

RIGHTS-BASED PHILIPPINE GOVERNANCE REVIEW



**Rights-Based
Philippine Governance Review**

Rights-Based Philippine Governance Review

edited by
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United Nations Development Programme (UNDP)
Australian Agency for International Development (AusAID)
Development Academy of the Philippines (DAP)

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We are especially grateful to the United Nations Development Programme (UNDP) and the Australian Agency for International Development (AusAID) for providing financial and technical assistance to this Governance Review Program under the Government of the Philippines-UNDP Portfolio on Enabling Environment: Poverty Reduction Through Good Governance.

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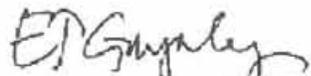
Message from the Governance Review Consortium

The task of governance review is always a challenging one for academics, less perhaps for its practical application to the actual running of government or the management of the public-private sector-civil society interface but more for providing us the opportunity to test theory against empirical reality, however each may be respectively constructed. Changes in theoretical perspectives are part of academic culture; the field of governance review has seen its own shifts in frameworks and guiding principles. The rights-based approach is one of these new perspectives now being advocated. Certainly it is not meant to supersede all other frameworks. What it offers is an alternate view, one that is anchored on human rights principles melded with principles of good governance. As with any new idea, there are fuzzy edges.

When the Consortium Members agreed to form the consortium for the Philippine Governance Review, little did we expect what we signed up for, in terms of challenging our comfort levels for what we thought was a straightforward governance review in the manner we, as academics long engaged in the study of governance had previously known and practiced. The task as we understood at the beginning was to create indicators for good governance in the various sectors of government. The output was as much in the process of arriving at this volume as in the results of the review itself as we endeavored to imbue a human rights perspective into our respective work.

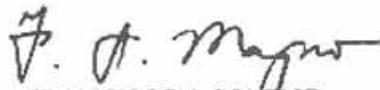
The work we present in this volume consist of a first attempt in adopting the rights-based approach to governance review. Undoubtedly it will not be the last. The next step is to hone further the ideas presented in this Volume, test them empirically and compare with existing governance review models. We invite other researchers to put to more rigorous test the newly minted idea of a rights-based approach to governance review.

For our part we will continue the work begun in this volume for beyond its value as a new framework we believe as students of the human condition that human rights and good governance are truly linked in perfect synergy. And as academics the task ahead for us is to help shepherd this idea into practical applications for the greater good.



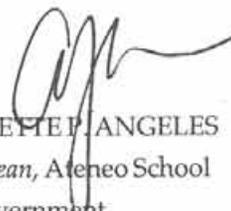
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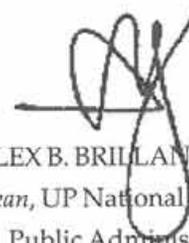
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Preface

Eduardo T. Gonzalez

“Governance can only get better with the Rights-Based Approach.”

Governance is not an arcane subject, but applying its component elements—voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, control of corruption—to a country’s institutional setting is not easy at all. To begin with, there is no single way of assessing the performance of institutions and agencies, whether they belong to government, private sector or civil society. Despite sundry attempts at aggregating (and disaggregating) measures of governance at local and national levels, governance review still remains a formidable challenge.

At first glance, what is laborious when left to run its own course may well be puzzling when operationally directed to promoting and protecting human rights. When governance teams up with a human rights framework, the resulting combination raises very difficult questions. After all, much like the many-sidedness of governance, there is no single, universally agreed rights-based approach, although there may be an emerging consensus on the basic constituent elements. For some, grounding governance in RBA adds value to it, and makes it work better. Others suggest that RBA merely dresses up the same old governance clichés and wonder whether it is merely a distraction from the core task of delivering measures to reduce poverty.

But the alliance may not be as troublesome as made out by many observers. Essentially, a rights-based approach integrates the norms,

standards and principles of the international human rights system—those contained in international treaties and declarations—into governance policies and processes. These principles include equality and equity, accountability, empowerment and participation, according to the UN’s Human Rights Commission. Now, consider the “articles of faith” in governance—accountability, transparency, voice and democratic practice. It is easy to see that one folds over the other quite neatly. Few in the governance arena could have bargained for what they got. On this basis, it should take only minimal effort to coax institutions into reconciling themselves to the demand for economic, social and cultural entitlements. The way the country manages its scarce resources need not be hostile to social and economic justice.

But does a governance-RBA coupling make practical sense? It may be worth looking at a few examples, culled from various reports, of the ways in which rights-based approaches are deployed in governance exercises.

Illustration 1: A traditional governance review at the municipal level may be carried out by means of annual planning exercises. However, in Bosnia and Herzegovina where the rights-based approach is being pursued, it is communities which assess the situation in their areas and how problems they have pinpointed impact on the exercise and enjoyment of human rights, e.g., citizen participation in public affairs, the right to social security and the right to physical and mental health. Part of their analysis includes the interrelatedness and indivisibility of the rights and the identified problems. Vulnerable groups such as female-headed households, minorities and internally-displaced persons—there are quite a few of them in the country’s municipalities—likewise take center stage. The communities actively assess the capacities of the institutions in fulfilling their obligations and the claim holders in claiming their entitlements.

Illustration 2: Customarily, activities of the informal sector in cities are almost always considered illegal, leading to the adversarial relationship

between informal activities operators and law enforcers. Scenarios like demolition of business stalls, confiscation of commodities, forced eviction of informal operators or their subsequent payment of fines or placement behind bars occur frequently. Despite these constant confrontations, informal operators continue to do business in the city, utilizing the public spaces available. In Dar Es Salaam, Tanzania, the city government, using the rights-based approach, first carried out a survey to identify petty trader location by size, degree of permanence and concentration and site suitability in relation to other users. Based on the survey results, a working group outlined strategies of intervention, including sensitizing government officials and politicians on the need to “mainstream” informal sector activities. A key measure was to relocate informal business in several modern market sites and to provide them with facilities to foster their businesses. Incentives to operators included the issuance of business licenses on condition that capital should be less than a designated threshold and an understanding that business structures should not be built permanently in assigned places.

Illustration 3: Unlike usual independent NGO assessments of government performance, the Save the Children Sweden, in consultation with various stakeholders, undertakes a rights-based governance review by assessing the government’s strengths and weaknesses in relation to the implementation of the Convention on the Rights of the Child (CRC). This NGO cooperates with government institutions, creates networks to influence and mobilize the mass media regarding children’s rights [given that media plays a crucial role in public perception that societies have of children], monitors public expenditure on children from a child rights perspective and promotes participation of children in budget monitoring processes.

Illustration 4: An attempt to interject human rights principles into a health program on a national scale hopes to improve multi-sectoral

understanding of, and work up political commitment to, the program. In 2001, a maternal and perinatal mortality and morbidity reduction initiative by the World Health Organization in Mozambique, adopted a human rights perspective to better target marginalized populations with specific interventions and services more appropriately and, ultimately, more equitably. The key was to improve legal and normative standards for access and care for pregnant women and newborns. An assessment tool was developed to assist a national multi-stakeholder team to review laws, policies and health system considerations against major health outcome indicators. The instrument measures how well the country has succeeded in (and further plans to respect, protect, and fulfill) its health obligations (say, to ensure the right to access basic and emergency obstetric care services).

These illustrations more or less offer a glimpse of how the rights-based approach to governance is put to use. Regular governance assessments or reviews account for failures and achievements; if RBA is present, they do allow for careful examination of whether or not people's rights are adequately addressed. Following Celestine Nyamu-Musembi and Andrea Cornwall, of the University of Sussex' Institute for Development Studies, it is possible to derive several RBA "tendencies":

- *As a set of instruments* with which to develop assessments, checklists and indicators against which interventions might be judged, as in the Bosnia and Herzegovina and Mozambique examples. Research and inquiry, it may be added, are likewise useful. In Nicaragua, for example, human rights activists use epidemiological research on the prevalence and effects of domestic violence to build support for legal reforms.
- *As a component to be integrated into programming*, as in the Tanzania example where a city government integrated rights into its livelihood security approach.

- *As the underlying justification for interventions aimed at strengthening institutions*, either to develop the advocacy skills of organizations, or to create or strengthen accountable governance institutions as in the case of Save the Children Sweden.
- *As a set of normative principles* to guide the way in which country governance is done, as in the UNDP's advocacy of RBA as a directing standard for its work.

While each of these four dimensions has demonstrated value, Nyamu-Musembi and Cornwall warn that pursuing any one on its own may prove insufficient. Reducing the rights-based approach to a set of instruments or a checklist to be ticked off runs the risk of compartmentalizing rights into "layers". Then, the obvious danger of seeing rights as a component to be incorporated into programs is that they become an add-on, with no intrinsic or organic influence on how things are done. (It is evident that rights form part of an interconnected whole. In the Tanzanian case, for poor people to secure livelihood rights meant that they also needed access to the courts—for example, to settle land disputes. The right to livelihood was therefore interconnected with the country's judicial system and the means to access justice.) Again, focusing only on strengthening the capacity of organizations or groups may help particular groups exercise rights, but may have limited impact in terms of wider societal changes. Finally, as a broad set of overarching principles, the approach simply serves as a new way of repackaging interventions, one that does not need to refer to anything more than good intentions. Moreover, to summon the discursive power of the concept of rights, without intending to hold up the weight of all the consequences that flow from it, could be fatal. Mainstreaming a rights-based approach, Nyamu-Musembi and Cornwall argue, will require work that includes *all four* dimensions.

In all these, it must be remembered that it is the state that can provide the tipping point. Governance is, after all, the way the state exercises its political, economic and administrative power. The challenge of introducing RBA in governance is the challenge of working with the

state. The performance of states is uneven across rights. All states “fail” to a lesser or greater extent in promoting and protecting rights. But it is important to ask whether the state is likely to challenge conventional ways of doing things, and whether it has a credible commitment to the (at least partial) realization of economic, social and cultural (or ESC) rights.

RBA underscores the obligations of the state by holding it accountable for human rights deprivation and deliberate violations and by tracking its mandate and commitment that claim-holders rights are addressed. (By contrast, NGOs lack any defined accountability.) The state is represented by government, which, as primary duty-bearer, has the responsibility to ensure that rights, as much as institutions and processes, are built on the rule of law, and are expressed in an environment that is accountable, open, effective, responsive and that gives space for equal and meaningful participation. In this context, ESC rights are a battleground for the fight over the heart and soul of government.

It is a mistake to underestimate the crucial role of government in upholding rights. To see clearly the role of government, it is worthwhile looking at several cases.

- The ancestral domain problem posed by violence against indigenous peoples demonstrates the synergies between governance and rights perspectives. Conflicts arise when development projects take place without an understanding of, or respect for, indigenous peoples’ strong spiritual ties to their lands and territories. Framing violence against IPs as a violation of human rights raises awareness and increases the political will to address the problem. It holds government accountable and broadens the response to include other governance actors, like law enforcers and the judiciary. The current peace negotiations between the Moro Islamic Liberation Front and the Philippine government on self-rule has rightly centered on ancestral domain, after negotiators on both sides have resolved other difficult autonomy issues.

- The apparent conflict between entitlement and affordability, as observed by the UK’s Department for International Development (DFID)—the British Government department responsible for promoting development and the reduction of poverty—can only be resolved by government. While a rights-based approach implies formal entitlement and claims by citizens, rights are expensive to fulfill. This is true even of civil and political rights: automating elections in the Philippines which would make it easy to cast and count the votes was estimated to cost between three and six billion pesos (between US\$ 56 million and US\$ 112 million), for example, and it did not even come out right. The legal framework, according to DFID, must talk about governments providing “maximum available resources,” and committing themselves to a progressive realization of rights. DFID interprets this to mean that (a) governments should take on obligations to fulfill human rights, (b) these should be reflected in resource allocation, (c) governments should be accountable, (d) also transparent, and (e) there should be participation.

The clash between individual rights (e.g. reproductive rights) and collective rights (e.g., a society’s ability to feed and clothe its population), or between “personal rights” (by virtue of which the individual can determine the way society behaves) and “solidarity rights” (whose realization requires collective action) should be conjoined, and not separated in government policies and actions, according to DFID. Government should not establish a comfort zone within the bounds of well-established individual rights only to find out later that it should allow for a broader interpretation that would encompass collective entitlements that society would wish to pursue.

Government is obliged to take deliberate action to ensure the progressive fulfillment of rights and a transparent assessment of progress. When government powers are decentralized to local levels, those levels become accountable as well. Government also has to ensure implementation of people’s rights in civic institutions and within the private sector. It must be

held accountable for the extent to which it enables those whose lives are affected the most to articulate their priorities and claim. It must be critically self-aware and address deep-seated power inequalities in its interaction with its constituencies, while strengthening the ability of local communities to access resources and services. If the government loses this instinct, it has lost a good deal of the difference that RBA promises.

Overview

Josefina N. Natividad

The *Rights-Based Philippine Governance Review* is an output of the Governance Review Program, a component of the GOP-UNDP Portfolio on *Enabling Environment: Poverty Reduction through Good Governance* which commenced in 2002. The Program received funding support from the UNDP through the Australian Government Aid for International Development (AusAID).

Governance review is based on the premise that citizens have the right to know how their government is performing, to collectively demand for good governance and to push and build support for governance reforms. It is commonly observed that there has been a notable absence of a commonly agreed upon set of principles, approaches and methods by which governance, specifically the performance of government and its instrumentalities can be meaningfully monitored and assessed. In Chapter 1 Virtucio and Manaois present a situation analysis on the status of governance reviews undertaken by international and local bodies. Their analysis shows that governance review tends to lean toward assessment of government performance and that the nature of the assessment likewise lead toward the programmatic mandate of the agency conducting the review. Of the various examples of government review examined in chapter 1, there is none that proceeds from a comprehensive frame that covers all aspects of governance, not just government. The Governance Review Program was conceived to address such a gap. Its objectives are:

- to develop, implement and institutionalize a mechanism for the continuous review of governance particularly the performance of public sector institutions
- to facilitate the identification of governance issues, the appreciation of the dynamics involved in policy and decision making, the participation of various sectors in governance processes, the development of capacities for sound and impartial governance evaluation and the identification, formulation and prioritization of necessary governance reforms
- to establish an institutional framework for the continuing assessment of governance and the performance of government institutions and their representatives
- to intensify multi-sectoral participation while maintaining the independence and integrity of the governance review process

Through these objectives the Program envisions as outcomes an improved public awareness and understanding of governance issues, an increase in the number of active stakeholder participants in review activities and an increase in reform measures adopted by public sector leaders. The Review itself has the following elements: research, monitoring of governance indicators, capacity building and learning, building awareness of and coalitions for governance reforms and inputs to policy and action planning.

To realize its objectives, the first major activity of the Program was the creation of the governance review consortium composed the Development Academy of the Philippines (DAP) acting as the lead institution and executing agency and three leading university-based institutions currently conducting teaching and research activities on governance, namely, the National College of Public Administration and Governance (UP NCPAG) of the University of the Philippines, the Ateneo School of Government (ASG), the La Salle Institute of Governance (LSIG). By recruiting the major academic institutions doing work in the area of governance the Program aimed to jumpstart the governance review because these institutions were already immersed in work on the topic. Moreover being academic institutions they

are expected to lend an independent, critical and unbiased eye toward the evaluation and monitoring of government programs. They are also more likely to sustain the conduct of governance review and to consider it as a worthwhile undertaking in and of itself beyond the duration of the Program because such an activity fits well into their academic mandates. The formation of the consortium and the set of activities it set for itself is aimed primarily to fill in the element of research and monitoring of governance indicators.

The consortium was formally created in January 2003. Its expected output was the Philippine Governance Review Report. Toward this end, this broad topic was divided into sectoral reviews (chapters 5-9) as now appear in this Report. UP NCPAG through a team headed by Leonor Magtolis-Briones took on the review of the Public Corporate Sector with the final report prepared by Gervacio, Sia and Sodusta under Magtolis-Briones' supervision. Lijauco and Mendoza of the ASG prepared the report on Local Governance, while Magno of the LSIG wrote on electoral and political reform. DAP took charge of two sectors, the Justice Sector in the report written by Gatarin and Tongco, and Macrogovernance by Mendoza and Manaois. During the initial stages of the consortium's work, the framework for the sectoral reviews as well as for the entire review was not yet fixed. In May 2003, Dr. Emmanuel Buendia of UNDP suggested for consideration by consortium members the adoption of a rights-based framework. Initially the consortium members expressed their reservations arguing that the RBA as a framework for governance review is not yet commonly accepted in the field thus the parameters and more importantly the indicators of performance using such a perspective are not yet established.

In a series of subsequent meetings the germ of the idea of using the RBA framework crystallized and the RBA approach was included in the Terms of Reference (TOR) for the preparation of each sectoral review. The broad strokes for what should go into a governance review filtered through the rights-based lens were contained in the TORs. Specifically the notion of rights and duties and corresponding claim holders and duty bearers was introduced. In the preparation of the sectoral reports each consortium member

endeavored to adopt a rights based perspective defined in this broad sense, each with varying interpretations as to how this was to be effected.

The rights-based framework as it appears in chapter 2 was prepared by Natividad after the completion of the sectoral reports. The framework was influenced primarily by the ideas set forth in the *2000 Human Development Report* and enriched by the findings from the sectoral reports. It was presented along with the sectoral reports for validation with stakeholders in the December 1, 2004 Conference on the Philippine Governance Review. Essentially the rights based framework attempted to merge human rights principles with principles of good governance based on the premise that rights-based governance is good governance. The major principles that guide the RBA framework for governance review are accountability, transparency, participation, nondiscrimination, adequate progress and effective remedy.

Chapter 3, written by Diokno, is a paper commissioned by the International Human Rights Internship Program and was first published in 1999 thus preceding the Philippine Governance Review Program by at least three years. Although not an output of the Governance Review Program, it is included in this volume to illustrate the applicability of the rights-based approach in the analysis of how the state complies with its obligation to meet social and economic rights. The paper aptly demonstrates how a rights-based perspective can serve as an empowering tool for rights advocates in pushing for government to respect, protect and fulfill social and economic rights. The paper outlines the steps by which claim holders can exact accountability from the duty bearers in one vital task of the state, budget allocation and expenditures.

In all, the rights-based framework is a fairly recent innovation in the field of governance assessment. Its major contribution is its ability to bring the concept of accountability to the operational level of matching duties with claims thus clarifying the reciprocal roles of claim holders and duty bearers. It also recognizes the distinction between civil and political rights as perfect duties and social and economic rights as imperfect duties, an important distinction to make in assessing how the state respects, protects and fulfills human rights.

This volume is a first attempt to apply the rights-based approach to a comprehensive review of governance. Being so, the application of rights-based principles in the sectoral reports may not yet be as fine tuned as would have been had the framework as elaborated in chapter 2 explicitly guided the preparation of these reports. But the RBA approach in general holds much promise for providing the perspective and the tool that will allow claim holders to clarify and take to task those who are responsible for delivering to them the rights they are entitled to as political constituents, as citizens and as human beings.

I. Situation Analysis of Governance Review Mechanisms: Global and Local Initiatives

Marie Antoinette G. Virtucio and
Princess Shimmadar R. Manaois

Governance Review Mechanisms and Processes: Global Initiatives

Whereas previously the common metric in reviewing government performance was effectiveness and efficiency, there has been a perceptible shift in the world view on governance toward more participatory processes and better measures of accountability. Most significant is the expanded definition of what constitutes governance. From its narrow definition as being almost synonymous with government or the formal state mechanism, the idea of governance now encompasses the private sector and civil society groups, giving recognition to these sectors as active participants, critics and catalysts of change in the government.

The change in perspective notwithstanding, it cannot be denied that government remains the most significant pillar in the governance concept. Governance review therefore remains very much driven by the assessment of government performance. It does not help that despite its more

encompassing new definition, it is unclear how the non-government pillars are to be assessed. What parameters, for example, should guide the assessment of civil society and the private sector? Given too, the multiplicity of tasks governance covers, its review has tended to focus on the evaluation of the performance of specific tasks. Thus its fragmented nature arises from the purposes of the agency commissioning the review or which aspect of governance is being assessed. In economic governance, for instance, efficiency, effectiveness and productivity are the main indicators of GNP or GDP growth which are considered the relevant outcome measures for a governance review. In the same manner, political governance is gauged by indicators measuring the accountability of state actors or politicians. In evaluating the performance of the bureaucracy, output indicators of the quantity and quality of goods or services delivered are applied. All these measures either come in government performance plans and statistical data or surveys on the perceptions of people about government performance.

Despite the differing perspectives taken by various reviews, the unassailable fact is that governance review is a very important element in sustaining governance reforms and in promoting good governance. It provides the groundwork for action planning and focus targeting as well as the evaluation of performance relative to its goals. According to the Asian Development Bank, a governance assessment examines the strength of a government's commitment to good governance, including sound macroeconomic and financial management, participatory and pro-poor economic policies, effective delivery of public services, and enforcement of contractual and property rights. Thus a governance review is a way of measuring the performance of the state and its components. It is a vital mechanism in determining the progress or failure of institutional frameworks and structures as well as of governance actors or stakeholders.

Table 1. Inventory of Existing Indicators and Review Mechanisms (Global Initiatives)

Project	Proponent	Key Features / Objectives	Indicators Measured / Principles Involved	Processes / Approaches Employed
Institutional and Governance Reviews	The World Bank	<ul style="list-style-type: none"> - empirical assessment of performance failures - development of standardized tools & modular approaches - analysis of the feasibility of reform recommendations by considering political realities & potential constraints 		Surveys; quantitative measures; sociological studies; focus group discussions involving representatives of interest groups; in-depth interviews with key observers
Results-based management in the public sectors of developing countries	ADB	<ul style="list-style-type: none"> - institutional-based - focus on performance results - clarifies customers & mandate of organization - specifies results and performance expectations of clients - performance reporting - links budget allocation to output delivery - performance analysis & continuous improvement 	Efficiency-effectiveness indicators; output-outcome indicators; equity-sustainability indicators	Balanced scorecards; client satisfaction surveys; institutional analysis through output-outcomes measures
Governance Matters I and II: Aggregating governance indicators	Kaufman, Kraay, Lobaton	<ul style="list-style-type: none"> Comparisons of governance across a broader set of countries; Provides more precise measures of governance; 	Voice and accountability [measuring aspects political process, civil liberties & political rights, independence of media]; political instability; government effectiveness [quality of bureaucracy,	Aggregating governance indicators drawn from various existing measures (from expert polls to surveys) using statistical tools.

Project	Proponent	Key Features / Objectives	Indicators Measured/ Principles Involved	Processes / Approaches Employed
Handbook of democracy and governance program indicators	Center for Democracy and Governance – USAID	To develop useful and effective indicators for measuring program performance	competence of civil servants, independence of civil service, inputs / demands of gov't. institutions; regulatory quality; rule of law [confidence of citizens in the rules of society, effectiveness & predictability of the judiciary, enforceability of contracts]; control of corruption	Use of data collection; government statistics; surveys
Improving governance with e-policy management assessment tools	Fanie Cloete, Public Management Institute, Belgium	Underpinning e-policy tools to improve the success rate of public services delivery, to achieve good governance and provide important benefits to public management outcomes		Evaluative approach / assessment
Business economic & enterprise performance survey	World Business Environment Survey- World Bank	To assess the quality of governance across 20 countries Central & Eastern Europe and the former Soviet Union from a firm-level perspective	Quality of public institutions (efficiency & quality of services delivered); institutional obstacles to business [i.e., corruption, street crime, political instability, anti-competitive practices, finance, infrastructures, law and order,	Empirical analysis of cross-country surveys; coordination with government offices on statistics (in determining the no. of firms and employees & their location)

Project	Proponent	Key Features / Objectives	Indicators Measured/ Principles Involved	Processes / Approaches Employed
Political risk index	Business Environment Risk Intelligence	Monitors countries on the basis of business environment analysis and forecasts	taxes; accountability; rule of law; predictability of policies	Survey / poll
Operation risk index	Business Environment Risk Intelligence	Monitors countries on the basis of business environment analysis and forecasts	Socio-political conditions [internal & external causes of political risk and symptoms of political risk] Bottlenecks for business development [policy continuity; enforceability of contracts; labor costs / productivity; degree of privatization; balance of payments; bureaucratic delays; economic growth, etc.]	
Annual survey of business analysts	Wall Street Journal		Attractiveness of the business environment	
Country risk review	Standard and Poor's DRI	Provides country risk assessment to international labor (data, analysis, forecasts and expert advice to strategic planners, business and financial analysts and policymakers) Assesses the relationship between country risk and its effects on the profitability of investments	Risk to the profitability of investments; government ineffectiveness; institutional failure; enforceability of contracts; costs of crime; corruption among public officials, effectiveness of anticorruption initiatives	Assessment of economic indicators (such as GNP growth, inflation, taxes, interest rates, etc.)

Project	Proponent	Key Features / Objectives	Indicators Measured/ Principles Involved	Processes/Approaches Employed
Transition indicators	European Bank for Reconstruction and Development	To represent the cumulative progress in the movement from a centrally planned economy to a market economy	Privatization; government restructuring; price liberalization; trade and foreign exchange system; banking reform & interest rate liberalization; securities market and non-bank financial institutions	Review and assessment of existing rules and analysis of economic indicators
Legal reform survey		To assess the progress made in financial, legal, reform in transition economies	Effectiveness and extensiveness of legal framework/ rules on banking and securities activities.	
Country risk service	Economist Intelligence Unit	To provide country risk ratings on political, economic policy and structure, liquidity, currency, sovereign debt and banking sector	Political stability [armed conflict; social unrest; change in government; terrorism threat; international disputes] and political effectiveness [government policy; government efficacy; red tape bureaucracy; legal system; corruption and crime	Data gathering from a global network; data assessment
Country forecasts		To measure the quality or attractiveness of the business environment in various countries	Macroeconomic environment; market opportunities; policy towards free enterprise and competition; policy towards foreign investment; foreign trade & exchange controls, taxes; financing; labor market; infrastructure, etc.	

Project	Proponent	Key Features / Objectives	Indicators Measured/ Principles Involved	Processes/Approaches Employed
Freedom in the world (FHFW) Nations in transit (FHNT)	Freedom House	Evaluates political rights and civil liberties around the world Evaluates progress in democratic and economic reform in post-communist countries	Political rights and civil liberties; freedom of the press Quality of government & public administration; rule of law; perceptions of corruption in civil service; business interests of policymakers; privatization; micro and macroeconomic policies	Country surveys
Global competitiveness survey	World Economic Forum	Measures the perception of business executives in a country	Business environment; competence of public sector; political pressures on civil servants; time spent with bureaucrats; citizens capacity to file lawsuits against government; citizens accept legal adjudication; judicial independence; costs of crime; frequency of irregular payments to officials and judiciary Corruption trends; extent of judicial independence; effectiveness of anti-monopoly policy; reported costs to business from organized crime	Surveys
CCR Executive Opinion Surveys				

Project	Proponent	Key Features / Objectives	Indicators Measured/ Principles Involved	Processes / Approaches Employed
Index of Economic Freedom	Heritage Foundation/ Wall Street Journal	Measures economic freedoms and prospects for growth in the global economy	Tariff rates; taxation; government intervention; monetary policy; capital flows and foreign investments; banking; wage and price controls; property rights; regulation; black market	
International country risk guide	Political Risk Services	Provides assessments of political, economic and financial risks in a large number of developed and developing countries	Political, economic and financial risks for investors; government accountability; socioeconomic conditions; investment profile; internal conflict; external conflict; corruption; military politics; law and order; ethnic tensions; democratic accountability; bureaucratic quality	Assessments based on the analysis of a worldwide network of experts
Corruption in Asia	Political and Economic Risk Consultancy		Quality of the legal system; effect of corruption on business environment for foreign companies	
Transparency in Asia			Perceptions of transparency in the business environment	
Quality of the media			Degree of censorship practiced; quality of local media, access to foreign print and broadcast media	

Project	Proponent	Key Features / Objectives	Indicators Measured/ Principles Involved	Processes / Approaches Employed
World competitiveness yearbook	Institute for Management Development, Switzerland	Analysis of competitive environment across countries	Business environment; efficient implementation of government decisions; political pressures on civil servants; tax evasion, confidence in ability of authorities to protect property; confidence in administration of justice; improper practices in the public sphere	Objective data and perception surveys
World development report survey (1997)	World Bank		Business environment; efficiency of government in delivering services; predictability of rules; time spent with bureaucrats; unpredictability of the judiciary; theft and crime; ability of state to protect private property; corruption as obstacle to business; frequency of additional payments to get things done	Surveys/ collection of opinions from countries
Corruption perceptions index, aggregation of many indicators	Transparency International		Corruption Perceptions	
Waiting time for telephone line	International Telecommunications Union		Wait for key service generally provided through government	

Project	Proponent	Key Features / Objectives	Indicators Measured / Principles Involved	Processes / Approaches Employed
Contract-intensive money; non-cash share of the money	International Financial Statistics		Proxy for contract enforceability / trust in government	
Private-sector credit / GDP	from International Financial Statistics		Financial sector development	
Gallup international	Gallup International	Measures frequency of corruption	Frequency of cases of corruption among public officials	Surveys / collection of opinions from countries
Business environment risk intelligence	World Bank		Bureaucratic delays; enforceability of contracts; mentality regarding corruption	

Existing Governance Review Mechanisms and Processes in the Philippines

For much of its post-World War history, the Philippine government has undergone numerous reorganizations; offices have been created, dissolved, merged and reengineered, all in pursuit of the goals of efficiency, effectiveness and economy. Among the most significant reorganizations that have taken place was the establishment of the revolutionary government of Corazon Aquino that succeeded Ferdinand Marcos' autocratic rule. Following the major lessons learned from the latter regime that suppressed basic civil and political freedoms, reform in government since 1986 has been largely writ under the rubric of democratization and the need for consultation prior to any formation of government policy. Such a dramatic shift from a dictatorial to a consultative frame of government fits largely into the changing global perspective.

In the Philippines, there are many ways to assess the performance of public sector institutions. One of the most common is the evaluation of an institution or a sector's faithfulness to its avowed mission and vision, goals and performance targets, and its contribution to the achievement of the sectoral or broader societal goals, like poverty alleviation. These assessments mainly measure effectiveness and efficiency. Another common review mechanism is in the analysis of how governance goes amiss. Its most familiar form is the measurement of the extent or magnitude of corruption at different levels of governance. In this type of review, the key governance principles of transparency, accountability and effectiveness apply. Its methodology includes investigative reports of the media or the nongovernment sector, perception surveys conducted by academic institutions, or official reports from the country's recognized and authorized audit institutions.

Governance review is not confined to the level of the institution or the sector. Officials and employees may also be the subject of review. Apart from using an internal assessment procedure to review their work performance, the evaluation of the performance of public officials may also be undertaken by publics who react to their professional and public

demeanor and communicate their reaction through such for as the mass media. The Code of Conduct and Ethical Standards for Public Officials and Employees or RA 6713, is a very useful instrument in appraising accountability of state actors. Participation of the people in the decision-and-policy-making activities of government can be evaluated in terms of measuring the extent of localization or decentralization of government structures, plans, programs and activities.

Despite several initiatives of various individuals and groups to measure the performance of public sector institutions, there still seems to be a lack of standards in reviewing governance. For one, there is not one body responsible for evaluating governance as a whole as governance review efforts come by fits and starts. There are existing institutions within government responsible for the continuous monitoring of performance of public institutions according to various measuring yardsticks. To monitor sound management of public resources in the country there is the Department of Budget and Management and for the proper use of state coffers, the Commission on Audit. Also, line agencies are expected to produce performance reports for ready evaluation normally along efficiency-effectiveness lines. Anti-graft bodies like the Office of the Ombudsman, the *Sandiganbayan* and the Philippine Anti-Graft Commission prepare reports on the magnitude and extent of corruption in the country through the inventory and listing of individual graft and corruption cases in government.

Monitoring poverty reduction in the country is yet another approach to governance evaluation. Measurement tools and techniques are abundant for the appraisal of poverty level which are undertaken almost regularly. The Millennium Development Goals, for instance, is an attempt at measuring the country's capacity to adhere to its international commitment to eliminate extreme poverty, and at the same time to determine the government's capability to address the basic needs of the people, like primary health care, education and housing. But on the whole, the efforts at governance review are rather fragmented and specific to the goals of the reviewer; thus, their findings and recommendations tend to be just as disjointed, apt to concentrate only on the specific aspect of governance evaluated. This is

probably one major reason why, in the wake of these reviews, governance reforms are hardly sustained or why action plans sometimes fail and are not implemented. An overarching perspective to bring all the pillars of governance together is sorely lacking

Many studies assessing the state of governance in the country have been made. They range from academic papers such as theses or dissertations to commissioned work. The following briefly discusses some of the existing governance assessment or review mechanisms in the country both at the national and local levels.

The *Effectiveness and Efficiency Review* (EER, previously SEER or the Sectoral Effectiveness and Efficiency Review) is a mechanism by which government agencies and institutions are evaluated in terms of their activities, programs and projects' contributions to the overall goals of the sector. Contribution is appraised on the basis of appropriateness, efficiency and effectiveness, among others. This review mechanism is mainly a performance check and is aimed at enhancing the link between the planning and budgeting processes of government in the context of the Medium Term Expenditure Framework. Moreover, the EER is an assessment tool that can improve budget allocation as it distinguishes reform-oriented PAPs from less appropriate and less effective PAPs, hence providing room for improved spending priorities of agencies. Overseeing the EER process is the shared responsibility of the National Economic Development Authority and the Department of Budget and Management.

The *Organization Performance Indicator Framework* (OPIF) is a mechanism that determines the performance of an agency by linking performance indicators with organization performance. It introduces the concept of performance budgeting, in which resources are allocated and expended on PAPs reasonably and cost-effectively. The OPIF evaluates an agency's performance in terms of nonfinancial outcome performance indicators (PIs), major final outputs (MFOs), client satisfaction feedback, key processes indicators (KPIs) and financial performance indicators (FPIs). This performance review mechanism is applicable to and is being adopted by the national government, particularly line agencies. The Department of

Budget and Management takes the lead in implementing and monitoring this process.

The *State of the Nation Address* (SONA) Review is a very common measure of governance in the country. The SONA is being used by different interest groups and different stakeholders in assessing the performance of the administration, particularly of the president, by comparing achievements with previously set targets or pronouncements. The SONA review provides information on the progress of the goals of the President and their alignment to the Medium Term Philippine Development Plan (MTPDP). Performance measurements are also monitored and assessed during SONA reviews especially on the modernization of the agricultural sector, attention to social bias, preference for the disadvantaged sector, raising of moral standards in government, propagation of the rule of law, etc. Furthermore, it is a mechanism that has information symmetry as it is annually delivered and recited by the President in public. The Makati Business Club (MBC), a private organization, and the Caucus of Development Nongovernment Organization (CODE NGO) Network, a civil society movement, are just some of the proponents of this review.

Apart from the SONA, the other performance monitoring system for the Chief Executive is the *President's To Do List* (presently Gloria's To Do List). This is being spearheaded by INQ7.NET, an internet channel or site owned and being managed by the *Philippine Daily Inquirer* and GMA 7, aimed at monitoring the President's performance against the targets set in the SONA. The performance measurements for this review mechanism are similar to those of the SONA Review.

The *Government Watch Project* (G-Watch) is also a donor-led and donor-funded governance initiative. Its main objective is to serve as an external monitoring agent whose job is to assess the government's expenditure performance. It evaluates whether expenditures on actual activities or project outputs match the resources allocated for planned activities or programs. The results of the studies and researches are subject to the scrutiny of the citizens, the government, both national and local, as well as other interest groups. Its main proponent is the Philippine Governance Forum, in

coordination with the Department of Budget and Management and various line agencies of government. This kind of review may be used by or applied to national government and line agencies.

The *Effective Participation of the Disadvantaged* (EPD) project is an initiative with funding support from the United States Agency for International Development (USAID) and is being implemented by various grantees. This review is an attempt at assessing the participation of the disadvantaged groups or sectors in the formulation and implementation of public policies in selected areas. This review mechanism uses indicators on research, and the analytical and administrative capacities of the different coalitions under study. This assessment tool is applicable to the disadvantaged sector.

The *Social Weather Surveys* are another tool for monitoring the state of governance in the country. The Social Weather Station (SWS) has been implementing surveys on the indicators of national governance. Some of these indicators are in the areas of political stability, national unity, reconciliation and amnesty, presidential performance, attitudes and demeanors of political personalities, graft and corruption, civil service effectiveness, decentralization, diplomacy, poverty, inflation, promotion and fulfillment of human rights and other surveys pertaining to the society such as women, children and disadvantaged groups, etc. Its main goals are to develop and assess national governance indicators for the country, to provide an independent source of pertinent, accurate, timely and credible data on Philippine economic and social conditions to supplement existing governance statistical activities as well as to provide trends in economic and social conditions affecting the country.

The *Filipino Report Card on Pro-Poor Services* is another donor-funded project (World Bank) implemented by the SWS. This is a survey type initiative that measures poverty based primarily on household expenditures. Among its aims are to identify the key constraints Filipinos face in accessing public goods and services, to appraise the quality and adequacy of these goods and services and the ways by which they were accessed or received by beneficiaries as well as to evaluate their behavior or interaction with service providers, particularly government officials.

II. The Rights-Based Governance Review Framework

Josefina N. Natividad

Introduction

The current discourse on good governance arose out of the changing worldwide perspective on the nature of government and its roles in human development. Under the global thrust toward political and economic liberalization, approaches to governance now emphasize issues of greater state responsiveness and accountability, and the impact of these factors on political stability and economic development. The creation of an enabling environment for human development hinges on fostering a political climate hospitable to a concept of governance that includes not just government but other social institutions such as the private sector and civil society, the latter to provide the venue for active participation of the citizenry in matters that affect their welfare. The concept of good government which also implies accountability, transparency, participation, openness and the rule of law is not synonymous with good governance as the former does not necessarily presuppose, for example, a healthy respect for civil and political rights or support for a free press which are currently considered indicative of good governance.

Governance has been defined in many ways, the common denominator being the reference to how rules are made (Hyden and Court 2002) and how authority is exercised. These varied definitions exhibit "a tendency among analysts and development agencies alike to adopt those that fit more closely

into their own programmatic mandate" (Hyden and Court 2002). Thus from the UNDP perspective, governance is the exercise of the economic, political and administrative authority to manage a country's affairs at all levels and comprise the mechanisms, processes and institutions for the articulation of citizen interests, exercise of legal rights, meeting of obligations and mediation of differences (UNDP 1997). While this definition sees the state as the main actor, it also reserves roles for the private sector and civil society organizations. The economic component of governance relates to state-private sector interactions, the political to state-civil society interaction, and the administrative to the bureaucracy. Moreover, while governance covers all three components, the state remains the major player because it is the institution vested with the authority to chart the course of development and is uniquely equipped with the legitimate means to enforce rules and carry out formal sanctions.

The World Bank definition, on the other hand, emphasizes the major role of the state when it defines governance as the process by which governments are selected, held accountable, monitored and replaced; the capacity of government to manage resources, formulate, implement and enforce sound policies and regulations; and the respect for institutions governing economic and social interactions among them (World Bank 2002). However, it recognizes that good governance depends not solely on government performance but also on a political climate that fosters stronger accountability, free public debate, a free press and civil society organizations actively engaged in public affairs.

To date, many variants of governance review have been conducted on the Philippines using different frameworks appropriate to the perspective of the agency conducting the review. A rights-based approach is only one of many such perspectives. Regardless of the lens through which governance has been viewed or may be viewed in the future, its assessment is usually informed by a common set of criteria—accountability, transparency, participation, rule of law, quality of the regulatory framework and effectiveness—which are effectively the basic elements that make for good governance. Changing perspectives only introduce variations in focus

and emphasis. In practice, governance review, even without the rights-based approach, may already be implicitly guided by human rights principles. After all, good governance implies that the state performs its duties toward all claim holders with fairness and equity. Thus, a rights-based approach to governance review may simply call for these implicit assumptions to be explicitly acknowledged so that they may be addressed more directly and more effectively.

The Rights-Based Approach

The rights-based approach presupposes that every human being is endowed with inalienable rights. The current concept of human rights as a set of basic entitlements that anyone and everyone can lay claim to was adopted fairly recently. The Universal Declaration of Human Rights, a landmark document signaling the formal commitment of a community of nations to the recognition, protection and fulfillment of human rights as well as the delineation of these rights came to be only in 1948, following the end of the Second World War which saw terrible oppression inflicted by humans on their own kind in the name of nation states and national interests. Since then, the notion of commonly shared human rights has taken root slowly even as subsequent international covenants have progressively defined, delimited, clarified, and expanded the normative content of such rights.

Nevertheless, there remains a gap between viewing human rights as a goal and incorporating human rights principles in practice. Existing inequalities within societies may militate against equal opportunity for all the members of those societies to enjoy having their basic rights respected, protected and realized. Social and cultural norms and values may preclude some sectors (such as women or ethnic minorities) from equal treatment, or limited resource may inhibit the capacity of the state to meet its human rights-related obligations to its constituents even if it is willing to do so. Moreover, the rights-based approach is grounded on value-backed principles that may not yet be universally accepted (See Box 1). Thus, putting

Box 1

The normative content of human rights first laid down in the UN Declaration of Human Rights has since then been progressively defined, delimited, clarified and expanded in a series of covenants signed over the years by member countries of the United Nations, all signifying their commitment to the common goal of ensuring human dignity for all regardless of country of affiliation. (Refer to table of normative content of rights from UN document.). This normative content is guided by a set of basic principles which may be broadly categorized into 1) those characterizing the nature of human rights themselves and 2) those defining optimal conditions and prescribing processes to ensure an environment under which human rights can be respected, protected and fulfilled. It is no coincidence that the second set of principles are also principles of good democratic governance, the form of governance assumed most conducive to the full realization of rights.

The first set consists of the following principles:

- a. universality – All human beings can lay claim to human rights by virtue of their being human.
- b. indivisibility – All human rights, be they civic and political or social and economic constitute one complete package of claims; there should be no denying some in the pursuit of others; there is no hierarchy of rights.
- c. interdependence and interrelatedness – All human rights are interlinked.
- d. equity – In recognition of inherent differences leading to inequalities among people the achievement of real equality may entail preferential treatment of certain groups to help them attain a status on par with the rest as far as the claim to rights is concerned.
- e. empowerment – The realization of human rights equips individuals regardless of their specific station in life, with the means to making their own destiny and their own choices about how to live their lives. Its opposite, powerlessness, is the human condition resulting from their inability to claim their rights and has been observed in many studies as the chief source of the sense of indignity, more than material deprivation, among those dispossessed of their rights.

The second set of principles are:

- a. nondiscrimination and equality – Human rights are to be enjoyed equally by all and there should be no exclusion from the claim to rights on the grounds of race, gender, ethnicity or socioeconomic status or other such discriminating attributes.

- b. accountability – The notion of rights implies the existence of entities accountable for the realization of these rights.
- c. true participation – It is the duty of the state to provide its constituents with the means to participate in decisions affecting their welfare under the assumption that people are not only the ultimate beneficiaries of development but are also agents of development themselves.
- d. transparency – It allows for the independent assessment of the performance of duty bearers and the status of rights-based development by all stakeholders through the full and free public disclosure of decisions, policies, rules and actions of government as well as the expeditious release of data bases for public use.
- e. attention to vulnerable groups – Related to the principles of equity and non-discrimination or equality, an explicit call for attention to vulnerable groups in society recognizes the many sources of the existing conditions of inequality within any society and that it is imperative to focus on them because their underprivileged status may render them otherwise invisible to a government not specifically attuned to minority rights.
- f. adequate progress – The principle of adequate progress tracks the efforts of the main duty bearer, the state, toward the full realization of the rights of its constituents. Since the capacity to fulfill all rights is constrained by resources, this principle provides a frame for assessing how well duty bearers strive toward meeting the ideal goal over time.
- g. legislative capacity and the rule of law – The rule of law refers to the principle that every member of society, even in power, must follow the law. It assumes a legal environment in which civil and criminal cases are handled in a nonarbitrary manner according to a well-developed and well-understood body of law. As a human rights principle, it presumes that human rights are guaranteed by law. Legislative capacity, on the other hand, refers to the capacity of the legislature to enact laws fostering the realization of human rights.
- h. effective remedy – Since rights are enforceable claims, there should be firm provisions for effective mechanisms for redress when rights are violated. Remedies for the violation of civil and political rights are mainly judicial. From the human rights perspective a judiciary acting independently is the best means of assuring impartiality and fairness in the enforcement of rules and the guarantee of effective redress against violations of such rights.

a human rights dimension in the forefront of human development concerns remains in the advocacy agenda of international bodies like the United Nations as well as NGOs and other groups which truly believe that it is imperative for optimal human development.

Neither has the synergy of human rights and human development always been commonly invoked. Since human rights as a concept has been historically associated more closely with civil and political rights while human development has been more closely linked with social and economic rights, there was even a time during the Cold War Period when civil and political rights on the one hand and social and economic rights on the other were regarded not as two sides of the same coin but as “competing visions for the world’s future” (Human Development Report 2000). Thus, human development can conceivably proceed without parallel developments in the realization of civil and political rights on the one hand and the fulfillment of social and economic rights on the other. Further, cultural beliefs, long held traditions and practice may militate against full acceptance of the idea of granting equal rights to everyone in the first place.

Contemporary advocacies hold that human development and human rights are inextricably linked. Indeed, if human development is to be fully realized, or alternatively, to provide the enabling environment for full human development, the process of development must be guided by the overarching goals of respecting, protecting and fulfilling basic human rights for all and of empowering everyone to shape their own destiny under a regime in which the realization of basic rights is guaranteed.

By applying sets of indicators in assessing human development, The UN Human Development Reports have, since 1990, begun to sensitize countries into using common indicators to monitor country accomplishments based on objective criteria. These are operational measures of the citizenry’s aggregate capacity to develop their human potentials in terms, for example, of life expectancy, literacy rate, access to health services and to safe water supply, among others. In fact, these indicators evaluate how each country stands in terms of addressing certain basic rights: the

right to life, to health and to education, for instance. Ranking countries on the Human Development Index and the related measures of the Human Poverty Index and the Gender Equality Index implies that the country and its natural representative, the national government, are under review. In this approach a country is assessed mainly on the basis of these outcome measures with no explicit prescriptions as to how these levels of outcomes may be improved upon and by whom.

Adopting a human rights framework to assess country performance in measuring human development introduces the important dimension of accountability in ensuring that the country reaches a reasonable level of human development or of respecting, protecting and fulfilling human rights for “to have a particular right is to have a claim on other people or institutions that they should help or collaborate in ensuring access to some freedom” (HDR 2000). Rights in general comprise a bundle of enforceable claims against certain duty bearers, i.e. those who are tasked to fulfill these rights by claim holders or those who possess these rights. In the case of human rights everyone is a claim holder while the main duty bearer is the state. Assessing how well a state achieves its fundamental duty to protect, respect and fulfill human rights thereby becomes a governance issue.

There are two main categories of human rights:

1. Civil and political rights which cover those rights necessary for individual freedom such as liberty, freedom of thought, speech, the right to choose one’s faith, the right to own property, to enter into valid contracts, the right to justice and to participate in the exercise of political power
2. Social, economic and cultural rights which refer to individual entitlement to a minimum level of economic welfare, social security and a living standard that guarantees a decent life for any member of a society. These include the right to health, education, adequate food and housing and taking an active part in cultural life

For all these rights, the primary duty bearer is the state. Institutions within the state most closely associated with the first set of rights are the justice system composed of law enforcement bodies and courts of justice which should espouse the doctrines of the rule of law and due process. The second set of rights, on the other hand, are associated with a more diffuse set of institutions catering either to specific rights (e.g. the right to health, the right to education) or to a set of interrelated social and economic rights collectively claimed by a particularly vulnerable sector (e.g. social welfare organizations or bodies within the state addressing the needs of the destitute and impoverished). One model for a well-articulated state response to fulfill the fundamental social and economic rights of all its constituents is the welfare state which guarantees the satisfaction of the most basic of social and economic needs of citizens “from the cradle to the grave.”

Civil and political rights are more directly associated with the notion of perfect duties, that is, of each right perfectly corresponding with a duty, with each duty bearer being held accountable for the fulfillment of a specific right. The social and economic rights, by contrast, are more in the nature of imperfect duties in which the correspondence between duty and right is not as well-defined. For example, when a political right such as freedom of speech is violated, it is usually clear whom the claim holder will hold accountable and how he can seek redress. On the other hand, it is not as obvious whom to hold accountable and how to seek redress when one does not have housing or enough food. For imperfect duties in which duty bearers and their responsibilities are not clearly spelled out, it is useful to investigate how other groups or stakeholders can share the state’s burden without fully absolving it from its obligation as primary duty bearer (HDR 2000).

Because the discourse on human rights originated from politics and philosophy, the layman’s perception of human rights tends to be identified more with civil and political rights and by extension also the institutions of law and justice seeking as well as the notion of violation of basic individual political and civil freedoms. A rights-based perspective broadens the discourse on rights, taking it beyond the notion of perfect duties to imperfect duties with their more diffused sense of accountability, specifically those

social and economic rights guaranteeing the human being's entitlement to a decent life. In fact, a rights-based framework introduces the concept that it is the duty of the state to assure its constituents a life of human dignity by providing reasonable access to the means to achieve that goal. By and large this is a daunting task. It has been observed that a country's ability to meet social and economic rights fully is tied with its economic conditions. Thus, compliance may vary across nation-states not because some refuse to honor their obligations but because they cannot, given the level of their resources. A rights-based approach also identifies other duty bearers that share with the state the responsibility to respect, protect and fulfill certain human rights. These include the international community, nongovernment organizations, civil society, advocacy groups and basic institutions like the family.

With rights come responsibilities. Rights are not unlimited; they are bound by the corresponding rights of other claim holders. Hence, claim holders are expected to exercise their rights only insofar as they do not interfere with or impinge on the right of others to claim their own entitlements. For example, when people who are unable to legitimately avail of housing settle in unused land illegally, they violate the rights of those who hold legal titles to the property directly even if those owners are not using the land. Hyden and Court argue that the central phase toward achieving good governance is the awareness of and exercise of citizen rights to political participation. An important component of this politicization process is citizen consciousness of and respect for the rules necessary to achieve common and public goods, also referred to as public duties. Minimal awareness of public duties is likely to result in the attribution of all responsibility to the state with no corresponding understanding of its citizen's obligations to the state, such as paying taxes or obeying simple rules.

Parameters

From the basic human rights principles discussed in Box 1, one can extract key parameters which lend a rights-based perspective to

governance review and which translate into operational measures that are in turn amenable to empirical investigation. These parameters are:

1. Accountability or clarifying the linkages among rights, claim holders and duty bearers
2. Nondiscrimination or ensuring equitable treatment
3. True participation or enabling people to make decisions affecting their well-being
4. Adequate progress or committing resources and efforts to the priority of rights
5. Effective remedy or ensuring redress of violated rights.

Accountability: duties, claims and responsibilities

The notion of rights implies there are entities that can be held accountable for the realization of these rights. This is arguably the most significant contribution of the human rights approach to human development. Because rights are reciprocally related to duties, the human rights perspective brings the lofty goals of human development one step closer to operational levels by singling out who should be answerable for the realization of rights and by extension, of human development. Moreover, to clarify accountability linkages one must understand exactly the content of each right: the nature of the claim, its specific entitlements, who the claim holder is, who is accountable (i.e. who bears the duty to fulfill the specific right) and the responsibilities of the claim holder.

Nondiscrimination and equality

Although a fundamental principle defining human rights is universality, the reality is that there are existing inequalities in any society which can jeopardize the full realization of everyone's rights with equal degrees of certainty. It is the duty of the state to ensure that all

appropriate steps are taken to guard against unequal realization of basic rights, some of the causes of which may emanate from social and cultural traditions that tend to put some groups at a disadvantage. Thus, the principle of nondiscrimination and equality implies that the state can take actions to guarantee equal access to the realization of one's rights. This may involve proactive identification of vulnerable groups within society which, by virtue of certain factors such as gender or ethnic minority status or impoverishment are unable to claim their entitlements fully from known duty bearers. It is the duty of the state to address their concerns even if it involves singling them out for preferential treatment to uplift their capacity and bring it on a par with nonvulnerable groups. State action may also mean reversing existing policy or legislation that may have had the unintended effect of discriminating against some groups.

The principle of nondiscrimination further draws attention to the need to recognize individual claims against those of the larger collective to which governments may give more priority in the exercise of its duty to provide goods and services to the greater majority. For example, in the interest of the greater good, does the government consciously pit the claims of marginalized groups, like indigenous communities, against the development goals of an entire nation, such as when ancestral lands are sacrificed to make way for power generating dams or when mining rights are granted against the objections of affected local communities?

Adequate progress

Respecting, protecting and fulfilling the human rights of all require time and resources. Even if the state is fully committed to fulfilling its duties, providing equal access to a life lived in dignity for everyone is a not an easy task. Nevertheless, the state is expected to strive toward this goal. In the language of human rights, adequate progress may be seen as applicable at two levels. For civil and political rights, which are perfect duties, the clarity of the linkage between right and duty, claim holder and

duty bearer implies that adequate progress calls for immediate compliance of the state as the main duty bearer to respect, protect and fulfill these rights. For social and economic rights, being imperfect duties, adequate progress is measured by progressive realization.

In general the principle of adequate progress tracks the state's efforts to meet its obligations. Such efforts may range from direct action such as passing legislation that purposefully respect, protect or fulfill some basic right (e.g., legislation providing for free basic education for all). More often, adequate progress is pursued by assessing government plans and actions in relation to specific rights. In addition to identifying existing programs devoted to a given right, progress is also tracked by evaluating resource allocation, as it is often the case that the real priorities of government can be discerned from an analysis of how much gets spent where. Since the state's capacity to meet its duties may be constrained by its resources, governance review will attempt to identify where feasible the basic, minimum levels at which each right can be considered reasonably addressed given the level of a state's resources. The whole purpose is to encourage the state to raise this minimum level as capacity improves and to document its progress to determine whether adequate progress is observed.

True participation

It is the duty of the state to provide its constituents with the means to participate in decisions affecting their welfare. The most direct form of participation is the exercise of the right of suffrage. Other forms of participation no less salient take the form of taking part in the making of policy through public consultations and free expression of opinions and views. Moreover, participation is more fully achieved when the members of society have the necessary knowledge to make informed choices in matters affecting them and their well-being. By this light it is the duty of the state to provide timely and accurate data about the current situation of its affairs for its people to make better-informed judgments.

Effective remedy

Since rights are enforceable claims, a basic principle of human rights is that there should be provisions for seeking redress when rights are violated. Remedies for the violation of rights are mostly judicial in nature, although they may also assume other forms. Good governance is observed when remedies are applied in a timely manner without discrimination and in adherence to just laws.

The Rights-Based Governance Review

Most nonrights-based approaches to governance review assess it on the basis of common underlying dimensions such as

1. voice
2. accountability
3. effectiveness
4. quality of the regulatory framework
5. rule of law
6. political stability and lack of violence and
7. control of corruption

with varying emphasis on the dimensions as appropriate to the purpose of the review and the institution conducting it.

Voice and accountability take into account the correlated processes of making public officials answerable for their performance and behavior subject to the nature of the institutions from which they derive their authority on the one hand and on the other, to the active participation of the recipients of these officials' actions in their formulation and implementation under the assumption that people are not only the ultimate beneficiaries of development but are also agents of development themselves. This dimension involves the important element of *participation* as the major indicator of voice. Furthermore, to enable more

responsible participation and to improve accountability, another basic element must come into play—*transparency* or the disclosure of government rules, regulations and bases of decisions. Transparency enables interested stakeholders to assess how well or how badly government is doing its job.

Government effectiveness refers to how government meets its duties to various stakeholders with enforceable claims. This dimension examines the goals government sets for itself and assesses how well these goals are met. Generally effectiveness considers the quality of the output. It should not be confused with the related concept of efficiency which examines how much time, money or effort is saved in reaching a specific goal. Effectiveness is a quality metric while efficiency is a productivity metric.

The quality of the regulatory framework is concerned with the assessment of laws, rules, policies and procedures which regulate society and govern government actions. The relevant aspects are predictability in the application of laws and their fair and consistent application. The rule of law is a related dimension and refers to the principle that every member of society, even those who hold power, must follow the law. It presumes the existence of a legal environment in which civil and criminal cases are handled in a nonarbitrary manner according to a well-developed and well-understood body of law.

The political stability dimension determines how secure the government is from threats to its legitimacy and staying power from both internal and external forces. Lastly, corruption defined as the misuse of public office for private gain comes in many forms—from bureaucratic/ administrative corruption, like bribe taking, to state capture when private groups use their influence to shape laws to their benefit. Assessing this dimension is a complex task due to its multiple manifestations at different levels of government, from the lowliest public position to the highest offices in the hierarchy. Widespread corruption in a society severely undermines the capacity of government to exercise its duties and fulfill its obligations effectively and in a fair manner. For this reason, the assessment of

corruption in its all its diverse manifestations is generally a major component of any governance review.

A rights-based governance review incorporates elements of the rights-based approach (RBA) in evaluating government performance. It involves a more deliberate attention to the application of human rights principles in the review of governance. In practice, governance review, even without the rights-based approach may already be implicitly guided by human rights principles. After all, good governance implies that the state performs its duties toward all claim holders with fairness and equity. A rights-based approach to governance review thus may simply call for these implicit assumptions to be explicitly acknowledged so that they may be addressed more effectively.

Figure 1 shows schematically the relationship between rights-based parameters and the common dimensions evaluated in any governance review. The arrows indicate which rights-based parameter directly corresponds with which governance dimension. For example, the assessment of voice and accountability guided by a rights-based perspective can more explicitly identify the rights involved, the nature of this right, the claim holders and duty bearers and their reciprocal responsibilities. In addition, incorporating the parameter of nonparticipation allows the review to give due recognition to the interests of vulnerable groups which may otherwise lack voice and other interests which may be missed without the use of the RBA in a traditional governance review. Similarly, the principle of adequate progress can guide the assessment of government effectiveness. This parameter lays down the development objectives government must address as part of its duty to protect, respect and fulfill citizen rights. Thus government is assessed not just on the basis of its own expressed goals but also through the yardstick of international standards which may lay down the normative ideals for meeting basic rights. Such standards will include international covenants defining the basic entitlements of all human beings regardless of the society they live in, beginning with the International Declaration of Human Rights and as it is subsequently refined in other international agreements.

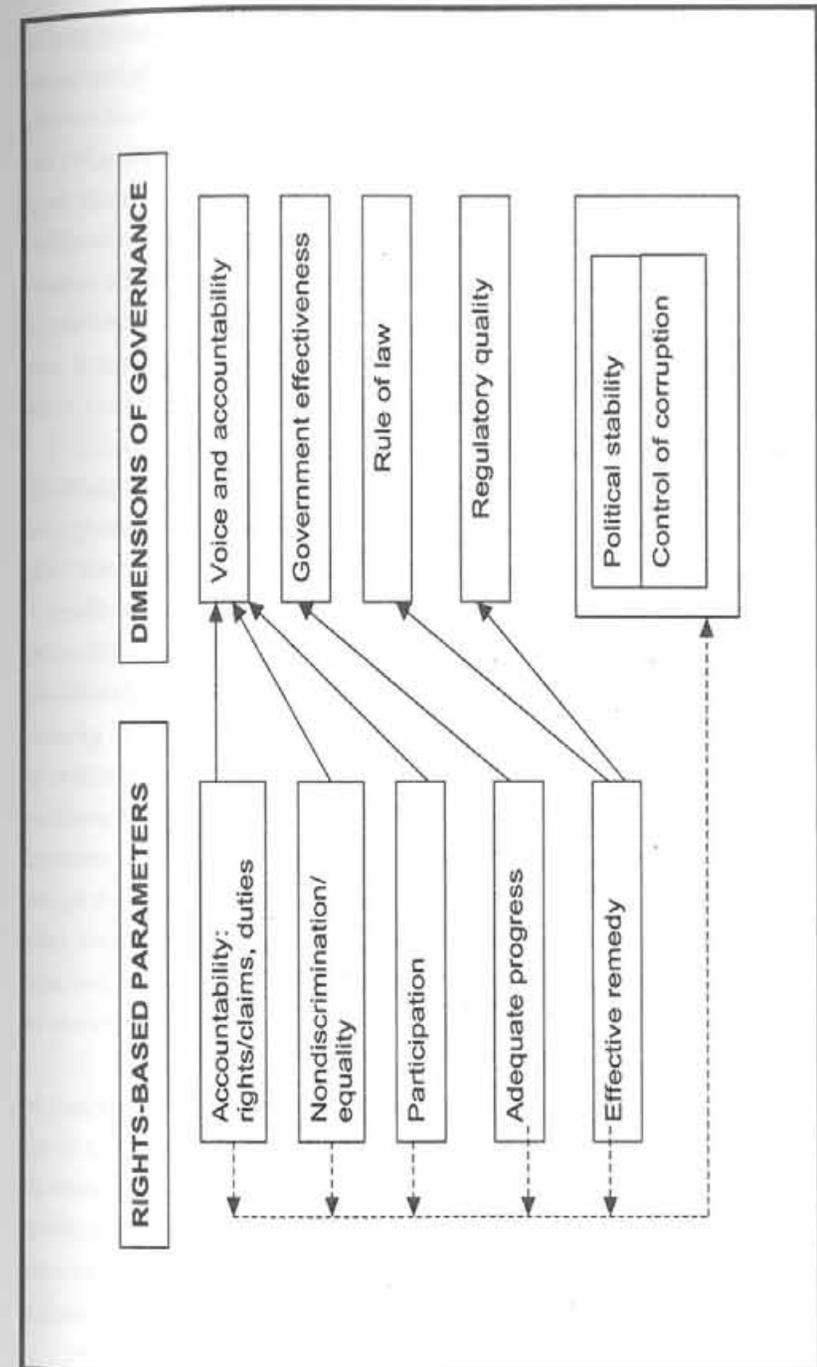


Figure 1. Schematic Diagram of the Relationship Between Dimensions of Governance and Rights-Based Parameters

The principle of effective remedy is directly linked to regulatory quality and the rule of law. It is particularly appropriate to adopt a rights-based perspective in assessing these two dimensions because the usual criteria for evaluating them may indicate good governance even when rights are not respected. For instance, the concept of "the rule of law" per se says nothing about the "justness" of the laws themselves but simply describes how the judicial system upholds the law. Thus a society with little respect for individual civil and political rights may actually observe the rule of law in a manner indicative of good governance because of its fair and consistent application even if the content of the law fails to respect some basic freedoms.

Finally, the two remaining dimensions of governance, political stability and control of corruption are linked to all rights-based parameters by broken lines. This signifies that there are no direct links between a given parameter and these two dimensions; rather, it means that a society's political stability and the level of corruption by and large affect the ability of the state to be to carry out any rights-based governance at all. Where there is political instability there is greater likelihood for civil and political rights to be violated as the state tries to protect its very existence. Similarly, high levels of corruption jeopardize equal fulfillment of rights or seriously threaten the capacity of government to implement programs for the benefit of all. In fact, all human rights principles are compromised in a regime where private interests take precedence over or even subvert public goals and where rules and regulations are clearly loaded in favor of some groups at the expense of others.

The rights-based governance review framework can be applied to varied types of classifications and at various levels: by sector (e.g., health, education, environment, social welfare, judiciary), by area of coverage (national, sub-local or local) or by thematic area (electoral and political reform, anti-corruption, civil service and economic management reforms, legislative reforms, globalization and corporate citizenship).

The review process addresses the following issues and questions in the order that they are listed:

1. Identification of right(s) addressed by the governance level under review

What right(s) is / are addressed by the sector / area of coverage / thematic area governance review (e.g. right to health, right to education)?

For example, in the review of local government units (LGUs) the Local Government Code enumerates the list of duties the LGU should fulfill at its level. Which of these are human rights-related? Does a government owned and controlled corporation like the National Housing Authority have human-rights related functions? What are they?

2. Identification of the basic entitlement of each right

What are the basic entitlements of this right?

- as set by international standards
- as set by local standards: the Constitution, legislation (e.g., the Local Government Code), formal mandates of government units (e.g., Department of Health)
- as defined by other stakeholders (e.g., the private sector, civil society)

The entitlements may be clear cut in the realm of civil and political rights such as those addressed in the judicial review but are fuzzy with respect to social and economic rights such as those addressed by agencies like the NHA or the NFA. How are the entitlements articulated? Through what processes did the definition of entitlements evolve?

3. Analysis of claim holders

- Who are to be considered claim holders to this right?
- Are there vulnerable groups? Why are they vulnerable?
- Are there possible issues of discrimination/inequality? What are the roots of discrimination?
- What avenues for claim holders' participation are available?
- What roles do civil society groups play, if at all, in relation to claim holders? to the specific right?

For every level of governance under review, it is crucial for the rights-based approach to identify clearly who may be considered claim holders to a specific agency's duty? For example, who are the targeted beneficiaries of a GOCC like PhilHealth? Are there vulnerable groups left out when the programs are designed because they are not identified as claim holders? How can these excluded groups be identified? How can their rights be addressed? Does PhilHealth, for instance, reach minority groups?

4. Analysis of duty bearers

- Who is/are the duty bearer(s) for a specific right?
- Does the state share duty with others? Who are these other groups? What is the nature of their obligations?
- What arm of the state (i.e., what level/area/sector) is accountable? Are there clear delineations of roles of accountability within the state structure (e.g., between national and local levels)?
- How accountable is each duty bearer? How is accountability manifested?
- Does the state have the power to compel other duty bearers to perform their part (e.g., compel parents to send their children to elementary school)?

- What mechanisms does the state use to compel other duty bearers?
- How transparent is/are the duty bearers in the performance of their duty?

While the rights-based approach identifies the state as the main duty bearer, the many levels of governance implies that it is not always easy to pinpoint just exactly which state entity is responsible for fulfilling which duty. Moreover, there may be other duty bearers designated by cultural norms that must be held accountable outside of the state. For example, in analyzing the right to health as articulated in the constitution, who are to be the main duty bearers, the Department of Health or the local government units to which health services have been devolved? How are the duties shared between these levels of government? Are the accountabilities of each clearly delineated? When health service delivery falters or when health indicators fail to reach acceptable levels, who should be held accountable and how? Should parents be considered co-duty bearers in health care? Should the state compel them to bring their children for basic immunization as this service protects health at the youngest ages? Are health budgets open to scrutiny by constituents at the local levels? at the national level?

5. Identification of concrete actions of duty bearers to address a given right

- Are there ideal standards to aim for?
- Are there minimum standards? Are the minimum standards met?
- Analysis of actions as:
 - as input – through plans, programs, policies, resource allocation
 - as outcomes – through indicators of coverage of programs / policies, accomplishment reports, performance indicators
 - as process – how participatory, how transparent?

The actions of duty bearers may be analyzed as inputs, as outcomes and as processes. Using the rights-based perspective these actions may be evaluated as to how they embody the principles of nondiscrimination, participation, and attention to vulnerable groups. The discussion of the legislative process that produced the landmark Republic Act 8371 ("An Act to recognize, protect and promote the rights of the indigenous cultural committees, establishing implementing mechanisms, appropriating funds therefore and for other purposes") or IPRA illustrates just how a specific duty bearer—the legislative—acted to realize a specific right based on its expected duty to enact laws.

6. Adequate progress in meeting obligations

- Are there adequate, reliable data sources with which to track the performance of duty bearers
- What is the quality of data/record keeping to establish longitudinal trends?
- How transparent is the sector/level/area under review in recording and releasing data on its actions, accomplishments, plans, programs and resource use?
- How participatory is the identification of measures to track adequate progress?
- Can data be disaggregated into appropriate categories to allow for comparison of subgroups in the population?
- Are there vulnerable groups and how are they identified, monitored or addressed over time?
- Are there issues of discrimination or inequality and how are these addressed over time?

To assess the performance of duty bearers effectively, the indicators of performance must be specified and followed up longitudinally in order to measure effectively how well the duty bearers are keeping to their obligations. Legislation such as the IPRA

may specify ideal principles fully complying with international standards but compliance in spirit through a well-meaning law must be tested in the course of implementation through empirical proof. Since the signing of the IPRA in 1997, how far have the rights of indigenous peoples as defined in that legislation been actually met? What kinds of information must be compiled and followed through over the long term to allow for tracking progress in meeting state obligations to indigenous peoples as embodied in this law?

7. Enabling and constraining factors for duty bearers

What factors facilitate or impede the ability of duty bearers to meet their obligations? Some of these factors may be:

- legislation
- resources
- clarity of mandate of the sector/level/area
- relative importance/ranking of a specific right in the hierarchy of government priorities
- civil society influences
- private sector influences
- international community influences

Enabling factors facilitate the performance of the designated duty bearers' duties. The ideal combination of enabling factors are a clear mandate supported by legislation and backed by adequate resource allocation, a relatively high ranking among government priorities and support from international organizations and donors. This ideal setup enables one to identify deviations that constrain the duty bearers' performance. It has been observed, for example, in the sectoral reports that one of the factors constraining GOCCs from meeting their duties adequately springs from the basic incompatibilities in their mandates for both profit making and

addressing the rights of the disadvantaged sector, such as the right to housing (NHA), food (NFA), credit (Land Bank) and health care (PhilHealth). In addressing these questions of enabling and constraining factors, one must understand the total environment in which the sector under review operates and identify bottlenecks as well as opportunities.

8. Enabling and constraining factors for claim holders

What factors facilitate or impede the ability of claim holders to assert their rights?

- awareness of rights
- availability of services to realize rights
- access issues
- quality issues
- vulnerability
- discrimination
- lack of voice
- civil society influences
- private sector influences

By and large, the rights-based perspective offers a new way of looking at the role of government and its partners in governance. This approach may be seen as empowering to claim holders because it gives them the opportunity to exact accountability from known duty bearers. The capacity of claim holders to act on their rights also has to be analyzed to identify enabling and constraining factors. The IPRA example has shown that claim holders can partner with other institutions and interest groups to push for effective legislation addressing their specific needs.

Nonetheless, the potential empowerment of claim holders must be balanced with the observance of public duties. Already there is a

tendency to expect a lot from government without a reciprocal measure of willingness on the part of the public to do its share. How much claim holders recognize the prerogatives of the state and the rights of others must also be determined as well as their willingness to respect the common good or to ensure equal claims to a right regardless of their individual circumstances. The objective of the National Home Mortgage and Financing Corporation's Community Mortgage Program, for instance, to develop "on site projects to allow illegal settlers to formalize their claim to the land they occupy by buying it from the owners through community mortgage" may create the impression that people who disrespect other people's rights to property ownership can still get government protection.

9. Analysis of cross-cutting issues

What common factors affect the governance climate that in turn influence its ability to meet its rights-related obligations and claims of entitlements, specifically:

- the role of the private sector
- the role of civil society
- corruption
- the social, political, economic, cultural climate
- fiscal capacity or the level of resources that the country in general or a local government unit in particular can commit to meeting its rights-based obligations.

The Context of Philippine Governance: The Social, Political and Cultural Environment

Governance does not occur in a cultural vacuum. To a significant degree, good or bad governance grows out of larger economic, social, political and cultural forces that include norms, values, beliefs and

standards for behavior that may support or undermine efforts to establish the ideal government. The same holds true for the idea that human rights are universal entitlements, equally available to all. Prevailing norms may uphold instead a culturally long-standing belief that some groups like women cannot enjoy equal stature as other groups, such as men. Therefore any application of the rights-based approach to governance review needs to consider the social and cultural context. In the Philippines there are a number of features of the culture impinging on the practice of good governance and respect for human rights.

One of the fundamental features of Philippine culture that exerts such a dominant influence on the Filipino way of life is the strong value for close family ties and the predominance of the family in all aspects of life. Not surprisingly, this carries over into all aspects of social life including the political sphere. In many elective posts it is not unnatural to have members of political clans occupying elective posts at all levels from *barangay kagawad* to congressman and for such positions to circulate among family members across generations. With the family in all its extended forms as the primary social unit to which loyalties are owed, it comes as no surprise when family interests supersede public interests. Even in the executive branch of government, accommodations of personal interests rooted in family-based considerations are common. In exchange for political support for the appointing official, for example, a legislator may wangle a high level government position for a sibling even if that person is grossly unqualified for the job.

Another value that affects governance is personalism. There is a premium attached to personal ties. Loyalties are based on commonly shared personalistic roots such as being from the same hometown, the same school, the same fraternity, speaking a common regional language, among many probable links. These ties pervade even the conduct of official business, paving the way for various breaches of acceptable bureaucratic conduct.

Not all the potential for misgovernance emanates from those in official positions or those seeking such positions, however. They also derived from the claim holders' expectations of officials who are perceived to be duty

bearers. Owing to personalistic values, claim holders tend to equate the state with the person holding a position in government, especially an elective post and to associate the personal actions of that official with his formal role as duty bearer representing the state. Hence, citizens turn to public officials for personal favors which are perceived to be part of their social and economic entitlements as claim holders—viz., financial aid for hospitalization of the sick, burial of the dead, school tuition fees or uniforms for the neighborhood basketball league. Insofar as social and economic rights are imperfect duties with no clear boundaries to set them off, the fuzziness creates a gray area where cultural factors rather than clear official rules define the situation. Such expectations encourage officials to raise funds for these expenses in ways that may compromise the tenets of good governance. Generally, people in office are regarded as patrons in a patron-client relationship and are expected to behave accordingly by dispensing personal favors. In sum, these values and their accompanying typical behavioral manifestations not only undermine the practice of good governance; they also threaten the principle of nondiscrimination if preferential treatment is accorded to some over others who are equally in need.

De Dios and Ferrer (2001) succinctly summarize some of the key features of the social, economic and political climate that foster corruption and threaten good governance. Positing the problem of corruption in the Philippines "as a principal-agent relation [which] entails positing agents as acting in their self-interest, behaving so as to maximize their own welfare," they argue that the combination of personalistic orientations, inherent weaknesses in the sanctioning structures and self-interests competing with the public good produce actions that may constitute corruption but make sense to the individual actors as maximizing behavior. There is voluminous literature on the sources of corruption in the Philippines all of which point out to some elements of culture that somehow exacerbate this practice (Corpuz 1965, Carino 1986, cited in de Dios and Ferrer (2001).

However, other cultural factors are also facilitative of good governance and respect for human rights. Gender bias against women, for one, while

not totally absent is not as marked in the country as it is in other countries. No significant differences between men and women get in the way of access to education and health care in general. Manifestations of gender bias are more subtle, nevertheless, and must be specifically studied to be identified. For instance, an analysis of the proportionate share of women in positions of power or in unemployment and underemployment statistics may reveal where subtler forms of gender bias are manifest. Discrimination against minority groups is not as obvious in the country either, compared to others with open ethnic conflicts. Discrimination against minority groups is the likely result of lack of physical access to services and facilities that meet basic human rights needs, such as schools or hospitals. Their needs of must also be studied and given possible special attention because their plight, measured by quantitative metrics, tend to get averaged out in the national figures due to their relatively small numbers. That nationally representative surveys normally do not pick up the situation of minority groups because of their low proportionate share of the total population is a case in point.

Some clearly positive factors conduce to good governance and promote human rights. The Philippine press has been noted to be about the most free in the Asian region. Besides, there is plenty of democratic space for citizens to organize around their shared interests, views and ideological leanings and to espouse such views actively within limits comparatively broader than those in other countries in the Region. Hence, there is a high potential for voice and accountability. The downside is that too much democratic license without the exercise of personal restraint and without a sense of responsibility to the collective can easily create a state of anarchy. In a culture that is personalistic, public officials may tend to bow to populist demands, in the end hurting the practice of good governance and the ideal of providing equal access to basic rights.

Lastly, one area of Philippine political culture which has not been fully understood or studied but which is an important issue in the study of rights is the area of public duties as Hyden and Court would have it. They suggest the inclusion of public duties or "the extent to which citizens respect the rules that are necessary for the achievement of common or public goods," as

part of a proposed set of indicators of governance. The emphasis on entitlements in a rights-based approach should not detract from recognizing the fact that citizens also have duties to the state and to the common good. Overemphasis on entitlements without a corresponding review of how citizens perceive the rules governing public order and fostering the common good will only reinforce the popular view of the state and its representatives as the provider of all services and as ultimately responsible for all of society's ills. This view is often articulated in the media where government bashing seems to be a favorite and popular preoccupation. When citizens look to the government as sole duty bearer and do not see themselves as having an active role to play in promoting public order and good governance, the latter will be difficult to achieve indeed. For good governance from a rights-based perspective presumes that citizens are not just objects of the actions of the state; they are also active partners in achieving commonly held goals such as basic human rights.

The Rights-Based Approach: An Illustrative Case

Following a rights-based perspective, the application of a rights-based approach to a specific governance review should be guided by a participatory strategy whereby claim holders and duty bearers agree on the parameters to be reviewed, although in general, the principles that will guide the review are those that underlie the RB lens. The following case illustrates how the RBA can inform the review of a specific right: the right to health.

The questions such a review can tackle follow the order of the issues suggested in the RBA framework and are presented in matrix form. The rights-based parameters relevant to each issue are identified, but the specific indicators must evolve out of the actual review itself as duty-bearers and claim holders come together to discuss the specific delimitations of this social right and to clarify the obligations for this imperfect duty. The matrix suggests topics and questions to be considered in a review of the right to health.

Table 1. Rights-Based Analysis of the Right to Health: An Illustrative Case

The right under review	Entitlements to the right	Claim holders	Duty Bearers
The right to health	<p>Relevant rights-based parameters:</p> <ul style="list-style-type: none"> • accountability <p>Claim holders may be considered as entitled to:</p> <ul style="list-style-type: none"> • Provision of public health services like the eradication/ control of infectious diseases of public health significance, such as leprosy, malaria, dengue, environmental sanitation, safe water supply preventive services of public health significance, such as immunization, pre-natal care, promotion of health programs like breastfeeding, nutrition, family planning, health education campaigns for healthy lifestyles, disease prevention, etc. <p>Access to curative care:</p> <ul style="list-style-type: none"> • availability of and access to services and facilities for curative care <p>Access to affordable health care financing</p>	<p>Relevant rights-based parameters:</p> <ul style="list-style-type: none"> • accountability • nondiscrimination/ attention to vulnerable groups <p>All citizens are claim holders but there are specific target groups which are identified as vulnerable in identifiable ways:</p> <ul style="list-style-type: none"> • children • adolescents • women of reproductive age • the elderly • workers • indigenous peoples • the impoverished • the differently-abled 	<p>Relevant rights-based parameters:</p> <ul style="list-style-type: none"> • accountability <p>National government through:</p> <ul style="list-style-type: none"> • the Department of Health (main duty bearer) • Local government (main duty bearer) • Co-duty bearers (State agencies): DOLE, DepEd, DENR, DSWD, DILG, BFAD • Co-duty bearer (Legislature for the enactment of laws related to the right to health) • Co-duty bearers (nonstate) parents, children of elderly parents, spouses, employers • Co-duty bearers (donor agencies, international organizations) • Co-duty bearer (civil society groups to help articulate claim holder issues)

Issues related to claim holders	Issues related to duty bearers	Actions of duty bearers
<p>Relevant rights-based parameters to consider:</p> <ul style="list-style-type: none"> • participation • effective remedy • nondiscrimination <p>Claim holders' awareness of their entitlements</p> <ul style="list-style-type: none"> - from DOH from the LGU from employers <p>Claim holder participation in the delineation of entitlements (e.g. can they demand artificial contraception when government decides to promote mainly natural family planning how to articulate these needs)</p> <p>Availability, accessibility, quality of available health care</p>	<p>Relevant rights-based parameters to consider:</p> <ul style="list-style-type: none"> • accountability • effective remedy • legislative capacity <ul style="list-style-type: none"> - How are the specific duties related to health provision delineated among the state duty bearers - How clear-cut are role delineations between the department of Health and the LGUs to whom much of the health care provision has been devolved? What is each mandated to deliver? - How accountable are duty bearers? What measures of accountability can be identified? (e.g. which level LGU or DOH provides immunization, how should parents be compelled to bring in children for immunization?) 	<p>Relevant rights-based parameters to consider:</p> <ul style="list-style-type: none"> • accountability • transparency • participation • attention to vulnerable groups <p>Relevant governance principles</p> <ul style="list-style-type: none"> • effectiveness/ efficiency - What specific actions/ plans/ programs/ policies have been adopted by duty bearers? How do these fare compared to international standards or standards set by the Constitution, by specific laws like the Local Government Code - How participatory are the processes of arriving at these courses of action? How is civil society involved (e.g. the role of advocacy groups like AIDS awareness groups)? - How do the programs perform in terms of output: e.g. levels of coverage of services, like immunization, malaria control, health education on dengue prevention?

References

- Cariño, L. (ed.). 1986. *Bureaucratic Corruption in Asia: Causes, Consequences and Controls*. Quezon City: JMC Press.
- Corpuz, O.D. 1965. *The Philippines*. Englewood, New Jersey: Prentice Hall.
- De Dios, E. and R. Ferrer. 2001. "Corruption in the Philippines: Framework and context." In *Public Policy*. Volume 5, no. 1, January-June.
- Hyden, Goran and Julius Court. 2002. "Governance and development: Trying to sort out the basics." In *Word Governance Survey Discussion Paper 1*. United Nations University: [http://www.odi.org.uk WGA_Governance/Docs/WGS-discussionPaper1.pdf](http://www.odi.org.uk/WGA_Governance/Docs/WGS-discussionPaper1.pdf).
- Kaufmann, D., F. Recanatini and S. Biletsky. 2002. "Assessing governance: diagnostic tools and applied methods for capacity building and action learning." The World Bank. <http://www.worldbank.org/wbi/governance>.
- United Nations Development Programme. 1997. "Governance for sustainable human development: A UNDP Policy Document." <http://www.magnet.undp.org/policy/default.htm>.
- . 2000. *Human Development Report 2000*. New York: Oxford University Press.

III. A Rights-Based Approach towards Budget Analysis*

Ma. Socorro I. Diokno

Budget analysis is emerging as a valuable tool of ESC rights activism. In case after case involving ESC rights, budget analysis can play an important role in vindicating any claims that may arise and in enforcing the rights in question.

Every time the state adopts a policy or issues a public pronouncement that is patently discriminatory, many ESC rights advocates respond. Yet, the sad reality is that for many activists, their opposition is often left unheard and unheeded by the state. Once the policy or pronouncement finds itself expressed in the budget, in the form of a program or project, the state has indicated its total commitment to such discriminatory action. Once the budget is approved, the policy or pronouncement will likely be implemented to the detriment of the affected communities or sectors. In this case, budget analysis can play a particularly important role.

In their work, ESC rights activists often encounter a dearth of essential public services to communities, especially in the rural areas. They often lack access to potable water, sanitation facilities, electricity, emergency services,

* This paper provides a beginning framework towards budget analysis from a rights perspective; it is neither definitive nor exhaustive. Its limitations and gaps will likely become more evident as the rightsbased approach is tested time and again by non-governmental organizations around the globe. This paper is intended to encourage, stimulate and provoke human rights groups to explore budget analysis from a rights perspective.

health services, education, etc. Many communities also suffer from water-borne diseases, infectious and communicable diseases, malnutrition, stunting, etc. In many communities, the residents are hardly literate. Confronted with this situation, ESC rights activists often hold the state accountable. In doing so, they may call for state projects or programs necessary to the realization and enjoyment of ESC rights. Unfortunately, such clamor is often met by the almost standard state response of “lack of available funds” or “budgetary constraints.” In this case, budget analysis could play a vital role.

Often, ESC rights advocates are approached by communities under threat of eviction or forced displacement due to state “development projects” that may be co-financed by foreign donors or institutions. These projects often come in the forms of dam construction, mostly in areas of indigenous communities, infrastructure development, power-plant construction, etc. They often disguise themselves as contributing to the economic development of the nation. But in reality, they often lead to destruction of people’s homes and livelihood—a direct attack on the communities’ fundamental ESC rights. In this situation, budget analysis could play an important role in protecting and enforcing the affected communities’ ESC rights.

ESC rights activists are often called upon to report on the state of human rights in their countries. These reports are especially important when their countries are under review by the UN Committee on Economic, Social and Cultural Rights. Such reports may be incomplete, without an analysis of the national budget.

ESC rights activists are also concerned about growing poverty and inequality in their debt-ridden societies. They often attribute these conditions to the state’s lack of political will in implementing ESC rights obligations. Often, the state challenges advocates to provide alternatives or solutions. In this regard, budget analysis could be a valuable tool.

ESC rights advocates can no longer ignore the national budget. The budget is important because it reflects what the state is doing or intends to do. The budget is a translation in financial terms of the action program of the state, coordinating planned expenditures with expected revenue

collections and proposed borrowing operations—hence a national plan that cuts across departmental boundaries and ties together all plans and projects.² It is the instrument through which a state attempts to carry out the full range of its activities. It converts state development plans and priorities into a program of action.³

The national budget can influence the level and direction of economic activity, including the social and political behavior of the people. “Government budget decisions affect our everyday lives and our future. They influence where we work, what transport we use, what health care is available to use, and education our children have. Government budget decisions will affect our choice of home, our personal safety, whether we have clean water and sanitation, and electricity.”⁴

“The budget reflects the values of a country—who it values, whose work it values and who it rewards ... and who and what and whose work it doesn’t. ... The budget is the most important economic policy instrument of government, and as such can be a powerful tool in transforming [the] country to meet the needs of the poorest.”⁵

States cannot under any condition escape from their obligations to respect, protect and fulfill ESC rights. State obligations require the state to take action (legislation, policy, program, action plan, etc.) towards the rights’ realization. The respect-bound obligation requires the state not only to refrain from any action that would negate ESC rights but also to create and facilitate an economic, social and political environment conducive to the enjoyment, exercise and realization of ESC rights. The protection-bound obligation requires the state to adopt, pursue and implement measures necessary to prevent other individuals or groups from violating the integrity, freedom of action, or other rights of the individual. The fulfillment-bound obligation requires the state to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of ESC rights.

It is difficult to conceive of any public policy that can be carried out without money and without being subject to budgetary processes at the development, review and implementation stages.⁶ It is equally difficult to conceive of any state action designed to create and facilitate an economic,

social and political environment conducive to the enjoyment, exercise and realization of ESC rights that can be undertaken without funds from the national coffer. The state cannot comply with its obligations unless it uses part of its resources to do so, and the state cannot use any of its financial resources without recourse to its national budget.

The exercise of state obligations is greatly influenced by the availability of resources. Various types of resources are available to the state: financial, material, natural and human as well as technology and information. Although “the predominant view has always been that availability of resources cannot be analyzed by looking only at government expenditures,”⁷ nonetheless, the budget is one major process by which state’s financial resources are planned and controlled. This points to the very serious need to effectively and prudently allocate states’ financial resources in order to comply with state obligations to respect, protect and fulfill ESC rights. Thus greater attention must be placed on what the state does with its financial resources.

Most states have not clarified the criteria they use for selecting the objects of public expenditure. Confronted with limited financial resources, states often make choices, perhaps arbitrary, that are influenced by pressure politics, perceived economic growth demands, “global realities,” etc., with little consideration for the impact such choices would have on the quality of human life. States have conveniently forgotten that their obligations to respect, protect and fulfill ESC rights should, in fact, serve as the basis for choices to be made. No state has asked the question: what norm of expenditure is consistent with ESC rights obligations?

States’ ESC rights obligations can no longer remain in the realm of theory. Since every action taken by the state has financial implications that are ultimately translated into the national budget, states’ ESC rights obligations and the national budget are intricately linked. The national budget is one way by which states may concretely express their compliance with their obligations to respect, protect and fulfill ESC rights.

“It is critical at this juncture that there be an agenda pushing that [the] government budget be seen as ‘a human rights process.’ This can offer a useful point of intervention in contesting and defining the role of the state—

in particular with regard to its responsibilities to ensure the upliftment of the welfare of the most impoverished, disadvantaged and marginalized in societies. It is particularly important that during this period of increased economic globalization we should seek to develop an international consensus, rooted in less developed societies, that human rights obligations must find concrete expression in the budgets and economic policies of governments.”⁸

This paper suggests various rights-based approaches towards budget analysis that may be undertaken by ESC rights advocates as part of their activism. Annexed to this paper are:

- a description of the national budget (Annex A);
- a description of budget analysis (Annex B);
- a description of other rights-based approaches towards budget analysis (Annex C);
- a description of budget indicators that may be applied to a rights-based approach towards budget analysis (Annex D); and
- a rights-based approach towards revenue analysis (Annex E).

Readers are encouraged to review the annexes for further information.

Budget Analysis as a Tool to Enforce a Right

Budget analysis may be applied in situations where the affected communities/ sectors wish to exercise their ESC rights, but have no access to any state goods (potable water and sanitation facilities, electricity, emergency services, health services, education, etc.) that could enable them to exercise and enjoy their rights. The purpose of budget analysis, in this situation, would be to pressure the state to provide a service necessary to the realization and enjoyment of an ESC right, by pointing out those portions of the budget (allocations that may appear to obstruct ESC rights) that could be re-aligned.

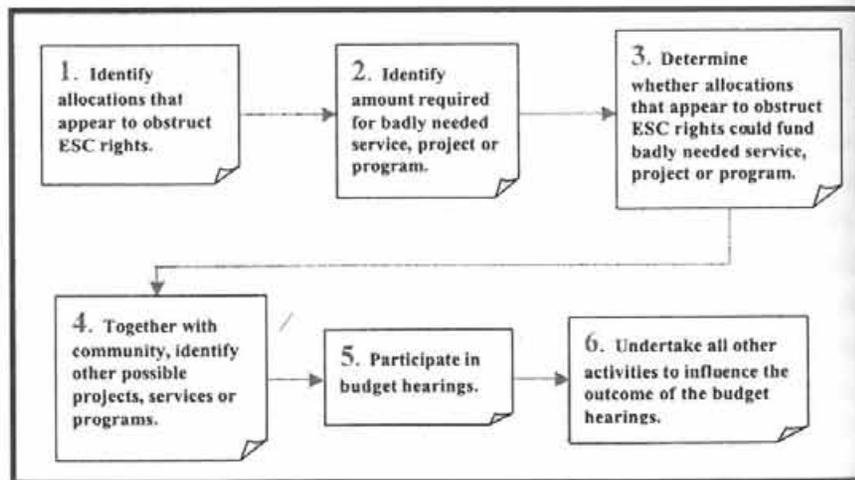
The state’s national budget indicates exactly how much financial resources are available for state use. It also indicates the various state programs and actions which are to be funded by the national budget.

By looking closely at each expenditure item under each cabinet ministry/ department or state agency/ office, one may identify programs and projects that may appear to obstruct the realization and enjoyment of ESC rights. These allocations may include any items in the budget of any department/ ministry or agency, which, on its face, appear to violate any ESC right, such as, for example, state subsidies for the tobacco industry that violate the right to health.⁹

By isolating those amounts, one may be able to pinpoint the amount of funds that could be re-aligned or re-allocated to pay for the implementation of a badly needed service, program or project needed to enjoy and exercise an ESC right.

Then, by looking at the budgetary allocations for a similar service, project or program, one may determine the amount needed to fund the badly needed, service, project or program. One may then compare the amount allocated for items that appear to obstruct ESC rights with the amount required for a badly needed service, program or project.

Together with the affected community, the ESC rights advocate may then undertake joint efforts at legislative budget hearings to pressure the state to allocate funds for the badly needed service, project or program, to be taken from those allocations that may appear to obstruct ESC rights.



Step Guide 1. Budget Analysis as a Tool to Enforce a Right

Step one. Do a line-item analysis of the budget (go over each item in the budget), to identify those allocations that may appear to obstruct the realization of ESC rights.

Step two. Identify the amount required for the proposed badly needed service, project or program, by looking at the budgetary allocations for a similar service, project or program.

Step three. Determine whether the amount required for the badly needed service, project or program could be funded by the allocations that may appear to obstruct ESC rights.

Step four. Present the findings to the affected community. If the amount of the allocations that may appear to obstruct ESC rights exceeds the amount required for the badly needed service, project or program, together with the community residents, determine what other projects, programs or services are necessary or could be funded by the re-allocations.

Step five. Participate in budget hearings to influence the legislators to reject any and all allocations that may appear to obstruct ESC rights and instead to realign these allocations to fund the badly needed service, project or program.

Step six. Undertake all other activities (lobby, petitions, delegations, litigation, etc.) to pressure the legislature and the state to abandon allocations that may appear to obstruct ESC rights, and instead realign these to badly needed services, projects or programs.

Budget Analysis as a Tool to Protect a Right

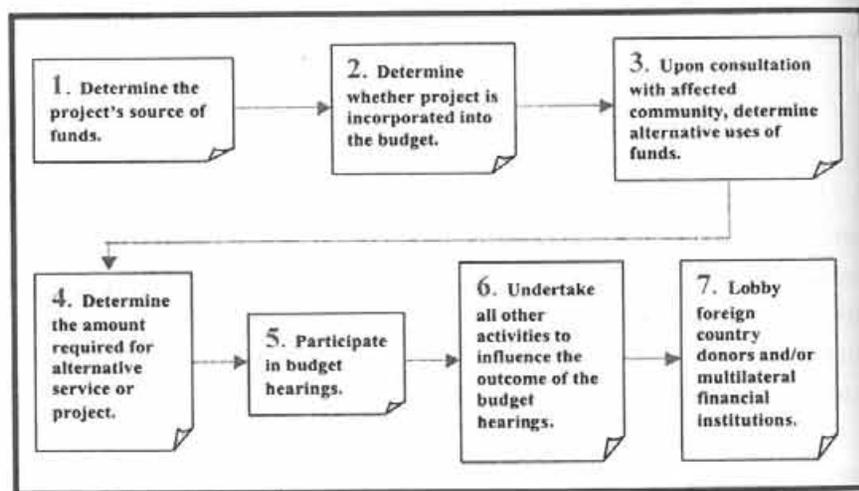
ESC rights activists are often called upon to assist communities whose fundamental ESC rights are threatened. The areas where these communities reside are often the sites of “development projects” that are undertaken either by the state alone, or by the state in conjunction with private domestic corporations or international corporations, or perhaps financed by international financial institutions or bilateral lenders.

In these cases, ESC rights activists often begin by undertaking fact finding and documenting their results. Lobby efforts generally follow documentation to seek the suspension and ultimate repudiation of the

“development project.” If necessary, ESC rights activists often assist in community organizing and mobilizing activities.

These activities, if submitted, could be expanded by budget analysis. If one wished to put a stop to such a project, one could review the budget to determine the amount appropriated for that project. One could then compare the appropriated amount with the amounts appropriated for programs or services that are essential to the realization and enjoyment of fundamental ESC rights. Then one could submit one’s findings to the legislature and actively participate in the legislative budget hearings. The opportunity to stop a program is evident during budgetary hearings, since, without funds, that project cannot be pursued by the state. Budget analysis may therefore become an additional interventionary tool in ESC rights activism.

In addition, where foreign country donors or multilateral financial institutions are concerned, one could argue that the amount appropriated for a project that violates ESC rights might be inconsistent with the foreign donors’ commitment under the 20/20 initiative. (See discussion of 20/20 initiative below). This would then be an additional argument to influence foreign country donors or multilateral financial institutions to honor their commitment to the 20/20 initiative by diverting the funds for this project to other basic social services.



Step Guide 2. Budget Analysis as a Tool to Protect a Right

Step one. Determine whether the project is funded or partially subsidized by state funds; determine also whether any foreign donors have committed themselves to fund such project and the amount(s) committed by said foreign donor(s).

Step two. Look at the budget to determine whether the development project is incorporated into the budget and to find out the amount appropriated for the project.

Step three. Consult the affected community to determine what other services or projects are most needed for them to enjoy and exercise their ESC rights.

Step four. Determine the amount required for such alternative service or project, by looking at the budgetary appropriations for similar services or projects.

Step five. Participate in budget hearings; submit position papers outlining the findings and suggesting alternative uses for the funds.

Step six. Undertake all other activities (lobby, petitions, delegations, litigation, etc.) to pressure the legislature and the state to abandon the development project, and instead realign these allocations to alternative uses.

Step seven. Lobby foreign country donors and multilateral financial institutions. Insist that they uphold their commitment to the 20/20 initiative.

Budget Analysis as a Tool to Vindicate a Right

Many ESC rights activists often come across policies, services and programs that blatantly discriminate against vulnerable sectors (the aged, women, children, the poor, indigenous communities, etc.). They also encounter situations characterized by inequality in access to state programs that impact on the realization and enjoyment of ESC rights. In these situations, budget analysis could play an important role.

The realization and enjoyment of ESC rights depend upon a number of factors, some of which are subject to state control, while others are not. These factors include the general socio-economic condition of a society

(quality of the environment, sanitation, health practices, education, nutrition, clothing, housing, income, income distribution, family size, etc.) and the quality, efficiency, availability and distribution of state services. Those factors subject to state control and intervention are largely funded through the budget. In the face of the state's financial inputs, it would seem important to find out whether ESC rights are realized and enjoyed by the vast majority of the population.

In this regard, the budget is viewed as a process indicator, while the status of the rights may be gleaned through various outcome indicators established by both official and NGO sources. It is important to look at as many sources of indicators as possible. One must also be constantly aware of manipulated figures, and look at indicators with a critical eye. Figures can—and have been—manipulated and may be unreliable. Sources may be incomplete or outdated. Indicators are often presented in estimates where precise figures are unavailable. Improper or inconsistent criteria and methodologies are sometimes used in the selection of indicators. Often, indicators are collected nationally and may result in biased figures and in an inaccurate portrayal of the factual situation of vulnerable groups and individuals.¹⁰

Outcome indicators are largely influenced by a multitude of factors, and should include those indicators that are substantially consistent with state obligations under the ICESCR. It is important to probe beyond those outcome indicators and to correlate the indicators with each other to arrive at the status of ESC rights. It is also important to dis-aggregate the indicators by urban-rural location, gender, age, income levels, social groups, ethnicity, occupation, etc.

One may also breakdown the allocations relating to specific ESC rights by geographic location and spending level. It is important to link the geographic distribution of the population with budgetary allocations. Is the state's population concentrated in urban centers or spread throughout the rural areas? Are the allocations focused on rural or urban spending? If the majority of the population is concentrated in urban areas, state allocations for the realization of ESC rights should focus on these areas. If, on the other

hand, the majority of the population is spread throughout the rural areas, state allocations for the realization of ESC rights should focus on rural areas. Inappropriate spending may lead to inequality between and discrimination against age groups, social classes, religions, ethnic groups, and geographic locations.

Looking at the right to education, it may be useful to correlate the state's literacy and functional literacy rates with the state's budgetary allocations and level spending patterns. It is important to look not at the national literacy and functional literacy rate but at the rates for each region. In most cases, the national rate does not reflect the true status across the country; some regions may reflect below-national average literacy rates. Are the allocations for the realization of the right to education focused on elementary, secondary, vocational, adult or university education? High levels of allocation for university education in the presence of increasing illiteracy or poor functional literacy rates, for instance, suggest an inappropriate expenditure mix which, in turn, could point to discriminatory action by the state. Higher education highly subsidized through interestfree loans and low tuition and other charges could deprive other levels of education of badly needed funds. Budgetary priorities focused on particular levels within the educational system, to the detriment of other levels, also suggest inappropriate expenditure mix. This may point to discrimination and inequality in access to state programs that facilitate the progressive realization of the right to education.

Looking at the right to health, it may be useful to link the state's infant mortality rate, under-five mortality rate, and leading causes of mortality with the state's budgetary allocations and level spending patterns. Again it is important to look at the rates for each region. Are state allocations for the realization of the right to health focused on primary or tertiary care, services and facilities? High levels of allocation for tertiary care urban hospitals in the absence of rural primary health care clinics could suggest an inappropriate expenditure mix, which could also point to discrimination and inequality in access to state programs relating to the right to health. Budgetary priorities focused on tertiary care, services and facilities would

be inappropriate in the face of high infant mortality rates, high under-five mortality rates, and preventable and/or treatable leading causes of mortality.

Budget analysis, in this case, could be used to support demands for changes in policies, programs and projects that discriminate against vulnerable sectors.

Budget Analysis and Monitoring

In preparing country human rights reports, ESC rights advocates often submit case studies, documented information, laws, jurisprudence, etc., that affect—positively or adversely—the condition of ESC rights. Such report, if submitted, could be augmented by an analysis of the budget. The state's budget is a concrete expression of the state's commitments, development projects and plans. Many times, these projects and plans impact on the realization and enjoyment of ESC rights. Since the state establishes its priorities and crafts its budget, it is ultimately responsible for any negative impact on ESC rights that may result from its budgetary priorities, policies and development plans.

Budget analysis, in this regard, could focus on comparisons with international standards for rights expenditures, which have evolved in recent years.

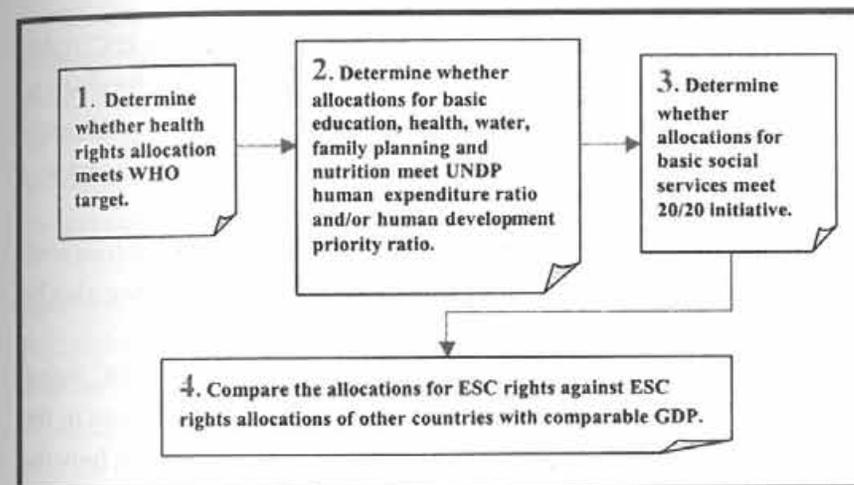
The World Health Organization has set a global target that encourages states to spend at least five percent (5%) of their Gross National Product on health expenditures.

The United Nations Development Programme recommended that states devote at least five percent (5%) of their Gross National Product or the equivalent of twenty percent (20%) of the national budget on what it calls human priority expenditures (expenditures on basic education, health, water, family planning and nutrition). The Human Expenditure Ratio refers to 5% of the Gross National Product while the Human Development Priority Ratio refers to 20% of the national budget.

At the 1995 UN-organized World Summit on Social Development, a consensus was reached adopting the 20/20 initiative. The 20/20 initiative

directs developed states to devote twenty percent (20%) of their official development assistance and developing states to devote twenty percent (20%) of their national budget on basic social services.

To determine whether state allocations for the realization of ESC rights match international standards, one may compute the share of selected allocations as a percentage of the state's Gross National Product and as a percentage of the budget and compare these figures with international standards. It may also be important to undertake international comparative analysis, by comparing both allocations and outcome indicators against those in other countries with similar Gross Domestic Products.



Step Guide 3. Budget Analysis to Determine whether State ESC Rights Allocations Match International Standards

Step one. Determine whether the allocation for the realization of the right to health meets the global target set by the World Health Organization by computing total health rights allocation, net of allocations that may appear to obstruct this right, as a percentage of the Gross National Product.

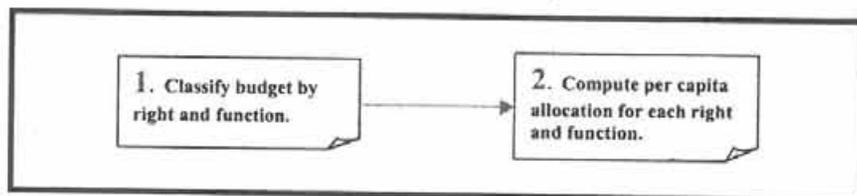
Step two. Determine whether selected allocations meet the human expenditure ratio and/or human development priority ratio suggested by the United Nations Development Programme. Add the allocations for basic education, health, water, family planning and nutrition and compute the

total as a percentage of the Gross National Product and as a percentage of total budget. Different states have different ways of arriving at these ratios so it may be important to discover what formula the state uses.¹¹

Step three. Determine whether allocations for basic social services meet the 20/20 initiative adopted at the 1995 UN World Summit on Social Development. Add the allocations for basic education, primary health care including reproductive health and population programs, nutrition programs, safe drinking water, nutrition, and institutional capacity to deliver these programs, and compute the total as a percentage of the budget. Again, different states have different ways of computing this initiative so one may have to find out what formula the state uses.¹²

Step four. Compare the allocations for ESC rights against ESC rights allocations of other countries with comparable Gross Domestic Products to determine the standing of the state vis-à-vis other states with comparable income. This may include computing the total ESC rights allocation as a percentage of the budget or of the state's Gross Domestic Product and comparing this figure with figures from other countries with comparable Gross Domestic Products. Outcome indicators may also be compared with the situation in comparable states.

In its human rights report, it may also be useful for the ESC rights advocate to show exactly what the state priorities are, as expressed in the budget. In this regard, budget analysis is undertaken to determine how the state intends to spend its available financial resources. It also seeks to identify the priorities the state has set for its public expenditures and to find out whether these priorities and public allocations are geared towards the creation of conditions necessary for the realization and enjoyment of ESC rights and are compatible with ESC rights obligations.



Step Guide 4. Budget Analysis to Identify State Priorities

Step one. Identify expenditure mix by classifying the budgets of all cabinet departments/ministries by right and function. The reclassification of the budget entails reviewing every item in every departmental/ministerial budget, since rights-related expenditures often cross departmental/ministerial lines. This step seeks to determine how much is allocated for the creation of conditions that facilitate the realization of ESC rights, how much is allocated for policies, programs and projects that appear to obstruct the realization of ESC rights, and how much is allocated for other functions of the state.

The budget may be classified by right and function, based on the right's content and accompanying state obligations,¹³ as shown in Box 1.

Determine how much the state has allocated for ESC rights' realization in comparison with state allocations for other functions by computing the share of allocation for each right and function to total allocations (allocations for the realization of the right to education as percentage of total budgetary allocations, etc.). This information will provide the expenditure mix in the budget and will point out state priorities for the current year.

What are these priorities? Is the state allocating more of its financial resources towards creating conditions for the progressive realization of ESC rights or is it allocating less on rights and more on national defense and security or debt service or some other state function? Does the expenditure mix reflect equitable and effective use of financial resources? Will the expenditure mix result in the enjoyment of ESC rights?

A word of caution. It is possible that, in reclassifying the budget by right and function, one could arrive at a total figure of ESC rights allocations (sum of all ESC rights allocations, net of allocations that may appear to obstruct ESC rights). This total figure, however, when divided by the state's Gross National Product, could produce a high percentage, thus creating the false impression that the state complies with its ESC rights obligations, when, in fact, it may not be doing so at all. Although this may be an effect or by-product of the reclassification of the budget by right and function, the purpose of reclassification is to compare state spending for ESC rights realization against state spending for other functions (judiciary, national defense and security, debt service, etc.).

Box 1. Classifying Budgetary Allocations from a Rights Perspective

Allocations for the realization of the RIGHT TO EDUCATION may include, among others, the education department or ministry's budget, portions of the budget of the department or ministry of social welfare, public works (construction of school buildings), as well as portions of the budgets of other departments/ministries that relate to the right to education.

Allocations for the realization of the RIGHT TO FOOD may include, among others, the budgets of departments/ministries that deal with land and land issues, agriculture, animal husbandry, nutrition, portions of the public works and highways budget (those dealing with arm-to-market roads, irrigation projects, etc.), portions of the environmental budget (those dealing with forest conservation, marine and aquatic resources management, utilization and conservation, etc.), portions of the trade and industry budget (those dealing with pricing, consumer protection, etc.), and portions of the budgets of other departments/ministries that are linked to the right to food (poverty alleviation funds, social development projects, etc.).

Allocations for the realization of the RIGHT TO HEALTH may include, among others, the health department or ministry's budget, portions of the social welfare budget, portions of the environmental budget (those dealing with pollution, waste management and control, etc.), portions of the public works budget (those dealing with construction of sanitation facilities, water pipes, etc.), as well as those portions of the budgets of other departments/ministries that are connected to the right to health (population control, etc.).

Allocations for the realization of the RIGHT TO HOUSING may include, among others, the budgets of all agencies, departments or ministries tasked with housing and human settlements issues, portions of the budgets of the departments/ministries of social welfare, public works, and others that relate to the right to housing.

Allocations for the realization of the RIGHT TO SOCIAL SECURITY may include, among others, portions of the budgets of the department/ministry of social welfare, agencies that provide income-maintenance or income-support schemes, and others that relate to the right to social security.

Allocations that OBSTRUCT THE REALIZATION OF ESC RIGHTS may include any items in the budget of any department/ministry or agency that, on its face, may appear to obstruct any ESC right, such as, for example, state subsidies for the tobacco industry which violate the right to health.

Allocations relating to NATIONAL DEFENSE AND SECURITY may include the budgets of the ministry/department of national defense, all military budgets, all law enforcement and police budgets, and portions of the budgets of other departments/ministries that relate to national defense and security (intelligence funds, etc.).

Allocations relating to the JUDICIARY will likely be limited to the budget of the judicial branch. Allocations relating to the LEGISLATURE will likely be limited to the budget of the national legislature.

Allocations for DEBT SERVICE are generally a separate category.

Allocations relating to OTHER STATE (EXECUTIVE) FUNCTIONS will include the budgets and those portions of the budgets not included in any of the above classifications.

Step two. Compute the per capita allocation for each right and function by simply adding up all the amounts in each classification and dividing the total by the population.

It is important to remember that per capita allocation does not imply that each and every member of the population will actually receive the amount allocated. In all likelihood there will be an uneven per capita distribution of state allocations for the various rights and functions. Research in South Africa has shown uneven per capita distribution of state expenditures on services such as health and education. In South Africa, the poorest twenty percent of households receive less than twenty percent of government expenditures on education and health, whereas the richest twenty percent receive more than twenty percent of public spending on those items. This is indicative of gross inequality in how government spending is reaching (or failing to reach) those who need it most. The per capita analysis would not be able to identify such inequality issues.¹⁴

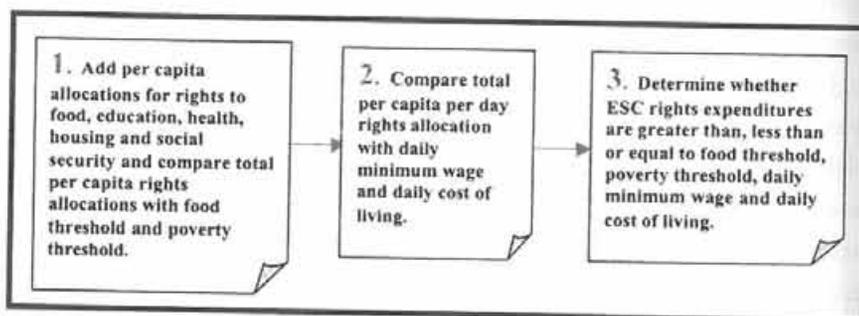
To complete the human rights country report, budget analysis may also focus on comparing allocations for ESC rights against national standards. Through the budget, the state allocates financial resources for programs, projects and policies that may facilitate the progressive realization of ESC rights or that may obstruct the realization of these rights. In many cases, the state has established its own standards or parameters that relate to ESC rights. These include standards on poverty, food and wages. Often, the standards set by the state are very conservative, and way below what is actually required to live a decent and humane life and to realize and enjoy ESC rights. The state also does not normally provide the basis for its computation of these standards. Some states are even known to engage in what is called "statistical magic"—the re-formulation and recomputation of minimum standards in order to present a more publicly palatable figure.

State-set standards are usually in the form of food threshold, poverty threshold, and daily minimum wages. The food threshold is the annual per capita income required or the amount spent to satisfy a person's nutritional requirements of x calories a day. The poverty threshold¹⁵ is the minimum

income required to satisfy food and other basic needs; persons earning less than this amount are officially regarded as poor. Most states have established daily minimum wages, either by executive proclamation or through the national legislature. The daily minimum wage is the rock-bottom wage to be observed by all employers.

In some states, NGOs have been able to compute the daily cost of living, or the amount needed to feed, clothe, house and attend to the health and other basic needs of an individual. The NGO-set standard is generally higher than the official standard and is generally more compatible with the realities within the state.

It is important to compare budgetary allocations for the realization of ESC rights with official state standards relating to ESC rights to determine whether the state matches its own standards and whether the state is indeed creating—or attempting to create—conditions that facilitate the realization of ESC rights. To determine whether state allocations for ESC rights match national standards, compare total per capita rights allocations with the official food threshold, daily minimum wage, daily cost of living and poverty threshold.



Step Guide 5. Budget Analysis to Determine whether State ESC Rights Allocations Match National Standards

Step one. Add the per capita allocations for the realization of the rights to food, education, health, housing and social security and compare the total per capita rights allocations with the state's food threshold and poverty threshold.

Step two. Divide the total per capita rights expenditure by 365 days to arrive at the rights expenditure per capita per day. Then compare the rights expenditure per capita per day with the officially mandated daily minimum wage and the estimated daily cost of living.

Step three. Is the budget for ESC rights less than, equal to, or greater than the food threshold, the poverty threshold, the daily minimum wage and the daily cost of living? Will these allocations result in the enjoyment or non-enjoyment of ESC rights?

Budget Analysis and ESC Rights Litigation

In recent years, budget analysis has emerged as an important tool in ESC rights litigation. Several cases discussed by Sandra Liebenberg¹⁶ point towards the importance of budget analysis in cases involving resource availability. She cites two cases, which are of particular significance—*Soobramoney v. Minister of Health, KwaZulu-Natal* (1997) and *Eldridge v. British Columbia (Attorney General)* (1997):

In Soobramoney v. Minister of Health, KwaZulu-Natal, the Constitutional Court held that the applicant's demand to receive dialysis treatment at a state hospital did not fall within the scope of "emergency medical treatment" in section 27(3) as it did not constitute an urgent, remedial intervention. Resource availability consequently became a critical issue as the claim fell to be determined in accordance with sections 27(1) and (2) in which resource availability is an express internal limitation. The Court proceeded to consider this issue within the context of the budget of the Department of Health in KwaZulu-Natal, finding that the Department did not have sufficient funds to cover the costs of the health services which are being provided to the public. It was also clearly concerned about the extensive ramifications of granting positive relief in this case. The principle would have to be extended to similarly placed persons. Ultimately "the health

budget would have to be dramatically increased to the prejudice of other needs which the State has to meet." ... The Court indicated that a large dose of deference would be given to the setting of budgetary priorities by the provincial administration, and the "difficult decisions" made by hospital administrators in the context of limited resources. ... *This decision suggests that the question of the "availability" of resources will be examined largely within the context of the existing allocations, whether to a particular portfolio or to a province or local authority. ...*

Resource constraints are likely to be the most common justification for limiting socio-economic rights. ... In the Canadian case of *Eldridge* costs-related justifications were expressly considered in the limitations enquiry under section 1 of the Charter. It will be recalled that the Court found that the failure of the Medical Services Commission of British Columbia to provide sign language interpretation for deaf patients constituted a *prima facie* violation of their right to equal benefit of the law and non-discrimination under section 14(1) of the Charter. The Supreme Court held that section 15(1) imposed a positive duty on the government to make "reasonable accommodation" of disadvantaged groups "adversely affected by a facially neutral policy or rule." However this duty extended only to the point of "undue hardship." ... In the section 1 (limitations) enquiry the Court found that the government had "manifestly failed to demonstrate that it had a reasonable bases for concluding that a total denial of medical interpretation services for the deaf constituted a minimum impairment of their rights." A key consideration was the "relatively insignificant sum" that was required to continue and extend the service (\$150,000 or 0.0025% of the provincial health budget of British Columbia). The government raised the argument that the recognition of the appellants' claim would have "a ripple effect throughout the

health care field, forcing governments to spend precious health care dollars accommodating the needs of myriad disadvantaged persons." In response, the Court held that the claims were not for services that government has not chosen to provide, but "only for equal access to services that are available to all." ... The fact that the fulfillment of a right will require substantial resources is not in itself a sufficient reason for limiting the right. ... The State is expected to factor the resource requirements of all constitutional rights into the budgetary process. However, the reasoning in *Eldridge* demonstrates that costs considerations are relevant in a limitations enquiry pertaining to the positive duties imposed by constitutional rights. Costs-related reasons for limiting socioeconomic rights should be subject to the standard of "undue hardship" referred to in the judgment. *The State must be required to demonstrate convincingly that the costs implications of giving full effect to a socio-economic right will impose an "undue hardship" on its fiscal resources, and will prejudice the other legitimate needs it is expected to meet in a democratic society....*

In the Philippines, the Free Legal Assistance Group (FLAG) is currently developing a case before the Supreme Court where budget analysis will play an extensive role. In 1998, the total debt of the Philippines was equivalent to 125.1% of the country's Gross National Product.¹⁷ As a consequence of its massive debt, in 1999, the Philippines appropriated one-fifth (20.83%) of its national budget on debt service, while allocations for fundamental services needed to enjoy and realize constitutionally guaranteed ESC rights were allocated a measly 7.63% of the total national budget. An analysis of the preceding years budgets would likely indicate a similar trend. This is because the Philippines adopted a martial law decree authorizing automatic appropriations for debt service; this decree effectively removed from the Philippine Congress any power and right to review and approve appropriations relating to the country's foreign debt. This decree was subsequently incorporated

into the Revised Administrative Code. Its constitutionality was questioned in a 1991 case entitled *Guingona, Jr. v. Carague*.¹⁸ The Supreme Court held that automatic appropriations for debt service in the 1990 budget "constitute lawful authorizations or appropriations." What FLAG intends to do is to tie up constitutional provisions and jurisprudence guaranteeing fundamental ESC rights with budgetary constraints as a result of the automatic appropriations provision in the law. FLAG rests its case on the recent Resolution adopted by the UN Commission on Human Rights that affirms that the exercise of basic ESC rights "cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from the debt."¹⁹

While FLAG is still further developing its theory of the case, essentially, FLAG will look at the year 2000 budget, reclassify it by right and function to determine expenditure mix and budgetary priorities. FLAG will identify those allocations for the realization of selected ESC rights (most likely the rights to health and a healthy environment, since the Court has previously upheld these rights as intergenerational rights, or rights owned and possessed by unborn Filipinos). FLAG will compare these allocations against the appropriation for debt service. In this way, FLAG hopes to strike down this provision, and instead require the state to justify all appropriations for debt service, subject to the review and approval of the Philippine Congress.

Budget Analysis and ESC Rights Activism

Since "the state is explicitly permitted to defend its unsatisfactory progress in realizing the rights on the basis of a lack of available resources,"²⁰ budget analysis takes on a particularly important dimension in ESC rights activism. It is a potentially useful tool to mobilize public opinion and marshal people's energies towards influencing states to comply with their obligations to respect, protect and fulfill ESC rights.

Many states claim that they are unable to comply with their ESC rights obligations for "lack of available funds." Since programs, and

fund sources, are largely discretionary upon the states, many ESC rights activists often find it difficult to respond to their state's convenient claim. By applying budget analysis from a rights perspective, it becomes possible to point out what financial resources could be realigned or reallocated for ESC rights purposes. States may thus find it a bit more difficult to resort to the "lack of available funds" excuse for their failure to comply with their ESC rights obligations. "Budget analysis gives [a] voice to citizens, a voice that is clear, reasoned, in the same language as that of the state, quantitative, and in the form of an argument. Such a voice is difficult to ignore."²¹

Budget analysis may also be used to mobilize public opinion and action towards the realization of ESC rights. Since budgets are funded largely through taxpayer's contributions, taxpayers have a stake over where and how their contributions are utilized. By undertaking a rights-based approach towards budget analysis, public opinion may be generated to influence the direction and level of funding of the state's budgetary priorities.

It is important to remember that "an exercise such as budget analysis does not make the budget, does not give an alternative process or product, or final solutions or numbers, though it may do so from time-to-time. What it does is give signals for change. That is the strength of budget analysis and policy priority."²²

Budget analysis may be incorporated into ESC rights activism through a variety of ways. In ESC rights litigation, budget analysis can play a crucial role in cases where "relevant allocations are patently inadequate to fulfill constitutional obligations, or if the determination of priorities manifests a clear preference for advantaged groups at the expense of disadvantaged groups."²³ In ESC rights monitoring, budget analysis may be used to monitor the level of compliance by states of their ESC rights obligations in a variety of ways, as suggested in this paper and in Annexes C and E.

Budget analysis may also be incorporated into community education and mobilization campaigns. Activities aimed at empowering

communities through discussions of the budget and its implications on ESC rights provide communities with the opportunity not only to claim the budget, but also, and more importantly, to claim their ESC rights. Communities gain knowledge on the budget and budget process and identify exactly where and how tax contributions and other public money is spent. That knowledge provides communities with the opportunity to influence the state to take positive actions to guarantee ESC rights or to desist from implementing any policy, program or measure that limits or obstructs ESC rights. That knowledge may also spur communities to effectively participate in the budget process, to hold the state accountable to the people, and to force the state to become transparent in its fiscal policies and actions.

Budget analysis is a complex, complicated and intimidating task—one that challenges the time, resources and energy of the already over-burdened advocate. Yet, in time, many ESC rights activists will soon find it an indispensable tool in ESC rights activism.

Annex A: The Budget

Budgets are variously referred to as financial plans, work plans or programs, or political and social documents. A budget can be viewed from various frames of reference: as an economic process (resource allocation); as a political process (competition among various groups for limited resources); and as an administrative process (planning, coordinating, control and evaluation). A budget can also be viewed as a human rights process (allocation of funds in compliance with state obligations towards the full realization of ESC rights).

In its strictest, most technical sense, a budget is a document containing words and figures that propose expenditures for certain items and purposes. The words describe items of expenditure or purposes and figures are attached to each item or purpose.²⁴ The budget has been defined as a process consisting of a series of activities relating expenditures to a set of goals,²⁵ or as a process through which public expenditures are made. While considerations of revenue constraints and taxation are inherent in the budget process, budgeting is generally treated as part of the expenditure process, rather than as a revenue raising process. In this respect, public budgeting serves as the allocation of expenditures among different purposes so as to achieve the greatest results.²⁶ A budget contains—or should contain—the totality of resources available to a country²⁷ and an itemized listing of all expenditures of the state. The budget is prepared in advance of the fiscal year to which it applies.

From an economic perspective, a budget has been described as the “most important economic instrument” of the state, as it reflects the country’s socio-economic policy priorities by translating priorities and political commitments into expenditures and taxation. In this way, the budget emphasizes constraints and trade-offs in policy choices.²⁸

From a political perspective, “... the national budget is a representation in money terms of governmental activity. If politics is regarded in part as conflict over which preferences shall prevail in the determination of national policy, then the budget records the outcome of the struggle. If one looks at politics as a process by which the government

mobilizes resources to meet pressing problems, then the budget is a focus of these efforts.²⁹ The budget has also been defined as “the master plan of government,”³⁰ the translation of financial resources into human purposes, or a series of goals with price tags attached, hence a plan where choices are coordinated.³¹

From an administrative standpoint, the budget is seen as a financial plan that serves as the pattern for and control over future operations and as a systematic plan for the utilization of manpower, material or other resources.³² It brings together estimates of anticipated revenues and proposed expenditures, implying the schedule of activities to be undertaken and the means of financing those activities. In the budget, fiscal policies are coordinated, and only in the budget can a more unified view of the financial direction of the state be observed.³³

From a human rights framework, a national budget can be defined as a process through which financial resources are allocated in compliance with state obligations to respect, protect and fulfill human rights. The status of human rights and compliance with state obligations become the key determinants of the choices made relative to financial resource allocation. A state’s human rights obligations should guide the ultimate purpose of government: to use all tools at its disposal to ensure the guarantee and enjoyment of all human rights by all individuals. Thus, state obligations provide the *raison d’être* underlying economic and administrative decisions reflected in the national budget.

Although state budgets are country-specific, generally speaking, the national budget structure has three components: revenues, expenditures and balance/(deficit).

Public revenues are all income or receipts of the state’s treasury that are used to support public expenditures. There are five main sources of public revenues.

Expenditures refer to payments made by the state, including current operating expenditures, capital outlays and the retirement of the public debt. Expenditures are classified, but expenditure classes—and details thereof—vary from country to country. It is important to note that expenditure classes depend on a variety of supporting systems.³⁴

It is therefore difficult to prescribe guidelines on how to read a budget. In some states, budgetary allocations are listed by nature of expense, according to the state’s Chart of Accounts,³⁵ and may include personal services, maintenance and other operating expenses, and capital expenditures. In other states, budgetary allocations are listed by function, which include overall management and related administrative and other program expenses, depending on spending objectives.

The final part of a budget is its *Balance/(Deficit)*. A balanced budget indicates that cash outflow does not exceed cash inflow. This is quite rare for most developing states. More commonly, developing states incur deficits, where total outflow exceeds total inflow. In this situation, states generally engage in deficit spending, or incur expenditures in excess of revenues. Such excess may result from a reduction in tax receipts at a time when expenditures remain the same or are increased. Deficit spending indicates an unbalanced budget. Deficit spending is generally financed by borrowed funds and its major objective is to stimulate economic activity by increasing purchasing power within an economy.

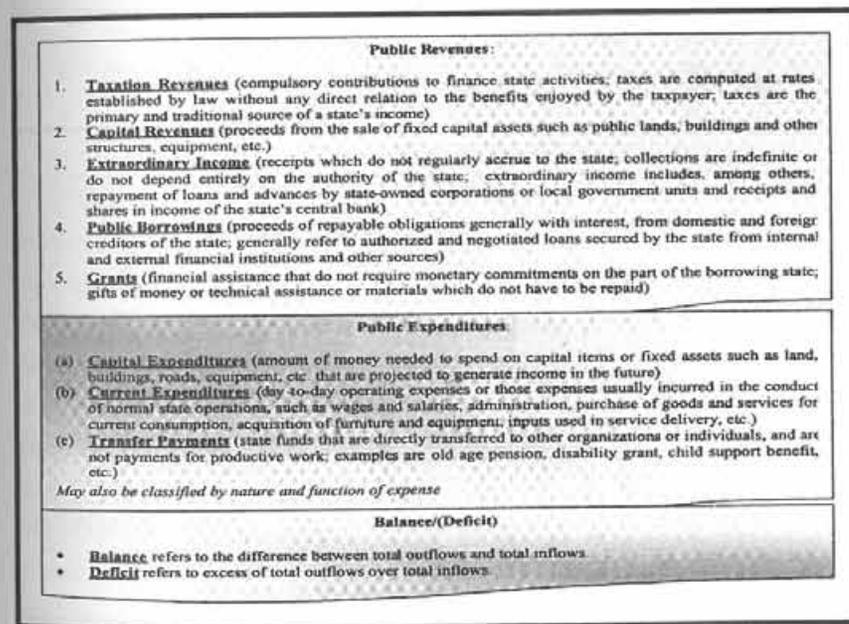


Figure 1. Budget Structure

The budget process is a cycle of sequential and inter-related budget activities regularly recurring within a fiscal year; it has been described as a fairly complex process, since new fiscal objectives are established each year which require several fiscal years to work out.³⁶ In general, there are three essential elements of the budget process: planning, management and control.

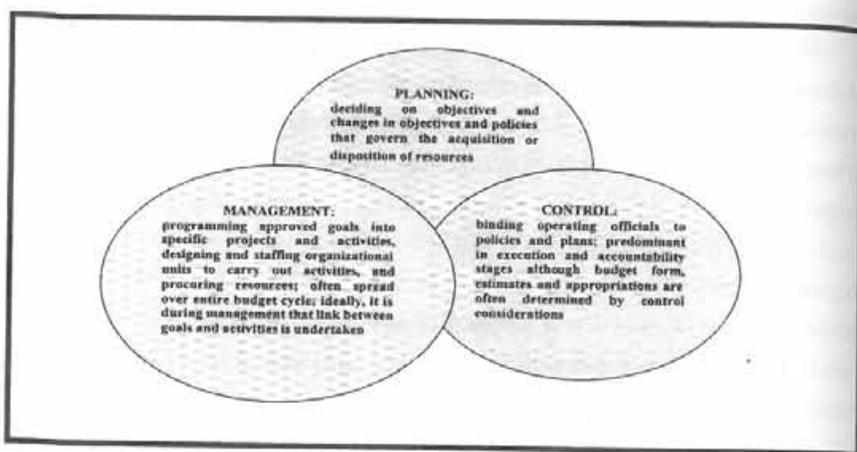


Figure 2. Elements of the Budget Process

A law generally spells out the four-stage budget process.³⁷

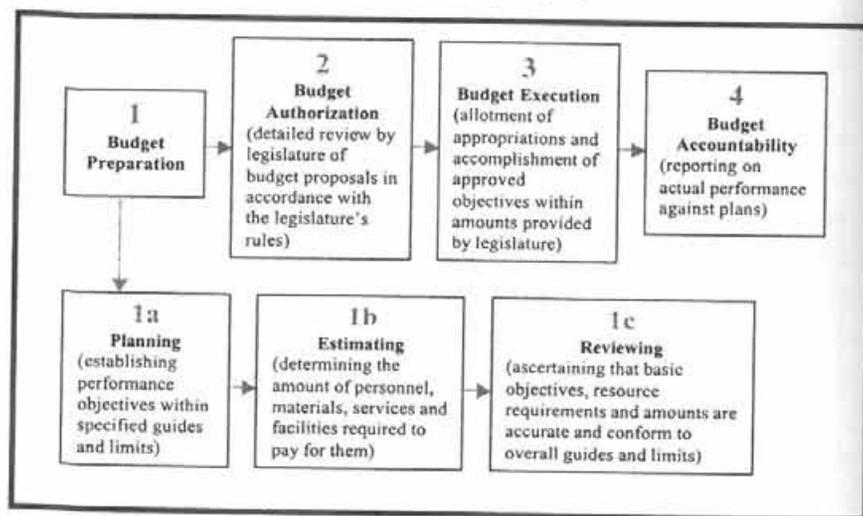


Figure 3. Stages of the Budget Process

The key players in the budget process vary from country to country. Generally speaking, however, the key players belong to both the executive and legislative branches. From the executive branch, the key players in the budget process include, among others:

- the Department / Ministry of Finance or the Department / Ministry of Budget and Management or the department or office responsible for preparing the budget;
- the Cabinet including the Chief Executive who decides on budgetary thrusts and priorities for the budget year; and
- Other departments / ministries that prepare departmental / ministerial budgets, programs and priorities.

From the legislature, the key players in the budget process include, among others:

- members of the Committees on Appropriations, Finance and such other committees that undertake the initial review of the budget;
- the legislative budget office (where such exists); and
- All members of the legislature who will eventually vote on the budget.

The budget should be governed by at least the following principles: transparency, accountability, participation, equity, non-discrimination and equality. The principle of transparency is important in the budget process. Transparency is a prerequisite for public debate; if budget information is not available, it is difficult to discuss. Transparency allows the analysis of state policies and facilitates the identification of weaknesses leading to the adoption of needed reforms. Transparency can increase faith in the state, and can contribute to consensus building and commitment to social trade-offs. Transparency enables the legislature and civil society to hold the state accountable, which they can only do if they have information on budget policies, practices, expenditures and outcomes. Transparency contributes to macroeconomic and fiscal stability as it prevents the buildup of a crisis in

secret, bringing about smaller adjustments sooner.³⁸ The principle of transparency is recognized even by the IMF, which published in 1998 a “Code of Good Practices on Fiscal Transparency—Declaration of Principles.”³⁹

Participation in all levels of social, political and economic decision-making is both a right and a duty of all individuals. Participation is an indispensable principle in the budget process. “Involved participation, which is affirmative in that it explicitly includes input from poor and working people hungry for education, health care and social security, is likely to result in more equitable expenditure patterns than a process which is dominated by powerful interests who set a self-serving agenda of tax breaks, subsidies, down-sizing and privatization.”⁴⁰

Box 2. Principles That Should Govern a Budget

The principle of **transparency** is crucial to the budget process, mandating that information affecting budget decisions (budgetary and fiscal information, information on development thrusts and programs, etc.) should be accurate, true and portray the genuine state of the economy. In addition, this information should be made available and accessible to the general public, open to public scrutiny, and written clearly and be readily understood by the public.

The principle of **accountability** is important in the budget process. Public funds are derived mainly from two sources: contributions of citizens through taxation and public borrowings whose burden of repayment is borne by taxpayers. Thus the state should be held responsible and made accountable for how it raises public funds and how it spends taxpayers’ money. Accountability in the state budget has several dimensions: accountability for objects of expenditure (what the state spends on), state performance and results (achieving results or meeting objectives for which public funds are spent), and budget processes that result in best value, quality and service for public money.

The principle of **participation** is an essential ingredient in the budget process to ensure efficient provision and more equitable distribution of budgetary allocations. Through active participation in the budget process, people could reject programs or policies that are potentially threatening to the enjoyment and guarantee of ESC rights and at the same time provide for mechanisms to compensate for any measures that may result in deprivations of ESC rights.

The budget should also be governed by the principles of **equity, equality and non-discrimination**. Public allocations should be fair and just, and should redound to all citizens equally, without discrimination based on gender, ethnicity, social class, age, etc. In particular, vulnerable sectors of society should not be discriminated against in the budget.

Porto Alegre, Brazil, is perhaps one of the best examples of participatory budgeting, where “city-dwellers have been able to decide about virtually anything related to public resources under the municipal domain—from streets to be paved to reform of the city’s public market, from supporting cultural initiatives in peripheral areas to the publication of a book telling the history of a specified community, from sanitation systems to pay policies regarding municipal civil servants.”⁴¹

Annex B: Budget Analysis

Budget analysis is a thorough and detailed review of the budget. It involves the collection, study and interpretation of budget data, the correlation of budget data to other relevant information such as state policies and programs, and the establishment of findings and results. Its aim is to provide analysis and information that is credible, accessible to a wide range of audiences, and makes a timely contribution to policy debates, with the purpose of affecting the way budget issues are decided and the decisions that are made.⁴²

Budget analysis is undertaken through a number of perspectives. Some groups assess financial arrangements covering national and sub-national goals. Others look at the effects of budget decisions on programs that affect vulnerable sectors. Yet others study the relationship of spending for one function against another (for example, military spending or debt service compared with economic development). Still others analyze budget process issues, policies and institutions. Other groups undertake budget analysis through a very technical lens; this includes classifying expenditures by major and minor headings (function or nature of expense), looking at budget figures, studying new allocation items, and understanding the state's development plans as expressed by budgetary allocations.⁴³

Budget analysts often encounter problems. Access to budget data and information is a common problem. The major budget books, detailed financial studies, papers and other budget documents are often withheld from the public. On many occasions, those undertaking budget analysis have been able to secure budget information from members of the national legislature; unfortunately, this sometimes prevents groups from timely intervention in the budget process.

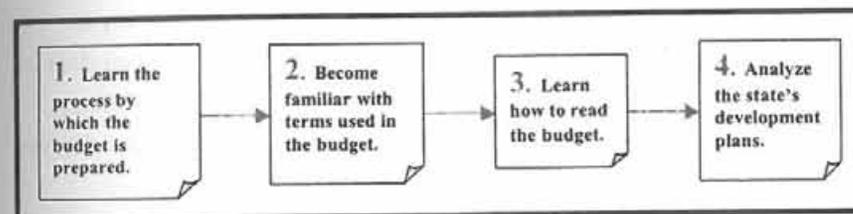
Clarity of budget information and data is another problem. In Israel, "the language of the budget books is obscure, divisions often are not properly identified, and functions often are not properly specified. These problems thwart the ability to assess policies."⁴⁴ Israel's experience is by no means isolated.

Another problem, again found in Israel, but reflective of other countries, is that "the budget books do not enable readers to establish the relationship between functions, costs and allocations—and thus to check the rationale behind the allocations."⁴⁵

There are several gaps in the budget structure that limit its effectivity as an instrument of analysis. The budget does not show any deviations between actual expenditure and allocations; sometimes, funds are spent for purposes other than those that are authorized; other times, expenditures are larger or less than the allocated funds and the budget does not show what happens to the unutilized portions of the allocations. The budget also does not indicate leakage, if any, in the amount expended, nor is the budget broken down by region, state, district, or municipality.

Finally, the budget process rarely provides people with the opportunity to participate in any of its stages. Sometimes, people may participate in the budget process only during the budget authorization stage, when the legislature conducts public hearings to discuss the budget.

Getting started on budget analysis involves a four-step process.⁴⁶



Step Guide 6. Getting Started on Budget Analysis

First, one must learn the process by which the state's budget is prepared and identify the key players in the budget process. This involves securing a copy of the budget law and official rules or guidelines on budget preparation. By carefully studying the budget law and corresponding guidelines, one would gain the initial information and knowledge needed to begin budget analysis.

Second, one must become familiar with the various terms used in the budget. The use of an accounting dictionary or consulting with experts would be helpful.

Third, one must learn how to read the budget. One needs to know how the budget is classified and what each classification entails. One also needs to know how to read the figures in order to determine their implications. Consulting experts and others already engaged in budget analysis would help. So too would studying the budget guidelines prepared by the budget office, where such are available.

Fourth, since the budget is—or should be—tied to the state's development plans, one must assess these plans. This involves securing copies of such development plans and programs, carefully analyzing them in order to determine their impact on the country.

The following are some guidelines suggested by an organization called *Developing Initiatives for Social and Human Action* [DISHA] of Gujarat, India, which has undertaken budget analysis for the past several years.⁴⁷

- In interpreting data, use judgment based on experience, subject studies or new learning.
- Test each hypothesis through an analysis of data.
- Bring in people from many disciplines to review the analysis.
- Review current and possibly new or innovative uses of data or findings such as articles, news accounts, views or fact sheets.
- Use skilled analysis to focus on unusual patterns or trends over time, sectors or constituencies.
- Conduct brainstorming sessions to generate new ideas for ways of looking at findings.
- Identify and use established standards of comparison.
- Think of direct action, follow-up collective or legal action, and analyze or interpret data that can lead to or support such action.

Annex C: Other Rights-Based Approaches towards Budget Analysis

The ways by which budget analysis may be approached from a rights perspective suggested in this paper are by no means exhaustive. If any, these are mere starting points.

A rights-based approach towards budget analysis could also focus on revenues and allocations. Public revenues are analyzed to determine whether the state complies with its respect-bound, protection-bound and fulfillment-bound obligations in its efforts to raise revenues to finance state activities. (See Annex E.)

Public allocations may be analyzed by nature and function to determine their impact on ESC rights and concomitant state obligations through a variety of ways:

- Public allocations may be probed to determine whether the expenditure mix, geographical and spending level patterns, state programs, categories of current expenditures and compensatory measures comply with state obligations to respect, protect and fulfill ESC rights.
- Public allocations may be scrutinized to find out whether the state has appropriated funds for the steps it is required to take under Article 2.1 of the ICESCR.
- Public allocations may be assessed to ascertain whether the state has appropriated funds to meet the benchmarks set by the state relating to the progressive realization of ESC rights.
- Public allocations may be compared with the status and condition of ESC rights to determine whether state allocations are geared towards the satisfaction and realization of ESC rights.
- Public allocations may be compared against international standards for rights expenditures and national standards related to the enjoyment and exercise of ESC rights.

- Public allocations may be compared against expenditures from a rights perspective. Such analysis would seek to look at the delivery of state services (whether the projects, programs, etc. that are funded are actually implemented; whether the target beneficiaries actually benefit from the programs that are implemented; whether these programs contribute to the progressive realization of particular ESC rights; etc.). Such analysis, however, would necessitate comparing the budget against the official audit of state expenditures released by the Auditor-General's office (or equivalent). This may present some problems, chief among them, the time lag between the audit and the release of the audit results (in the Philippines, the official audit results are available some three years after the year under audit).
- Public allocations related to the judiciary, national commissions on human rights (where such exist) and other rights-adjudication bodies may be analyzed to determine the extent of remedies available to victims of ESC rights violations, in their exercise of their right to reparation.
- Monitoring the progressive realization of ESC rights through budget analysis entails a multi-year comparison of the state's budget. Comparing one year's budget with the next year's allocations may indicate changes in the state's policies and priorities. Are these policies and programs geared towards the realization or obstruction of ESC rights? Is the state allocating more funds for programs that facilitate or that obstruct the progressive realization of ESC rights?

Reviewing multi-year budgets may point out any retrogressive measures the state has taken relative to ESC rights. Has the state cut back on any expenditure relating to ESC rights realization? Have any major ESC rights-related programs or entitlements been canceled? Have budgetary allocations that are targeted at vulnerable sectors been reduced? What justification has the state relied on for such cutbacks, cancellations and reductions? Is the state's justification among those permissible under the ICESCR?

Finally, the status of ESC rights is an integral part of the rights-based approach towards budget analysis. By continuously monitoring the status of ESC rights, it is possible to determine whether the rights are progressively being realized or not. Has the status improved over the years? If not, what action is the state taking to improve the status of ESC rights? Is the action reflected in the budget?

Annex D: Budget Indicators Applicable to a Rights-Based Approach towards Budget Analysis

A rights-based approach towards budget analysis may use the following budget indicators: (a) non-allocation of available financial resources; (b) budgetary allocations; (c) inappropriate expenditure mix; (d) imbalance in categories of current expenditures; (e) budget cuts; and (f) under-utilization of allocated financial resources.

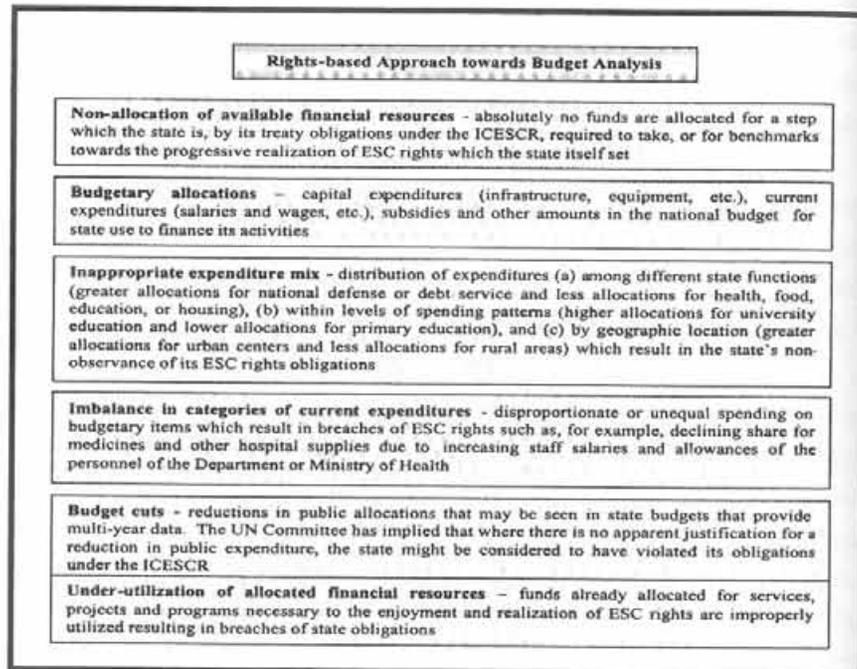


Figure 4. Budget Indicators to Monitor State ESC Rights Obligations

Annex E: A Rights-Based Approach towards Revenue Analysis

A rights based approach towards revenue analysis seeks to determine how much financial resources are available for state use and how the state intends to raise these resources. This information impacts on the status and realization of ESC rights and can signify whether the state complies with its non-discrimination and equality obligations.

Generally speaking, the state raises its public revenues mainly through tax collections and public borrowings. It is important to look at taxation revenues because these will show whether the state complies with its respect-bound and fulfillment-bound obligations, particularly, the non-discrimination and equality obligations of the state.

Taxes are classified into direct and indirect taxes depending on whether taxes are based on the taxpayer's ability to pay or not. Direct taxes⁴⁸ are those that cannot be shifted or transferred to another but are borne by those liable to pay them. Direct taxes are computed on the basis of the taxpayer's income or personal assets such that those with greater income pay a larger tax. Since direct taxes cannot be shifted to other taxpayers, these do not tend to increase the prices of consumer goods and services and are, in principle, more effective in achieving equality in society.

Indirect taxes,⁴⁹ on the other hand, are those paid by persons other than the one on whom the tax is legally imposed. Persons liable for indirect taxation may shift or transfer their tax burden to others as part of the purchasing price of a commodity or part of compensation for services rendered. Thus, all buyers of the same product or service pay exactly the same rate and amount of tax regardless of differences in their incomes.

In countries where income is inequitably distributed, indirect taxation increases inequality in society. This is because when the poor pay the same amount of taxes as the rich, the poor are actually paying proportionately more taxes than the rich are. The indirect tax is a bigger share of the income of the poor, and the poor have less to spend for their needs than the rich do. Indirect taxes also tend to increase the prices of consumer goods and services.

Where indirect taxation results in a decline in purchasing power, which is required in the exercise of human rights,⁵⁰ indirect taxation has a devastating effect on the enjoyment and realization of ESC rights. In situations where tax revenues are generated mainly through indirect taxes, the state may be said to be in breach of its obligation to respect ESC rights. The state may also be in breach of its obligation to fulfill ESC rights where reliance on indirect taxation results in rising prices and effective reduction of purchasing power, which are not among the conditions necessary for the enjoyment and realization of ESC rights. Finally, the state may also be held liable for the deliberate retardation of the progressive realization of ESC rights and / or the calculated obstruction of the progressive realization of ESC rights, particularly the rights to an adequate standard of living, food, health, education and housing.

In theory, tax revenues generated mainly through direct taxes, particularly in countries characterized by massive poverty and inequality in the distribution of wealth and income, are a more effective means to achieve equality in the distribution of wealth and income in society. In practice, however, the effectivity of direct taxation in achieving equality in the distribution of wealth and income in society may not be readily apparent, particularly in situations where non-wage income (business income, professional income, interest income, etc.) is hardly taxed. In this situation, wage earners pay their taxes, while businessmen and other professionals do not. One may therefore need to explore the different measures relating to the burden of taxation, by looking at the entire tax system, to determine whether the state complies with its obligations to respect and fulfill ESC rights. Existing studies, conducted by academic or research institutions, and / or other NGOs, could be relied upon to provide substantial information indicating whether direct taxation in a particular state contributes to the achievement of equality in society.

It is also important to look at the source of public borrowings and conditions attached to these loans particularly in light of the fact that higher borrowings mean larger spending on debt service, thus smaller allocations for the creation of conditions necessary for the enjoyment and realization of ESC rights. The identification of the source of the loan will determine to

some extent the conditions that are attached to the loan, since all loans have conditions attached to them.

Commercial banks impose primarily financial conditions (interest rates, spreads,⁵¹ periods of repayment, etc.). Bilateral lenders (other country-governments) impose generally political and trade conditions. Multilateral financial institutions (IMF and WB) impose conditions that involve detailed participation in the state's development plans and all aspects of the state's economic policies. As a general rule, the IMF extends loans to states with balance-of-payments⁵² problems, while the WB extends loans that are directly applied to development projects. In practice, however, overlapping occurs.

States' protection-bound obligations require the state to protect its citizens from abuse by third parties. State acceptance of conditions imposed by third parties that are attached to public loans and that retard, halt, or obstruct the progressive realization of ESC rights may be construed as a breach of the state's protection-bound obligations. In addition, states' fulfillment-bound obligations require the state to create conditions necessary for the enjoyment and realization of ESC rights. State acceptance of conditions attached to public loans that retard, halt, or otherwise obstruct the progressive realization of ESC rights may also be construed as a breach of the state's fulfillment-bound obligations.

Under a lending philosophy predicated on the assured free flow of goods and commodities from industrialized countries to the borrowing state, the IMF imposes conditions on all loans it extends. Countries that oppose the conditions suggested by the WB and the IMF do not receive financial assistance.⁵³ Although details vary according to the specific situation of the state, the basic components of IMF-imposed conditions on loans it extends include:⁵⁴ abolition or liberalization of foreign exchange import controls; devaluation of the domestic currency; domestic anti-inflationary programs, (including control of bank credit, higher interest rates and perhaps higher reserve requirements, control of government deficit, curbs on spending, increase in taxes and in prices charged by public enterprises, abolition of consumer subsidies, and control of wage increases); dismantling of price controls; and greater hospitality to foreign investment. These conditions are

often packaged within what is called a “structural adjustment program”⁵⁵ and could adversely affect the enjoyment and realization of ESC rights,⁵⁶ especially when these adversely affect living conditions by leading to a decline in purchasing power⁵⁷ needed to exercise ESC rights.

Policies controlling wage increases in the wake of rising prices directly violate the right to work and the rights to an adequate standard of living, food, clothing, housing, health and education. Policies abolishing consumer subsidies and dismantling price controls on consumer items, combined with policies controlling wage hikes, that result in lowering purchasing power and restricting access to essential goods and services, violate the rights to an adequate standard of living, food, housing, health and education.

Policies requiring the devaluation of the domestic currency may also lead to a fall in purchasing power and a rise in prices of consumer goods and services. This is because when a greater amount of domestic currency is used to buy the same amount of foreign currency, the domestic currency prices of the state’s imports increase, even if the foreign currency prices have not. For countries that import most of its capital goods, the prices of even locally made and assembled goods also increase. Devaluation as a condition for a public loan that results in a fall in purchasing power may result in violations of the rights to an adequate standard of living, food, housing, health and education.

Policies such as liberalization of foreign exchange and import controls—part of the globalization of economies under the General Agreement on Tariffs and Trade—encourage the increase in foreign portfolio inflows and outflows, and facilitate the free inward and outward flow of short-term capital or short-run money (“hot money” or speculative investments). These policies are regarded by many as having caused the Asian currency crisis. In some countries in Southeast Asia, particularly Indonesia and Thailand, the currency crisis was attended by the closure of businesses and factories, massive unemployment, food shortages, riots and other acts of violence, collapse of commercial and other banks, rising poverty and growing inequality. This situation is clearly incompatible with the progressive realization and enjoyment of ESC rights.

Policies controlling bank credit and imposing higher interest rates could result in less access to capital for domestic industries; with less capital, domestic industries often find themselves resorting to down-sizing, right-sizing, shortened work hours, and, in more serious situations, closing down factories. Unemployment and underemployment could thus increase. Such policies could have serious implications on the enjoyment and exercise of ESC rights.

Where the state accepts any of the policies imposed by third parties as conditions to public loans that result in a decline in purchasing power, and thus a decline in living conditions, the state may be said to be in breach of its obligations to protect and fulfill ESC rights. As noted by the UN Committee: “a general decline in living ... conditions, directly attributable to policy and legislative decisions by states parties, and in the absence of accompanying compensatory measures, could be inconsistent with the obligations under the Covenant.”⁵⁸

Looking at taxation revenues, determine who bears the tax burden, by looking at (a) the share of direct and indirect taxes to total taxation revenues and (b) the ratio of indirect to direct taxes. To determine who shoulders the tax burden, (a) simply compute the share of direct and indirect tax to total tax revenues (direct tax as percentage of total tax revenues and indirect tax as percentage of total tax revenues) and (b) compute the ratio of indirect tax to every 1.00 in domestic currency of direct tax collected (divide indirect tax by direct tax to arrive at the ratio of x indirect tax : 1.00 direct tax). The above computations will lead to either of two results: (a) tax revenues are generated mainly through direct taxation; or (b) tax revenues are generated mainly through indirect taxation.

In all likelihood, the budget will not reflect a breakdown of taxation revenues (region-wise, commodity-wise, city-wise, and item-wise); neither will the budget reflect the upward spiral of tax contributions (from municipality/city, to district, to state, to central or national level). This information may be useful to determine which segment of society pays a higher percentage of indirect and direct taxes. This information may be sought from the state’s internal revenue service or from studies on the burden of taxation undertaken by research or academic institutions and NGOs.

Looking at public borrowings, identify the source of the loan (domestic or foreign, commercial banks, bilateral lenders or multinational financial institutions) and conditions attached to the loan.

Step Guide 7. A Rights-Based Approach towards Revenue Analysis

Notes

1. This paper provides a beginning framework towards budget analysis from a rights perspective; it is neither definitive nor exhaustive. Its limitations and gaps will likely become more evident as the rightsbased approach is tested time and again by non-governmental organizations around the globe. This paper is intended to encourage, stimulate and provoke human rights groups to explore budget analysis from a rights perspective.

2. Leonor Magtolis Briones, *Philippine Public Fiscal Administration*, Vol. I, FAFI Publication No. 25, FAFI, Mandaluyong City, 1998, p. 271.

3. Albert Waterston, *Development Planning Lessons of Experience*, Baltimore, MD: The Johns Hopkins Press, 1965, p. 201.

4. Budget Information Service (1998), Institute for Democracy in South Africa, *The Budget as a Tool for Change*, p. 2. Copies may be obtained from Warren Krafchik: warren@idasact.org.za.

5. Debbie Budlender, ed., *The Women's Budget*, Cape Town: Budget Information Service, Institute for Democracy in South Africa, 1996, p. 7.

6. Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 271.

7. Robert E. Robertson, "Measuring State Compliance with the Obligations to Devote the 'Maximum Available Resources' to Realizing Economic, Social and Cultural Rights" : Bert B. Lockwood, Jr., *Human Rights Quarterly*, Vol. 16, No. 4, Baltimore, MD, November 1994, p. 698.

8. Kenneth Creamer, Email dated 9 August 1999; emphasis supplied.

9. See Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights; see also General Comments 1 to 12 adopted by the UN Committee on Economic, Social and Cultural Rights; see also Maastricht Guidelines on Violations of Economic, Social and Cultural Rights; see also articles discussing violations of the rights to health, education, housing, and food in : Theo C. van Boven, Cees Flinterman, Ingrid Westendorp, *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, SIM Special No. 20, SIM, Utrecht, 1998; and Fons Coomans, Fried van Hoof, Kitty Arambulo, Jacqueline Smith and Brigit Toebes, *The Right to Complain about Economic, Social and Cultural Rights*, SIM Special No.18, SIM, Utrecht, 1995; see also related articles in *Human Rights Quarterly*.

10. Indicators may be used to measure both a certain situation and changes concerning this situation over time. Indicators, however, contain some weaknesses that will need to be rectified if these are to be incorporated more thoroughly into the realm of human rights. For a discussion of indicators (definition, limitations,

relative value, criteria for indicator selection, assumptions, etc.), see Danilo Turk, *The Realization of Economic, Social and Cultural Rights*, July 1991 (Second Progress Report), UN Doc. E/CN.4/Sub.2/1991/17; see also International Human Rights Internship Program, *Ripple in Still Water Reflections by Activists on Local- and National-Level Work on Economic, Social and Cultural Rights*, 1997.

11. The Philippines has adopted the following formula to arrive at the human development priority ratio:

$$\frac{\text{human priority spending}}{\text{total public spending}} = \frac{\text{social service budget}}{\text{total public spending}} \times \frac{\text{human priority spending}}{\text{social service budget}}$$

12. The Philippines has adopted the following formula to arrive at the 20/20 initiative:

$$\frac{\text{human priority spending}}{\text{GNP}} = \frac{\text{total public spending}}{\text{GNP}} \times \frac{\text{social service budget}}{\text{total public spending}} \times \frac{\text{human priority spending}}{\text{social service budget}}$$

13. See UN General Comments for discussion of state obligations and ESC rights content; see also articles discussing in detail the rights to health, education, housing, and food in : Theo C. van Boven, Cees Flinterman, Ingrid Westendorp, *The Maastricht Guidelines* and Fons Coomans, Fried van Hoof, Kitty Arambulo, Jacqueline Smith and Brigit Toebes, *The Right to Complain*; see also related articles in *Human Rights Quarterly*.

14. Kenneth Creamer, Email dated 9 August 1999. There is a need to develop tools to determine whether budgetary allocations actually reach those who need it most and to devise a formula that identifies budgetary allocations for every income level. These tools will likely be country-specific and may entail the creation of an equilibrium model for each country. In the Philippines, for instance, the official health expenditure survey (conducted once every three to four years) would provide some information to allow the computation of ratios of health expenditures targeted at—and received by—specific income levels. This would enable Philippine groups to extrapolate the data, re-compute for inflation, and arrive at a rough estimate of the amounts allocated for specific income levels. It then may become possible to identify those programs in the budget that are targeted at particular income levels, divide the allocations for these programs by the population in the particular income level, and compare the distribution of allocations by income level. This, however, would require the adoption of certain assumptions, would need additional research and data, and would apply solely to the allocations relating to the right to health.

15. In setting the poverty threshold, and in deciding what constitutes minimal food and other requirements, most states are generally influenced by social and political factors.

16. Sandra Liebenberg, "Socio-Economic Rights" : Chaskalson, et. al., *Constitutional Law of South Africa* (3rd Revision Service, 1999), Juta & Co.: Cape Town; emphasis supplied.

17. Freedom from Debt Coalition, *The Philippine Deep or How Indebted is the Philippines. A Primer on Debt*, 1999.

18. 196 SCRA 221, 1991.

19. UN Commission on Human Rights, *Effects of the full enjoyment of human rights of the economic adjustment policies arising from foreign debt and, in particular, on the implementation of the Declaration on the Right to Development*, Commission on Human Rights Resolution 1992/22; emphasis supplied.

20. Liebenberg, "Socio Economic Rights," *Constitutional Law of South Africa*.

21. Mihir R. Bhatt, "Budget Analysis: DISHA's Experience," Annex D : International Human Rights Internship Program, *Ripple in Still Water Reflections by Activists on Local- and National-Level Work on Economic, Social and Cultural Rights*, 1997, p. 96.

22. *Ibid.*

23. Liebenberg, "Socio Economic Rights," *Constitutional Law of South Africa*.

24. Aaron Wildavsky, cited in Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 269.

25. Allan Schick, cited in Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 269.

26. Grooves and Bish, cited in Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 269.

27. Resources available to a state include its physical factors, natural resources, human power, existing productive capacities, financial resources in domestic currency and foreign exchange, receipts from borrowings, grants and assistance programs, etc.

28. Budget Information Service (1998), *The Budget as a Tool for Change*.

29. Aaron Wildavsky, cited in Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 270.

30. Prof. Philip E. Taylor, cited in Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 269.

31. Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 270.

32. Eric Kohler, cited in Briones, *Philippine Public Fiscal Administration*, p. 270.

33. Prof. Philip E. Taylor, cited in Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 269.

34. Supporting systems include civil service law, institutions and regulations which determine the number, rank and salaries of public sector employees, system for selecting, prioritizing and controlling public investment projects, laws and processes governing the procurement of goods and services, economic and financial models, etc. (Larry O'Toole, *SIGMA Policy Brief No. 1: Anatomy of the Expenditure Budget*, 1997).

35. A Chart of Accounts is a uniform and systematically arranged list of accounts applicable to a specific concern, with account names and numbers.

36. Jose P. Leveriza, *Public Administration: The Business of Government*, 2nd Edition, Metro Manila: National Bookstore, 1990.

37. For further discussion of the budget process, see Appendix 1, Section A, to International Budget Project, *A Guide to Budget Work*, 1999, available at <http://www.internationalbudget.org/resources/guide>.

38. Budget Information Service, Institute for Democracy in South Africa and the International Budget Project, *Transparency and Participation in the Budget Process: The South African Case and Transparency and Participation in South Africa's Budget Process*, Draft papers submitted to the Second International Budget Conference entitled "Transparency and Participation in the Budget Process," Cape Town, South Africa, February 21 to 25, 1999.

39. Barry H. Potter, *Fiscal Transparency: The IMF Code*, Paper submitted to the Second International Budget Conference entitled "Transparency and Participation in the Budget Process," Cape Town, South Africa, February 21 to 25, 1999. Copies of the IMF transparency documents, which are now available in Arabic, Chinese, French, Portuguese, Russian and Spanish, are available at the IMF transparency web site at <http://www.imf.org/external/np/fad/trans/index.htm>.

40. Kenneth Creamer, "Key Challenges for Progressive Budget Reform" : Budget Information Service, Institute for Democracy in South Africa, *Budget Watch*, 31 July 1998.

41. Zander Navarro, *Participatory Budgeting — The Case of Porto Alegre (Brazil)*, Paper presented to the Regional Workshop: Decentralization in Latin America—Innovations and Policy Implications, Caracas, Venezuela, May 23-24, 1996 [Revised June 1996].

42. Iris Lav, *Getting Started on Budget Work*, Notes submitted to the Second International Budget Conference entitled "Transparency and Participation in the Budget Process," Cape Town, South Africa, February 21 to 25, 1999.

43. For a description of the various approaches towards budget analysis, see International Budget Project, *A Guide to Budget Work*, 1999, available at <http://www.internationalbudget.org/resources/guide>.

44. Adva Institute and the International Budget Project, *Reforming Israel's Budget Process: Assessing the Establishment of a Knesset Budget Office and other Options*, 24 February 1999, Paper submitted to the Second International Budget Conference entitled "Transparency and Participation in the Budget Process," Cape Town, South Africa, February 21 to 25, 1999.

45. *Ibid.*

46. The International Budget Project of the Center on Budget and Policy Priorities recently released *A Guide to Budget Work*, 1999; the Guide is available at <http://internationalbudget.org/resources/guide>. Additional information may be obtained from Isaac Shapiro at shapiro@cbpp.org.

47. Bhatt, "Budget Analysis: DISHA's Experience," *Ripple in Still Water*, pp. 96-97.

48. Examples include income tax, transfer tax, real property tax, estate tax, community tax, etc.

49. Examples are sales tax, business percentage tax, value added tax (VAT), amusement tax, and the like.

50. Eduardo Suesun Monroy, *Method and Plan of Work for the Study of Human Rights and Extreme Poverty*, UN Doc. E/CN.4/Sub.2/1991/18, June 1991.

51. Spreads refer to the difference between two different figures or percentages.

52. Balance-of-payments represent the balance between what a state earns from its exports of goods and services, etc., which makes foreign currencies available to it, and what the state spends for its imports and other items, including foreign aid, requiring foreign currencies.

53. Sigrun I. Skogly, "Structural Adjustment and Development: Human Rights—An Agenda for Change": Bert B. Lockwood, Jr., *Human Rights Quarterly*, Vol. 15, No. 4, Baltimore, MD, November 1993, p. 756.

54. Leonor Magtolis Briones, *Philippine Public Fiscal Administration*, Vol. II, FAFI Publication No. 25, FAFI, Mandaluyong City, 1998, pp. 8-9.

55. The World Bank defines structural adjustment program as "reforms of policies and institutions covering micro-economic (such as taxes and tariffs),

macroeconomic (fiscal policy) and institutional interventions; these changes are designed to improve resource allocation, increase economic efficiency, expand growth potential and increase resilience to shocks", cited in Skogly, "Structural Adjustment and Development: Human Rights—An Agenda for Change," *Human Rights Quarterly*, p. 755.

56. For discussion of the impact of structural adjustment programs, see Fantu Cheru, *Effects of structural adjustment policies on the full enjoyment of human rights*, 24 February 1999, UN Doc. E/CN.4/1999/50.

57. Simply put, a decline in purchasing power means a reduction in the cost of the domestic currency, i.e., what x amount in domestic currency could have bought yesterday, the same amount can buy much less today. Income, jobs and productivity affect purchasing power. When prices rise faster than wages, and wages rise faster than productivity, a decline in purchasing power occurs. It is important to note that higher prices alone do not necessarily constitute a human rights problem. But the combination of higher prices, lower wages, and lower productivity could.

58. General Comment No. 4, *The Right to Adequate Housing (art 11(1) of the Covenant)*, adopted by the UN Committee on Economic, Social and Cultural Rights at its sixth session, 1991, UN Doc. HRI/GEN/1/Rev.3, 15 August 1997, paragraph 11, p. 69.

IV. Introduction to the Sectoral Reports

Josefina N. Natividad

Of the many perspectives from which to assess governance, the rights-based approach (RBA) has been the most explicit in drawing a direct link between human development and human rights. The RBA proceeds from the basic premise that all persons are entitled to certain basic goods and freedoms and that the goal of human development is to provide the enabling environment under which these basic entitlements can be realized by the greatest number, without discrimination. To this end the rights-based approach introduces an added dimension in the human development-human rights discourse: accountability. From the rights-based perspective accountability is not a diffused obligation. In the language of rights, a right implies a corresponding duty. Accountability thus implies that claim holders to a right can take to task specific duty bearers whose obligation it is to fulfill the given right. However it is also recognized that the responsibilities of duty bearers are not always clearly bounded. Thus there are perfect duties and imperfect duties.

Perfect duties correspond to civil and political rights while imperfect duties are to social, economic and cultural rights. The right-based approach further assumes that the main duty bearer in fulfilling claim holder entitlements is the state. Civil and political rights have on the one hand traditionally driven the discourse on human rights and consist of entitlement to basic freedoms: of speech, of assembly, of choice of religion among others. Social, economic and cultural rights on the other hand had traditionally

driven the human development discourse. These rights consist of entitlement to a decent standard of living and include the right to education, food, housing, health among others. By couching human rights and human development goals into the common language of claims and duties and explicitly naming the state as the main duty bearer, the rights-based perspective provides a different lens through which governance can be reviewed. Following a broader definition of governance that includes civil society and the private sector as partners of government, the RBA considers the important role of these two pillars of governance as co-duty bearers or as partners of claim holders in the articulation of claims. In a nutshell this is the rights-based framework for governance review.

The process of arriving at such a framework for this book was an iterative one. On the one hand, it could be argued that the framework should have preceded the preparation of the sectoral reports as the former should serve as the common guide for the analysis of the individual sector. But on the other hand, the broad stokes of a rights-based framework (i.e., identification of duty bearers and claim holders and of rights-based indicators for governance in the sector) that guided the process of the sectoral report preparation and the outputs that resulted from using this preliminary frame actually helped in a significant way to shape the final rights-based governance review framework presented in this Final Report.

In sum, the sectoral reports apply a rights-based perspective to the analysis of electoral and political reform, the criminal justice system, the public corporate sector and local governance which means they all proceeded from the commonly shared main objective of identifying duty bearers and claim holders for the specific rights identified by each Report to be the major responsibility of the sector under review.

All use the methodology of:

1. review of secondary material: published work in academic or non-academic publications, internal reports and documents, financial performance reports, unpublished work on the sector such as case studies, project reports among others.

2. primary data gathering through key informant interviews (for example with key proponents of legislative bills, selected LGU officials) and consultative workshops with representatives of LGUs selected for best practice and of local resource institutions for the Local Governance Review, with representatives of selected government owned and controlled corporations (GOCCs) in the Public Corporate Sector Review and with representatives of the four pillars of the criminal justice system in the Justice Sector Review.

The objective of the consultative workshops varied somewhat across the sectoral reports. In the Public Corporate Sector Review, the workshop “aimed to identify specific programs and projects of public corporations and the factors that impede or enhance citizen participation.” In the Justice Sector Review the consultative workshop aimed to present and validate the key findings from the review of secondary material on the justice pillars and to solicit recommendations from representatives of the sector for plans of action that are anchored on rights-based principles. In general though, the workshops specifically sought the participation of duty bearers in identifying issues and problems concerning the sector that impede or enhance performance of their duties to claim holders. None of the workshops were conducted with claim holders as participants.

Furthermore, the five sectoral reports covered the same key points: clarification of (or attempts to clarify) the rights-duty bearer-claim holder linkages and identification of issues and capacity gaps that impede or enhance the capability of the sector to address its rights-based obligations. They also identified the normative content of each right as defined in international covenants and in national legislation or in the Philippine constitution. Implicitly the rights-based dimensions of non-discrimination and participation are tackled in the Reports as each assumes that rights, whichever of them may be specifically addressed by the sector under review, have to be equally enjoyed by all and that there has to be a participatory process in the setting of the goals to be met by duty bearers and in the identification of indicators of performance. The sectoral reports themselves

document with varying depth the process of goal-setting for the sector but in the methodology employed to gather data for the reports claim holders participation is notably absent. There is an abundance of duty bearer inputs and views, mainly because it is their performance in the sector that is under review. Moreover, in the review of secondary material it is not surprising to find that the claim holders’ voice is faint or not there at all because these background materials were not meant to be rights-based in the first place. Finally, because the writing up of the reports preceded preparation of the final framework, none of them conform to the suggested steps for a rights-based review as outlined in the framework chapter. But the reports highlight various aspects of the RBA and in so doing illustrate how this particular lens can sharpen awareness of issues and problems that otherwise go unrecognized in a governance review that does not use the RB perspective.

From the reports on Local Governance, the Public Corporate sector and the Criminal Justice System two basic issues stand out as key to the application of a rights-based perspective in the review of these sectors: the translation of the concepts of rights and duties as defined in the sector into the operational level- i.e. in terms of actual entitlements and concrete obligations and the matching of duty bearers with corresponding claim holders. The macro governance review on the other hand concentrates on the review of the performance of government in meeting the Millennium Development Goals which collectively seek to address the needs of the most deprived sectors in society in terms of the most basic needs: for survival (reduction in infant, child, maternal mortality, mortality from the major preventable infectious diseases: HIV / AIDS, tuberculosis, malaria), for a decent standard of living (reduction in poverty incidence, access to potable water and clean environment), for knowledge that enables full participation in society(increase in access to basic education for the general population, elimination of gender bias in access to basic education). First it takes stock of progress made in meeting the MDGs then identifies and analyzes the capacities and constraints to government and its co-duty bearers (civil society and the private sector) in fully realizing the targets of the MDGs. This is done at two levels: 1) the identification of specific departments and agencies

and other bodies of government whose mandates directly or indirectly address the MDGs, such as the Department of Health, Department of Education, PhilHealth, National Book Development Board, among others and 2) analysis of the resource capabilities of the national government. The Review points out the fundamental role of economic growth in facilitating the achievement of the MDGs. Given the country's firm commitment to address these goals the major issue that is raised in the report is the wherewithal to finance the programs that directly address the MDGs as well as to install the necessary infrastructure that will make these goals irrelevant in the future because they would have been adequately met. In assessing macro governance, the report recommends the refinement of indicators of progress to make them more rights-based. For example, there is a need to come up with a reliable national surveillance system for monitoring basic indicators of meeting the MDGs disaggregated by sex, age, ethnic group, income, education or other possible sources of discrimination, the Such a surveillance system should be transparent and open for public use. Allowing public use of data if made part of the basic services of the national government through its agencies like the National Statistics Office ensures transparency and enhances the participation of the citizenry in the monitoring and assessment of government performance.

The Local Governance sector review gives major consideration to the implications of the devolution of basic functions and services to the local level on meeting rights-based obligations by duty bearers. Specifically it raises question of the demarcation of accountability for the devolved functions between the local and the national government. While the Local Government Code empowers the LGU to craft its own plans to meet its duties to its constituents in such service areas as, for example health, education or housing, the Report notes that there continue to exist national bodies that oversee these functions, some exercise a direct hand in provision of services (e.g., education) while others only retain a regulatory / supervisory function (e.g., health). In reckoning accountability a rights-based review of the local government units should be able to address squarely the question of delimiting accountability between these two levels.

Among the questions that may be raised from the LG Report are, which level is to be held accountable, for example for meeting health- or housing-related rights-claims of LGU constituents? If duty bearer roles are shared between local and national levels of government, how exactly is this sharing of duties manifest? Who is accountable for what? Who is accountable to whom? This last question is of special significance in this sector because of the relative fluidity of movement of constituents across LGUs. For example, LGUs that are selected to receive relocated informal settlers not just experience a sudden increase in their constituency when they agree to house a relocation site. In most cases the addition in numbers is also a qualitative addition of a select group probably with higher demand for services like health, sanitation, education, etc. How will these needs be accommodated and by whom?

The Public Sector Review on the other hand raises another issue, still related to the theme of clarifying rights, duties, claim holders and duty bearers. Analyzing the mandates of the GOCCs, i.e. the given reasons for their having been created or established, the Report shows that there is a common underlying thread to the mandates of most GOCCs: to respond to the needs of the disadvantaged sectors of society in a manner specific to their major function. For example, the National Food Authority is "tasked to implement policies aimed at stabilizing the supply and price of grains for farmers, consumers and other stakeholders...to ensure food security and price stability." But as corporate entities they are also expected to turn in a profit. In some ways these two fundamental functions are incompatible. In the NFA case, by the very nature of its operations fulfilling its rights-based mandate sets the stage for financial losses. This situation is duplicated in many GOCCs. Incompatible mandates also render difficult the process of assigning accountability as it is not often clear which claim holder rights are being served by which duty bearer actions. For example, as profit making entities GOCCs should be accountable to the public sector equivalent of shareholders for the financial performance of the institution. Defining this public sector equivalent has not been adequately addressed therefore it is not readily apparent just to whom are GOCCs accountable for their

performance. It is of no help that appointments to GOCC positions are often political in nature and not transparent to the general public. Thus the accountability of these appointed officials may be to their appointing patrons rather than the public they are supposed to serve. It is also pointed out in the Report that in many of the corporations that were reviewed, the mandate to serve disadvantaged sectors become the excuse for poor financial performance. Therefore, the fuzziness in accountability and the absence of rights-based indicators to assess GOCC performance are two of the major issues that stand out in an RBA-guided review of the Public Corporate sector.

The sectors that were reviewed address both types of human rights: the civic and political and the social and economic. The rights that are covered by the Local Governance, the Public Corporate and the Electoral and Legislative Reform sectors are in the realm of imperfect duties; they cover social and economic rights. Because the actual limits of these rights in terms of entitlements are blurry, the Reports suggest the need for effective mechanisms for participation by stakeholders, especially claim holders supported by civil society, the private sector and other interest groups in drawing up of indicators of rights-based performance by the known duty bearers. With participation, interests are clearly articulated and reasonable limits to the ability of the duty bearer to fulfill its obligations can be defined in consultation with claim holders.

In the case of perfect duties such as those that are covered by the criminal justice system, the parameters for measuring duty bearer performance are more precise and articulated in law. Among these are the rights of claim holders to seek judicial redress, the right to a fair trial, to legal counsel, to bail, within the limits set by law—among others. In general the criminal justice system is the sector that aims to provide effective remedy to those whose civil and political rights have been violated and at the same time to protect the rights of those who are accused of violating other people's rights. Because duties and claims are well defined and because the normative standards for gauging whether one's civil and political rights have been respected are clear, governance review of this sector is very much in the

nature of checking for adequate progress, i.e., reviewing how well the criminal justice system adheres to internationally accepted standards for dealing with victims and perpetrators of the violation of rights. In this sense compared with the three other sectors, a governance review of the criminal justice system is a relatively uncomplicated exercise and involves assessment of adequate progress in the implementation of measures that indicate adherence by duty bearers to their obligations at the four pillars of the system identified in the Report namely law enforcement, prosecution, the judicial and the correctional.

Finally the review of the Electoral and Legislative Reforms sector highlights the application of two basic rights-based parameters in reviewing the two components of this sector: electoral reform and legislation. These parameters are transparency and participation. The right to suffrage is a well-respected and well-protected right in the country. But the electoral process needs reforms for this right to be exercised in a responsible and optimal manner. One important factor in the creation of the enabling environment for the ideal exercise of the right to suffrage is a citizenry that is provided with "independent (and credible) information about the government", that is able to vote on the basis of an appreciation of the merits of political candidates and their platforms and an even playing field for political aspirants, unbiased by power, wealth or privilege. The rights-based parameter of transparency, also a pillar of good governance is the underlying theme of electoral reforms amply discussed in this sectoral report.

For the legislative portion the report chose to illustrate how participatory processes shepherded the passage of two landmark bills that specifically address the rights of two vulnerable groups: children and indigenous peoples. These are The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act and Republic Act 8371, the Act to Recognize, Protect and Promote the Rights of Indigenous Communities/ Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Mechanisms, Appropriating Funds Therefor and For Other Purposes. Moreover by tracking the subsequent events and processes that followed the passage of RA 8371, the report concludes that the passage of

legislation is but the first step in the realization of rights. The real test of the law lies in its actual implementation. Thus stakeholders, chiefly those who represent the claim holders must remain vigilant in monitoring adequate progress in compliance by duty bearers with the law. The case of RA 8371, a complicated piece of legislation that is controversial for its recognition of heretofore non-legitimated entitlements (e.g. recognition of ancestral domain) and its impacts on other claim holders and interest groups (e.g. mining rights claimants) illustrates the need to maintain an active interest in monitoring duty bearer compliance with its provisions, especially those that will require investment of time and considerable resources.

As illustrated in the sectoral reports the rights-based perspective is a workable and useful way to review governance when the main objective for such a review is assessing how the needs of clients, or in the language of the RBA, the claim holders are being met using the major governance and right-based principles of accountability, transparency, nondiscrimination and voice/participation.

V. Macro Governance Review Using the Rights Perspective

Magdalena L. Mendoza and
Princess Shimmadar R. Manaois

Introduction

Macro governance, by and large, covers a wide range of state affairs—economic management, allocation of resources, revenue generation and administration, public expenditure management, development planning, policy formulation, regulation and conflict resolution. The decision making and the policy implementation system in all these processes have implications on equity and quality of life.

Transparent and accountable macro governance means the collective wielding of economic, political and administrative power in a manner that promotes social stability and economic prosperity for all. Macro governance must promote the rights and welfare of citizens as a whole, prevent their capture by narrow interests, eliminate marginalization and promote social inclusion.

Notwithstanding the wide coverage of macro governance, this review attempted to focus the stocktaking on macro governance performance from the human development perspective i.e., how economic and political decisions affect poverty reduction and how economic resources are invested to promote human development.

Economic and political empowerment is the outcome of rights-based governance. A rights-based macro governance perspective suggests that

there are institutional arrangements—planning, programming, services delivery, legislative capacity, enforcement capacity, judiciary systems—to respect, protect, and fulfill the rights to development. It also means that the essentials of an enabling environment are in place—allocating budgets, ensuring participation, protecting social capital of vulnerable claim holders, transparent policy making—to realize these rights.

From the rights perspective, there is no better way to gauge macro governance performance than by assessing the country's accomplishments vis-à-vis the goals and benchmarks set forth in the United Nations Declaration on Social Development, better known as Millennium Development Goals (MDG). The MDG has placed basic human rights and poverty reduction in the center of every country's development agenda by directing policies and resource allocation to priority human needs.

Development is a "process of expanding the real freedoms that people enjoy." Economic growth is essential to achieve development, but it is not enough. According to economist Amartya Sen, development requires eliminating major sources of unfreedom and deprivation. Deprivation has many dimensions. Aside from lack of economic opportunities, illiteracy, ill health, gender inequality, and unsafe living environment are all aspects of poverty. The MDGs address these most compelling human needs. The overarching goal is to cut extreme poverty by half between 1990 and 2015 and eliminate the worst form of human deprivation—hunger. The specific goals are:

1. achieving universal primary education
2. promoting gender equality
3. reducing child mortality
4. improving maternal health
5. combating HIV / AIDS, malaria and other diseases
6. ensuring a sustainable environment
7. developing a global partnership for development, as a means to achieve the abovementioned goals

These goals recognize crucial rights to development such as the right to an adequate standard of living, food security, basic education, primary health care, and shelter. Social institutions, primarily the state have the duty to respect, protect, and fulfill these rights.

It must be stressed that the duty of the state to ensure an adequate standard of living for everyone is an "obligation primarily of result, not so much of conduct" (UNESCO 2000). For instance, the state's primary obligation is to create an environment where every member of the population is assured an adequate standard of living. This can be done by respecting and protecting entitlements, by assisting the less able to make the best use of their assets, and by carrying out necessary reforms to guarantee equal opportunities for everyone. Still the state has to fulfill this duty in cases of "market failure." It could do so by providing safety nets to direct the provision of basic needs for those without economic means and the socially disadvantaged and marginalized. Here, the primary governance responsibility is to ensure that the basic public services directly linked to human development—food security, basic health, basic education, water, sanitation—must benefit the poor. There is a failure in macro governance when these basic services are directed to those who have the means rather than to the poor or when public resources for these services are diverted to the non-poor, lost due to inefficiency and corruption, or when policies aggravate marginalization.

In the context of the Millennium Development Goals, poverty reduction is thus the outcome of a rights-based macro governance. In this review, rights-based macro governance means that:

- institutional arrangements—planning, programming, services delivery, legislative capacity, judiciary—respect, protect, and fulfill the rights to development
- institutions addressing human rights observe the principles of universality, non-discrimination, protection of vulnerable groups, participation and accountability

- the essentials of an enabling environment in order to realize rights are in place, e.g., restructuring budgets, ensuring participation, protecting social capital of poor claim holders, transparent policy making
- the mechanisms enhancing the enforcement delivery capacity of governance institutions responsible for the gratification of specific rights are in place
- the state, as prime duty bearer, builds alliances for support and action towards equitable growth and sustainable human development

Objectives of the Review

Taking off from the eight goals set forth in the Millennium Declaration, this study seeks to map out the MDG commitments using the rights-based approach to governance. The review focuses on the assessment of institutions, processes, and mechanisms involved in the attainment of the aforementioned goals and how each goal contributes to poverty reduction and the promotion and protection of human rights. It also attempts to assess the quality, adequacy and sustainability of basic services as well as the extent to which equal access to these services is being addressed and ensured by duty bearers.

The objective of the study is to evaluate the capacity, incentives, and reform initiatives of the governance institutions with obligations to realize the right to development of the Filipino people. Its review is limited to those accountable for the attainment of Millennium Development Goals and poverty reduction. It seeks to enlarge the lens with which to assess governance by including rights based principles, e.g., attention to vulnerable groups, nondiscrimination, transparency and accountability.

The review aims to bring into the picture the stakeholders who would otherwise be without protection and provide a framework for dealing with issues like empowerment and equity, as well as entitlements and obligations. It also examines through the rights-based lens the quality of governing institutions, the functioning of civil society, and the enabling policies in place to reduce human poverty in the country.

Methodology

The review takes off from existing governance reviews, studies and related research. The intention is to apply the RBA lens in assessing macro governance performance and identifying governance issues that have impacts on both claim-holding and duty-bearing.

Given the abundant literature and academic discussions about the MDGs, the review was primarily based on secondary data gathered from various sources: government agencies whose mandates include the implementation and/or monitoring of projects and programs directly contributing to the attainment of the MDGs; international and civil society organizations, including academic institutions and the media.

The review starts from identifying the duty bearers or the institutions with obligations to respect, protect, facilitate and make direct provisions to realize the rights embodied in the MDGs. Capacity issues or constraining factors and enabling factors as well as the regulatory structure and policy-making environment were identified and written out in a matrix. Duty bearers are matched with corresponding claim holders. The resulting matrix allowed for clarification of the relationships between and among the duty bearers and claim holders in the realization of MDG-specific human rights. As the study progressed, the mapping tool evolved into a more defined instrument integrating the fundamentals or principles of good governance and human rights.

The next step was to examine institutional arrangements (planning, programming, legislative capacity, services delivery, judiciary) to find out whether these support, protect, promote and fulfill human rights and whether institutions addressing rights violate the RBA principles (e.g., marginalize some sectors or are biased for others). An analytical tool called Modified Rights-based Institutional and Stakeholders Analysis was employed to bring out these issues. With the aid of the problem tree analysis, the incentive gaps, jurisdictional gaps, and participation gaps were identified. From here, the study endeavored to pin down the underlying

problems and root causes of the capacity issues, which became the basis of the recommendations.

The initial findings of the study were presented during the Round Table Conference on the Rights-Based Philippine Governance Review held in December 2004. The final report incorporates the feedback and reactions from the conference.

The Philippine Millennium Development Goals

Poverty is not just about lack of income. Impoverishment has many dimensions: illiteracy, ill health, gender inequality, and unsafe living environment. To function productively and participate actively in economic, political and social activities, one has to be educated. But more than this, to lead a life of dignity, one has to have an adequate standard of living—a level of existence that is above poverty and adequate for one's health and well-being.

These concerns motivated various nations the world over to adopt a framework for governance that assumes that all humans deserve to live their lives with dignity. In September 2001, member states of the United Nations came together to affirm commitments towards addressing poverty and all forms of inhumanity. These member states collectively pledged commitment to the Millennium Declaration as a strategy to break the chain of poverty and eliminate the worst forms of human impoverishment. The Millennium Declaration embodies specific targets and milestones, which came to be known as the Millennium Development Goals (MDGs), to eradicate worldwide poverty not later than 2015. (See Box 1.) The Philippines is a signatory to this global commitment.

The MDG targets are ambitious, but they must be achieved. The actual targets vary across nations and economies since the incidences of poverty and rates of progress differ. Thus, the Philippines translated these goals into its own set of targets. (See Box 2.)

Box 1: The Millennium Development Goals and Targets for 2015

Goal	Target
Goal 1 Eradicate extreme poverty and hunger	Target 1 Halve the number of people whose income is less than \$1 a day between 1990 and 2015, Target 2 Halve the number of people suffering from hunger between 1990 and 2015
Goal 2 Achieve universal primary education	Target 3 Ensure that by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling
Goal 3 Promote gender equality and empower women	Target 4 Eliminate gender disparity in primary and secondary education preferably by 2005 and in all levels of education no later than 2015
Goal 4 Reduce child mortality	Target 5 Reduce by two thirds the under-5 mortality rate between 1990 and 2015
Goal 5 Improve maternal health	Target 6 Reduce by three quarters the maternal mortality rate between 1990 and 2015
Goal 6 Combat HIV/AIDS, malaria, and other diseases	Target 7 Have halted and begun to reverse the spread of HIV/AIDS by 2015 Target 8 Have halted and begun to reverse the incidence of malaria and other major diseases by 2015
Goal 7 Ensure environmental sustainability	Target 9 Integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources Target 10 Halve the number of people without sustainable access to safe drinking water by 2015

Box 1: cont.

Goal	Target
	Have achieved a significant improvement in the lives of at least 100 million slum dwellers by 2020
Goal 8 Develop global partnerships for development	<p>Target 12 Develop further an open, rule-based, predictable, nondiscriminatory trading and financial system This includes a commitment to good governance, development, and poverty reduction—both nationally and internationally.</p> <p>Target 13 Address the special needs of the least developed countries Includes tariff- and quota-free access to exports enhanced program of debt relief for highly indebted poor countries (HIPC), cancellation of official bilateral debt, and more generous official development assistance (ODA) for countries committed to poverty reduction</p> <p>Target 14 Address the special needs of landlocked countries and small island developing states</p> <p>Target 15 Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term</p> <p>Target 16 In cooperation with developing countries, develop and implement strategies for decent and productive work for youth</p> <p>Target 17 In cooperation with pharmaceutical companies, provide access to affordable, essential drugs in developing countries</p> <p>Target 18 In cooperation with the private sector, make available the benefits of new technologies, especially information and communications</p>

Box 2: Philippine MDG Targets

Millennium Development Goals	Baseline	2015 Target
Eradicate extreme poverty and hunger		
Proportion of population below the national poverty line	20.4 (a)	10.2
Prevalence of malnutrition among 0 to 5-year-old children (% underweight) based on international reference standards	34.5	17.5
Prevalence of malnutrition among 0 to 5-year-old children (% underweight) based on Philippine reference standards	9.8	4.9
Provide basic amenities		
Proportion of families with access to safe drinking water	73.7 (a)	86.8
Achieve universal primary education		
Elementary participation rate	85.1 (a)	100
Promote gender equality		
Ratio of girls to 100 boys		
Elementary	95.8 (b)	100
Secondary	104.5 (b)	100
Elementary participation rate		
Male	95.3 (b)	100
Female	93.4 (b)	100
Reduce child mortality		
Under-5 mortality rate (per 1,000 children)	80	26.7
Infant mortality rate (per 1,000 live births)	57	19
Improve maternal health		
Maternal mortality rate (per 100,000 live births)	209	52.2

Source: Philippine Progress Report on Millennium Development Goals, 2003

Legend: Baseline is based on 1990 or year closest to 1990

(a) 1991 level

(b) 1996 level

Identifying Claim Holders and Duty Bearers

Rights-based macro governance focuses on raising levels of accountability in the development process by identifying claim holders (and their entitlements) and corresponding duty holders (and their obligations). On one hand, one must identify the claim holders and determine if they have the capacity to claim their rights. Correspondingly, it is equally important to specify the actors or institutions responsible for the realization of rights and to establish whether they are capable of meeting their obligations.

The rights-based approach to development views beneficiaries of development as claim holders, who, by virtue of their humanity, possess fundamental rights and freedoms. Human rights establish norms of conduct for people and government and clarify the relationship between people and government. Human rights emphasize the need for fairness and equity, nondiscrimination and equality in treatment, and for conditions in which individuals and groups can pursue their goals and fulfill themselves as *human beings*. Human rights seek to establish rules and conditions where civilized life is possible. The rights-based approach to development thus seeks to improve the quality of human life so that people may fully enjoy and exercise all their rights and freedoms.

Claims and Entitlements

Claims or entitlements are embodied in the Millennium Development Goals. These are a clear expression of efforts to realize and fulfill economic and social rights by specifically targeting fulfillment of the most basic of needs. These goals support the rights-based approach as they are centered on the attainment of human dignity, equality and equity—the bridge that connects human existence to human development.

A right to have the basic needs met

According to Article 25(1) of the Universal Declaration of Human Rights, “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family.” Adequate standard of living may be understood to imply meeting basic needs and maintaining a level of living above the poverty line of the society concerned. The World Bank defines poverty line as the expenditure necessary to buy a minimum standard of nutrition and other basic necessities and a further amount that varies from country to country reflecting the cost of participating in the everyday life of society (UNESCO 2000).

From the point of view of the MDG, the right to adequate standard of living mainly consists of four components: the right to food security, right to adequate health care, right to basic education and the right to adequate housing.

The right to food security

Adequate food does not only mean that people have something to eat. It also means there must be an adequate food supply free from contamination and sufficient to satisfy nutritional and dietary needs.

Stability of food supply and access to food also entails the existence of the necessary infrastructure that would bring food closer to where people, especially the most deprived groups, are. Furthermore, in situations where the cost of food is prohibitive, access to food at the lowest, most reasonable and affordable price must be guaranteed to those unable to afford basic food prices. Judicious management of natural resources also affects the stability and sustainability of food supply for the population now and for future generations.

The right to health

An adequate standard of living cannot be attained without ensuring the right to adequate health care. Adequate health care is necessary for

all but is particularly important for children, the elderly, mothers-to-be and those who have immediate responsibility for infants and small children.

The right to health means entitlement to medical assistance and protection against diseases and malnutrition. This right is not just about having access to medical services and medicines, it is also about having access to safe and clean water and sanitation facilities. The right to health stipulates availability, accessibility, acceptability, affordability, and quality of health services. Similarly, health facilities and services should be provided based on the principle of equity or nondiscrimination. The suitability of the health system is another important consideration. It calls for respect for medical ethics, culture, gender, life stage and religion.

The right to basic education

Adequate care for children also means providing for their education. Education is a basic requirement for a person to function well in society. Being educated enables an individual to make sound decisions affecting his/her life and future. To ensure that all persons enjoy the right to education free basic education must be provided to all, regardless of age, gender, religion, ethnicity and geographical location. Basic education refers mainly to primary education but may include secondary education when affordable to the country. The entitlements include educational services that are available, physically and economically accessible, culturally appropriate and adaptable to changing times and environments.

The right to housing

Essential to a life of dignity is adequate housing. Lack of shelter and poor living conditions are visible manifestations of poverty. The right to housing does not mean merely having a roof over one's head. It also means the right to live in security, peace and dignity. While the state is not expected

to provide free housing to all it is nonetheless obliged to facilitate the fulfillment of this right. One such obligation is to assure individuals, groups and families of the opportunity to enjoy legal security of tenure to their homes regardless of the nature or status of their residency, i.e., rental, lease or ownership. It is the obligation of the state to shield people from forced eviction or harassment. Ensuring access to related services and facilities such as safe water and sanitation, are also part of the state's obligations.

The entitlements involved in the MDG framework are interconnected in that one cannot be attained without giving due regard to the other. The fulfillment of these rights depends on how policies are set and how resources are allocated. Adequately providing for these entitlements will eradicate the most apparent forms of human impoverishment.

Rights-based Governance Claim Holders

While it is the duty of the state to respect, protect, and fulfill the economic and social rights of every member of the population, as articulated in the MDG the immediate focus of these goals is addressing the rights of the most vulnerable members of the society. Vulnerable groups are those in a weak position to secure and demand for their rights. This includes the poor and the economically disadvantaged who are often the subject of discrimination due to their socioeconomic status. Children, rural folk, indigenous peoples, women in very difficult situations and internally displaced persons are also among those at risk of not being fully able to avail of their rights. It is essential for the state to identify these vulnerable groups and to take measures to improve their conditions.

Children are specifically vulnerable since they cannot articulate their rights. In Philippine society (as in many societies around the world), children are thought to be passive, dependent and vulnerable. They are brought to this world *walang-alam* (knowing-nothing), and *walang-malay* (innocent). Children are also born *tabula rasa*—without knowledge, without goals, and without morals (Ong 2001). Hence they need proper care, protection and direction.

While children in general are vulnerable, some are at higher risk than others—children of poor families who are forced to work, children in rural areas with lesser resources and more difficult access to basic services, children in conflict-affected areas who are either recruited to take up arms or are internally displaced, children of indigenous groups marginalized on account of their religious and cultural beliefs. Special measures must be taken to protect and ensure the rights of children as they cannot be expected to take care of their own needs. Neither are they to blame for their choice of parents when the latter turn out to be not responsible enough (UNESCO 2000).

Women also belong to vulnerable groups. Traditionally, women are more susceptible to discrimination than men. In some societies, discrimination comes as a result of cultural beliefs and practices. Vulnerability may also be a function of illiteracy and lack of economic resources. In the Philippines, women generally enjoy their rights except perhaps for those in poor households who have to work and take care of children and run the household at the same time, women in far-flung areas who suffer higher mortality rates due to difficult access to health services, indigenous women who suffer exclusion due to cultural practices, female children forced to work, trafficked or unable to finish schooling due to gender biases.

Indigenous peoples oftentimes suffer marginalization if not exclusion. Rather than fostering unity, development at times creates divisions among peoples and produces social discord. Unfortunately, indigenous groups may end up the victims of discord because their cultural beliefs are different from that of the mainstream. Essential to the realization of adequate standard of living for indigenous peoples is the respect and protection of their ancestral domains. For these people whose culture requires close links to the use of land, protection of their land may be even more important than the obligation to realize the right to adequate food, care and shelter.

Oftentimes, vulnerable groups do not demand their entitlements. The state's obligation thus includes the duty to enable these groups to claim

their entitlements. Moreover, while the state has primary obligations to address rights, it is also required to impose duties on persons subject to their jurisdiction. Claim holders have duties to respect the rights of other persons, such as the duty to respect the property of others and to contribute to the common welfare, including taxation. Compliance with such duties makes it possible for the state to assist and provide ways which enable everyone to enjoy their economic, social, and cultural rights (UNESCO 2000).

Within the framework of rights-based governance, there are two types of obligations: positive (i.e., to respect, protect, and fulfill) and negative (i.e., to abstain from violations) as there are also two types of duty holders: state and non-state.

The state is the primary actor responsible for ensuring that rights of claim holders are met. As main duty bearer, its key responsibility is to create the necessary conditions that can realize economic, social and cultural rights. Its instrumentalities, i.e., government institutions, both local and national, serve as formal channels through which the regulatory framework is laid down and policies and programs implemented. A common misunderstanding of the right to development is that all economic, social and cultural rights must be provided by the state, and that they are costly. Following governance principles, however, the state's duty to realize rights is an obligation primarily of result, not so much of conduct. The state has four levels of obligations: *to respect, protect, facilitate and provide* (UNESCO 2000).

*Obligation to respect*¹

At the primary level, the state must respect people's rights. For social and economic rights these mean respecting their rights to ownership of resources, to their use for the satisfaction of their own needs, and to find a job. Also, as part of the obligation to respect individual's resources, the state must take steps to recognize property rights, e.g., the land rights of indigenous peoples.

Obligation to protect

At the secondary level, the state's obligation is to protect. The protective function is the most important aspect of state obligations with regard to economic, social and cultural rights. In a way, this is similar to the role of the state as protector of civil and political rights. For instance, the protection of housing against dispossession requires legislation and is part of the laws of many societies. Protection against health malpractices requires regulation of the health profession. Protecting access to food means regulation of food prices and the granting of subsidies, and rationing of essentials when necessary. It also includes protecting the citizenry against hazardous or toxic food elements through regulations in foods and drugs, and against pollution. The state is also obliged to preserve existing entitlements, e.g., preventing parents from keeping children out of school through mandatory attendance in elementary schools, or to protect resource bases against expropriation by third parties, e.g., preventing encroachment on the land of indigenous peoples whose livelihood and culture depend on the land.

Obligation to facilitate

At the third level, the state is obliged to take positive measures to enable individuals, groups and communities to avail of their rights. The facilitation of rights takes many forms. First, the state is obliged to assess the current situation as a whole taking into account disaggregation in terms of age, gender, religion, ethnicity and geographic location in order to identify which groups do not enjoy equally their rights to development. It does not necessarily mean that the state must provide direct support to these groups. The duty of the state is to remove the obstacles barring vulnerable groups from enjoyment of their rights. With regard to the right to food security, facilitation means taking measures to improve production, conservation and distribution of food, e.g., by making full use of technical and scientific knowledge and raising productivity. In health and basic education, facilitating access may be achieved through price regulation to make these

services affordable or through the construction of access roads to schools and health centers.

Obligation to provide

The fourth level compels the state to provide for a right when an individual or group, for reasons beyond his or its control, lacks the capability to realize or exercise a particular right. Here, the obligation to fulfill consists of direct provisions of basic needs, such as free basic education, free primary health services and direct food aid for the destitute. Depending on a country's governance policy, the state's role as provider can range from minimum safety to a full comprehensive welfare model.

Rights-Based Governance Duty Bearers

Rights-based governance views duty holders in both the public and private sectors as critical actors in the process and outcome of development. This places upon the state the primary responsibility to enforce, protect, promote and guarantee the enjoyment and exercise of fundamental rights and freedoms.

For human rights to be fully realized, the appropriate conditions must be created. The state has the central responsibility for creating such conditions. But the private sector, whose actions and activities often affect the enjoyment of rights and freedoms, has a crucial role to play as well. In fact, most times, claims are made against other individuals, and it is government's duty to protect people from violations of their rights by individuals or private entities. Non-state actors are also responsible for the promotion of rights-based approaches to governance. For instance, public scrutiny is essential to monitoring the accountability of state and private actors.

In fulfilling its duties, government plays the crucial role of ensuring that services are provided and delivered to people. However, although the government engages in direct provision of some services such as health,

education, sanitation and general welfare, it does not automatically follow that government institutions are solely responsible for failure in the delivery of such goods or services. The government can take several forms of public responsibilities. Public goods can be provided and services can be discharged by government in a number of ways other than direct provision. For instance, government responsibility in terms of achieving good health and education outcomes may be done either through improving tax collection or fostering economic growth or directly providing for health and education infrastructure via increased public spending or combination of any or all of these measures.

There are two main reasons why governments take on some responsibilities for certain public goods and services. One is the notion that there is no perfect market. Markets tend to pour resources on things or activities that yield the most benefits or incentives. Because profit is the ultimate goal of the market, protection of and general welfare of the people cannot be left to market forces. This is the reason why governments exist at all (WDR 2004). The second rationale for government's taking part in the provision and delivery of public goods and services is rooted in the belief that governments can guarantee equity and nondiscrimination in the society. Education and health services are just some of the public domains of government.

Institutions help channel these public goods and services. The state can create an enabling environment for rights through public policies promoting equity, accountability, tolerance, and the rule of law, and through institutions that can deliver specific rights efficiently. For the MDGs, three sets of governance institutions (both state and non-state) carry out the duties: 1) institutions creating the framework for rights, such as the constitution, congress, judiciary; 2) institutions generating policies that have impact on rights, e.g., planning, policy making, budgeting, finance; and 3) institutions delivering specific rights, e.g., health department, education department, local governments. In recognition of the duties of the state, the Philippine Constitution laid the framework for the fulfillment of basic rights to development.

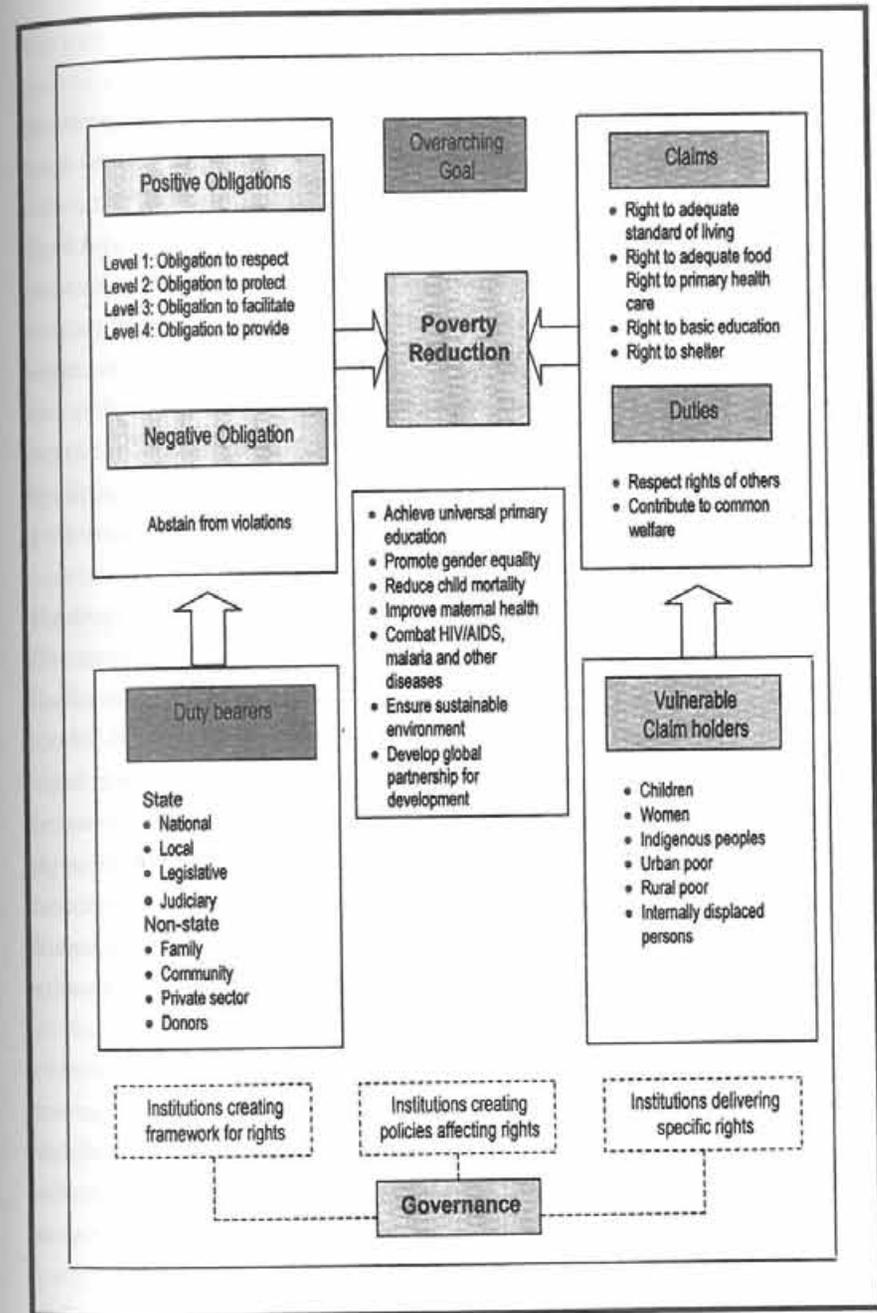


Figure 1. Rights-based Governance and MDGs

The National Government as Duty Bearer

First, the Philippine Constitution obliges the state to protect and promote the right of all citizens to quality education at all levels and to take appropriate steps to make education accessible to all. The Constitution also guarantees a system of free public education in the elementary and high school levels. To this end, the national government is authorized to provide the highest budgetary priority to education. And without limiting the natural rights of parents to rear their children, elementary education has been made compulsory for all children of school age. To promote social inclusion and to preserve the indigenous peoples' culture, the Constitution also charges the state to provide subsidies to the underprivileged and to encourage nonformal, informal, and indigenous learning systems for communities needing them.

The Department of Education is the key agency commissioned to provide basic education and to lay the foundation for lifelong learning. Private and religious schools also provide basic education but the DepEd regulates their operation. The local government units (LGUs), through the Local School Boards, and the Department of Public Works and Highways support basic education through the construction of school buildings. The development of quality books and school instruction materials, is also ensured through the National Book Development Board, charged to formulate, adopt and implement the National Book Policy and the National Book Development Plan. The Professional Regulatory Commission helps guarantee quality education by regulating the teaching profession.

On the matter of health, the Philippine Constitution obliges the state to adopt an integrated and comprehensive approach to health development in order to make essential goods, health and other social services available to people at affordable costs. The priority of the health needs of the underprivileged, sick, elderly, disabled, women, and children is stressed in the Constitution.

The Department of Health is the principal health agency responsible for ensuring access to basic public health services to all Filipinos through

the provision of quality health care and regulation of providers of health goods and services. Under the 1991 Local Government Code, local government units are responsible for the delivery of basic health services such as the implementation of promotive, preventive, curative, and rehabilitative health programs, and the operation and maintenance of local health facilities. The DOH exercises oversight and regulatory functions, provides technical assistance, formulates standards and guidelines, and manages the operation of retained hospitals, regional medical centers, regional training and or teaching hospitals, specialized health facilities, and national government hospitals.

For difficult to cure diseases like HIV / AIDS, the state has created the Philippine National AIDS Council (PNAC), an advisory, planning and policy-making body for the comprehensive and integrated HIV / AIDS prevention and control program in the Philippines. PNAC also directs the implementation of the Philippine AIDS Prevention and Control Act of 1998. The control of diseases like malaria, tuberculosis and other diseases of public health significance are within the responsibility of the DOH.

To protect the public further, the state maintains a food and drug regulatory system through the Bureau of Foods and Drugs (BFAD), which is tasked to formulate rules, regulations and standards and other laws pertaining to foods, drugs, traditional medicines, and household products containing hazardous substances and to enforce these laws and regulations. To protect the poor and make health services affordable to all people, the state partly supported health financing through social health insurance under the Philippine Health Insurance Corporation (PhilHealth).

As regards to food security, the Department of Agriculture is responsible for raising agricultural productivity, particularly of small farmers and fisherfolk, and ensuring food sufficiency and affordability by encouraging investments in agriculture, particularly in irrigation, post harvest facilities, rural infrastructure, credit and research, development and extension program. Protection, by means of regulating the supply and prices of staple food commodities, such as rice, is delegated to the National Food Authority. Further, the state requires the National Nutrition Council to formulate and

coordinate an integrated national program on nutrition including targeted assistance in food and nutrition for vulnerable groups. LGUs also have a role in providing nutrition services in their respective jurisdictions and in enforcing food and nutrition-related laws, such as salt iodization, food inspection and sanitation.

The provision of potable water and sanitation, on the other hand, are the responsibilities of several national and local bodies. Based on the Local Government Code, LGUs are obligated to provide services and facilities related to general hygiene and sanitation, such as drainage and sewerage, and provision of Level 1 and Level 2 water supply, e.g., water impounding projects, artesian wells, spring development, and rainwater collectors in their jurisdictions. The regulation of the water sector, particularly the issuance of water permits and approval of water tariffs, is the obligation of the Metropolitan Waterworks and Sewerage System, Local Water Utilities Administration, and National Water Resources Board. Water quality regulation and setting standards on testing, treatment and surveillance is the function of the DOH, while the DPWH is in charge of setting standards for engineering surveys, design, operation and maintenance. The Department of Interior and Local Government only provides general administration and institution-building support to LGUs.

The Department of Environment and Natural Resources is the main duty holder in ensuring environmental protection and sustainability. The Philippine Council for Sustainable Development was created at the national level to serve as a policy advisory, monitoring and advocacy body on the Philippine Agenda 21, the country's blueprint for balancing the use of natural resources with meeting basic human needs.

With regard to adequate shelter, the Philippine Constitution tasks the state to make available at affordable cost, decent housing and basic services to underprivileged and homeless citizens. While respecting the rights of small property owners, the Constitution provides that urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with the law and in a just and humane manner. It provides specifically that no resettlement of urban or rural dwellers shall be

undertaken without adequate consultation with them and the communities where they are to be relocated. These duties are primarily lodged with the National Housing Authority and the Housing and Urban Development Coordinating Council.

Supportive of efforts to expand economic opportunities and protect vulnerable groups is the Department of Agrarian Reform that is obligated to implement asset reform and provide tenurial security to landless farmers. The Department of Social Welfare and Development, in addition, is duty bound to extend social welfare services to groups without adequate social protection and to provide minimum basic needs to disadvantaged groups.

While the state created the foregoing institutions to take care of specific rights, the state's main duty really is to create an enabling environment to facilitate the fulfillment of rights rather than directly fulfill all these rights. This enabling environment should ideally be guided by the principles of equity, social inclusion, accountability and transparency.

As the central planning agency, the National Economic and Development Authority (NEDA) is obliged to ensure that socio-economic development policies take the direction of sustainable growth and equity, not serving narrow private sector interests. The mandate of the Department of Budget and Management (DBM) is to promote the sound, efficient and effective management and utilization of government resources (i.e., technological, manpower, physical and financial) towards achieving national socioeconomic and political development goals. In preparing the budget, the DBM, through the Development Budget Coordinating Committee, is expected to ensure that the highest budgetary allocation goes to priority human needs as provided in the Constitution and to the most deprived sectors. The Department of Finance, together with its revenue collection arms such as Bureau of Internal Revenue (BIR) and Bureau of Customs, is duty bound to formulate, institutionalize and administer all fiscal policies in the country, manage the financial resources of the country, and secure adequate and steady financing for priority human needs.

Special policy advisory and coordinative bodies are also set by the state to facilitate the realization of rights to development of identified vulnerable groups—the National Anti-Poverty Commission which oversees the implementation of the Social Reform Agenda and protects the economically disadvantaged sectors, the Council for the Welfare of Children, the National Commission on the Role of Filipino Women. Statistical agencies like the National Statistics Office and the National Statistics and Coordination Board bear the responsibility of maintaining an efficient statistical system in the government, aimed at achieving coordinated, accountable and effective development indicators or measures of progress at all levels to help ensure meaningful development in the country.

The Local Government as Duty Bearer

The principle of subsidiarity best describes the need for government at the local or community level. It holds that all decisions and responsibilities should be carried out at the lowest and most appropriate level of government or that any higher level of government should do away with functions that can be accomplished more effectively at the lower level or by people and personalities closer to and have a better understanding of a problem or issue.

The Local Government Code of 1991 did not only accede to the provision of the 1987 Constitution to provide autonomy to local government units but also paved the way for the adoption of more democratic governance through decentralization. With the passage of this code, the delivery of basic public services such as health, social welfare, provision of safe water and sanitation, creation of livelihood opportunities among others have been devolved to local government units. With their vast powers and autonomy in running their own local affairs localities, LGUs are now directly accountable for meeting the most basic needs of their respective constituents as well as for the protection of and fulfillment of their human rights. Attention to vulnerable groups and marginalized sectors in their respective areas is also one of the most important responsibilities devolved to LGUs.

The Legislature as Duty Bearer

The Congress is one of the key institutions that sets the laws and creates the legal framework for the realization of the rights embodied in the MDGs. As the law-making body of the nation, Congress is constrained to legislate laws that respect, protect and fulfill rights. It is expected to craft sanctions against any form of violation of rights or discrimination against any citizen. Moreover Congress is also tasked with the important function of allocating resources for the realization of the goals set in the MDG through the passage of the appropriate legislation.

The Judiciary as Duty Bearer

Enforcing rules fairly and making impartial decisions on people's claims to their specific rights and entitlements are the major obligations of the judiciary with regard to the achievement of the MDGs. Justice institutions and courts are primarily tasked to secure and enforce all the rights of individuals. However, since there are other institutions and government bodies charged with the implementation and provision of services directly pertaining to the rights covered in the MDGs, such as the right to education and primary health care, the judiciary takes on the responsibility of ensuring that each individual benefits from the actions of other institutions or is protected from any form of deprivation by way of providing a framework of remedies to redress human rights violations or grievances. The judiciary is obliged to ensure that the actions and measures adopted by the legislative and executive branches of the government are reasonable and consistent with the Constitution, the fundamental law of the land, as well as with other laws. Checking on the constitutionality of every law, protecting the democratic processes and taking reasonable measures to eliminate severe human deprivation are some of the judiciary's duties, tasks that will signal full realization and attainment of the MDGs.

Constitutional bodies such as the Commission on Human Rights and the Office of the Ombudsman are also designed to provide redress in case of

violation of rights. By its very name, the Commission on Human Rights is the government body directly involved in addressing complaints about the nonfulfillment of basic human rights, commonly the civil and political. To maintain honesty and integrity in the public service and to take positive measures against graft and corruption, the state created the Office of the Ombudsman as protectors of the interests of the Filipino people. The Ombudsman is obliged to act on complaints in any form filed against public officials or employees.

The Family as Duty Bearer

While the state is the prime duty bearer for ensuring universal access to primary education, families, particularly parents, are morally responsible for their children's well-being. In the Philippines, the family is considered the basic unit of society. Parents are the chief protectors of children and it is through them that children's rights are fulfilled. Parents are obliged to give children full protection and to ensure that they grow up to be responsible, healthy and productive members of society. The role of the family is to mould the child into a socially responsible adult through providing him with his basic needs (which includes good education, appropriate health care and adequate nutrition), instilling discipline, and protecting him from harm and undesirable influences (Ong 2001). Ideally parents should realize what is best for their children and respect their rights. When they themselves violate their children's rights or are unable to provide for their basic needs, other institutions intervene.

The Private Sector as Duty Bearer

Emerging discourses on good governance draw attention to the role of the private sector not only as a source of jobs and livelihood but as a partner in achieving human development and in pursuing human rights goals. The private sector, just like the state duty bearers, is accountable to society and must be mindful of the consequences of its actions. It has

a social obligation to protect and enhance the society wherein it functions. It must respect the rights of others, observe regulations (e.g., health standards, pollution control), abstain from violations (e.g., child labor), and contribute to the common good (e.g., paying the right taxes, guarantee of safety and health). When public service delivery capacity is not enough, the private sector is obliged to augment government capacities and resources such as through direct provision of affordable basic health and education services, financing assistance for the economically disadvantaged and underprivileged.

The Civil Society as Duty Bearer

As the third leg of governance, civil society has a social and moral obligation to help realize development rights. While civil society is organized by private or voluntary arrangements among individuals and groups outside the direct control of the state, it can expedite political and social interaction. Civil society can advocate for citizens' rights and serve as vanguard against neglect and violations. As organs of popular self-organization and empowerment, civil society organizations (CSOs) provide mechanisms for voice, participation and people's mobilization and serve as counterpoints to state power. While civil society's prime duty is to serve as a pressure group to the state to compel it to respect and protect rights, it also has a responsibility to facilitate provision of basic services or even act as alternative provider to the state.

It is in this light that the church as part of civil society can be viewed as playing an important role in the protection and fulfillment of human rights. For example, in terms of specific vulnerable groups, the church has the moral obligation to respect the rights of the child and can actively fulfill this duty by advocating for parental responsibility, promoting awareness of parental duties within the community, among others. Although voluntary on its part, the church can also assist in fulfilling rights. It can help directly provide basic services to the most vulnerable groups in society to augment government efforts.

The International Community as Duty Bearer

The international community has the moral obligation to facilitate the fulfillment of rights embodied in the MDGs. It can pressure the state to promote the fulfillment of its duties to its citizens and prevent neglect, but its actions must ensure that discrimination and inequities are not aggravated. With respect to globalization, for instance, international bodies such as the World Trade Organization and the ASEAN Free Trade Agreement are responsible for ensuring that liberalization policies are not crafted to favor rich nations to the detriment of developing countries and unduly disadvantage vulnerable social groups. Donors from developed countries are duty bound to channel development assistance to poor countries in favor of social needs. Donors must make good their commitment to the 20/20 Initiative, a pact forged during the 1995 World Summit on Social Development, by allocating at least 20 percent of their official development assistance (ODA) to basic social services. Rich countries and international organizations can also facilitate through sharing or transferring technologies, capacity building, and monitoring.

Table 1 shows a mapping of the state and non-state institutions specifically tasked to address the millennium development goals. The mapping is by no means exhaustive as it identifies only the primary duty bearers.

Assessing Progress Towards Millennium Development Goals

Assessing progress towards the MDGs will show if the state is able to realize the basic social and economic rights of its most disadvantaged constituents. Progress may be assessed in two ways: 1) through changes in outcomes, e.g., decreasing poverty rates, declining child malnutrition, falling child and maternal mortality rates and 2) changes in inputs, e.g., changes in education spending, textbook to pupil ratio, doctor to population ratio (HDR 2000).

Table 1. MDG Duty Bearers and Their Obligations

Goal	Obligation to respect	Obligation to protect	Obligation to facilitate	Obligation to provide
Eradicate extreme poverty and hunger	DOJ (e.g., protection of land rights) DAR (e.g., agrarian reform)	NCIP (e.g., IPRA for the protection of ancestral domains) DA (e.g., food security) BFAD (e.g., regulation of food, drugs and medicines) NFA (e.g., rice subsidy) Congress (e.g., safety nets) CHR (e.g., violation of rights) Judiciary (e.g., redress) Ombudsman (e.g., complaints about misuse of public resources)	NAPC (e.g., policy and coordination) NNC (e.g., coordinate and monitor integrated food and nutrition program) FNRI (e.g., measuring malnutrition rates) Micro-credit institutions (e.g., Landbank, Quedancor) TLRC & TESDA (e.g., livelihood skills & training)	Parents (e.g., provide basic needs) DSWD (e.g., MBN) LGUs (e.g., MBN, livelihood opportunities) DepEd, LGUs & NDA (e.g., milk feeding in schools)
Achieve universal primary education	CWC (Philippine Convention on the Rights of the Child)	Philippine Convention on the Rights of the Child PRC (e.g., regulation of teaching profession) DepEd (e.g., accreditation of private schools) NGOs (e.g., child protection) DOLE (e.g., protection against child labor)	DSWD (e.g., food for school) NETRC (e.g., students' performance evaluation) NSO and NSCB (e.g., statistics) CWC (e.g., CRC monitoring) NBDB (e.g., affordable and adequate supply of quality books)	Parents (e.g., send children to school) DepEd (e.g., basic education) LGU and DPWH (e.g., construction of school buildings) Private sector (e.g., affordable basic education, adopt-a-school program, scholarships) School (e.g., quality education)
Promote gender equality	Philippine CRC	Philippine CRC	NCRFW (e.g., gender advocacy)	DepEd (e.g., equal opportunities for boys and girls)
Reduce child mortality	Parents, LGU and NSO (e.g., registration of child's birth) Philippine CRC	PRC (e.g., regulation of medical profession) DOH (e.g., regulation of hospitals) PhilHealth	NSO and NSCB (e.g., health statistics) DSWD (e.g., ECCD)	Parents (e.g., proper child care) DOH (e.g., immunization, micronutrient supplementation) LGU (e.g., infant

Goal	Obligation to respect	Obligation to protect	Obligation to facilitate	Obligation to provide
		(social health insurance)		and child health care) Hospitals (e.g., quality health care)
Improve maternal health	Family (e.g., recognition of women's right to health)	DOH (e.g., regulation of hospitals)	NSO and NSCB (e.g., health statistics)	DOH (e.g., vitamins/ supplementation, prenatal care) LGU (e.g., maternal health care) Private hospitals (affordable treatment) Hospitals (e.g., quality health care)
Combat HIV/AIDS, malaria and other diseases	Philippine National Aids Council (e.g., advisory, planning and policy making)	Philippine National Aids Council (e.g., advisory, planning and policy making) DOH (e.g., regulation of hospitals)	Philippine National Aids Council (e.g., advisory, planning and policy making) NGOs (e.g., advocacy on AIDS awareness)	DOH (e.g., disease prevention and control) Hospitals (e.g., quality health care) International organizations (e.g., grants for treatment) Private sector (e.g., affordable medicines)
Ensure environmental sustainability		DENR (e.g., environmental protection, pollution control) LWUA, NWRB and MWSS (e.g., water supply and tariff regulation)	Pag-IBIG (e.g., housing loans)	NHA (housing for the poor, resettlement) Private concessionaires and water districts (e.g., affordable and adequate supply of clean water) LGUs (e.g., provision of level 1&2 water supply and sanitation)
Develop global partnership for development	NEDA (e.g., pro-poor policies) DBM (e.g., budget allocation) Congress (e.g., appropriation for priority human needs) DOF (e.g., secure financing, debt management, revenue generation) ODA (e.g., 20/20 Initiative)			

Under a rights-based governance, the perspective adopted in assessing progress include:

- Average perspective which indicates overall progress
- Deprivation perspective which tracks progress of the most deprived groups
- Inequality perspective which documents progress in narrowing inequalities (HDR 2000).

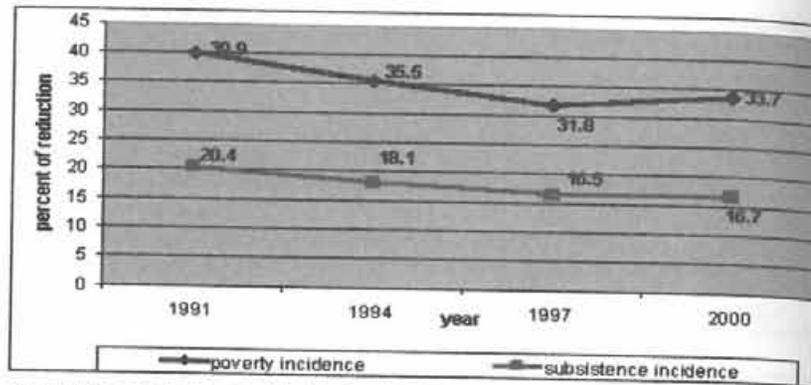
While it is important to benchmark performance with global targets, the state will not fail the assessment as long as there is progressive realization of rights, i.e., trends are positive. The benchmarks are used as goals for policy making and rates of progress input into the determination of areas where action (by government, private sector and civil society) needs to be strengthened.

To this day, almost a quarter of the population lives in poverty, bereft of adequate access to quality basic services, while the government struggles to arrest the budget deficit and resolve domestic conflict. In the NEDA report on the rate of progress toward meeting the MDGs issued in January 2003, the trends in several goals are positive, indicating that there is progressive realization of some rights, but the rates of progress leave much to be desired.

Goal 1: To eradicate extreme poverty and hunger

Goal one is the most fundamental of all the goals. The targets for this goal are (1) to halve the proportion of people living in extreme poverty between 1990 and 2015 and (2) to halve the proportion of the population below the minimum level of dietary energy consumption and the proportion of underweight children under five years old.

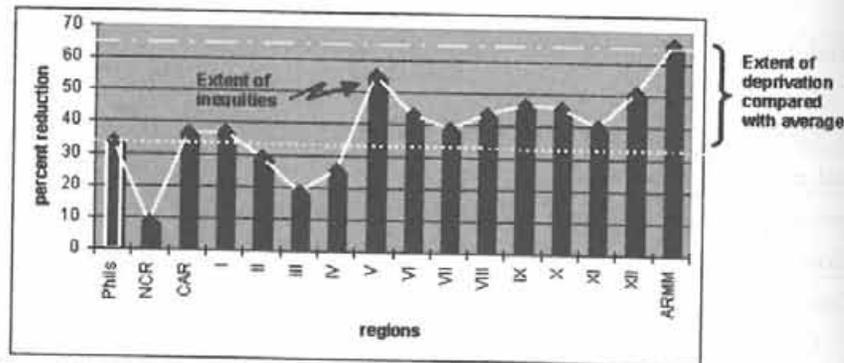
Official reports indicate a downward trend in poverty incidence in the Philippines from 45.2% in 1991 to 39.5% in 2000, posting an improvement of 13% though at a very slow progress rate of 1%.



Source: National Statistics Coordination Board (NSCB)

Figure 2. Poverty Incidence and Subsistence Incidence, 1991-2000

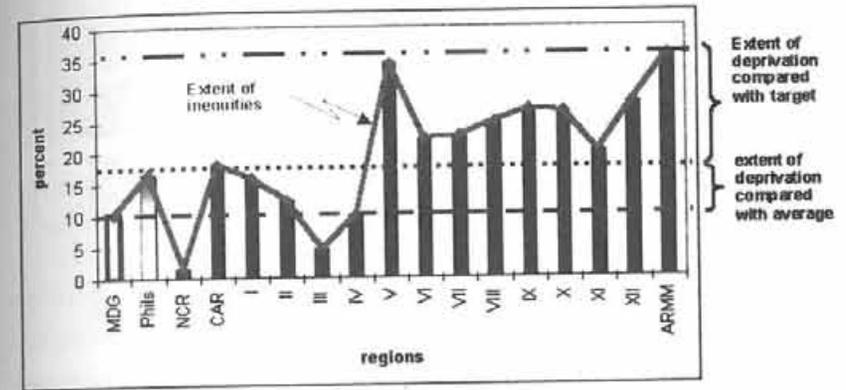
Wide disparities in poverty incidence are noted across regions (Figure 3). In Mindanao and in all the regions in the Visayas, poverty incidence is higher than the national average of 33.7%. As expected, poverty was lowest in the National Capital Region (8.7%) being closer to the seat of national government and endowed with richer opportunities. The poorest provinces posted a 53-63% poverty range, the least poor only about 5-12%. Not surprisingly, the ten poorest provinces are found in the Autonomous Region of Muslim Mindanao (66%), Central Mindanao (51.1%) and the Bicol Region (55.4%). Persistent armed conflict, cultural differences and geographical isolation are some of the major causes of deprivation in these regions.



Source: National Statistics Coordination Board (NSCB)

Figure 3. Poverty Incidence of Population by Region, 2000²

Similarly, the subsistence incidence also declined from 20.4% in 1991 to 16.7% in 2000. The trend shows a progressive decline in the proportion of households which cannot satisfy their food requirements, at an annual rate of 1.8% in the 9-year period. While the proportions of families living below subsistence is decreasing the absolute numbers of households involved is still increasing because of overall population growth. In 1991 about 2.4 million families lived a life of mere subsistence. The comparative number in 2000 was 2.5 million.

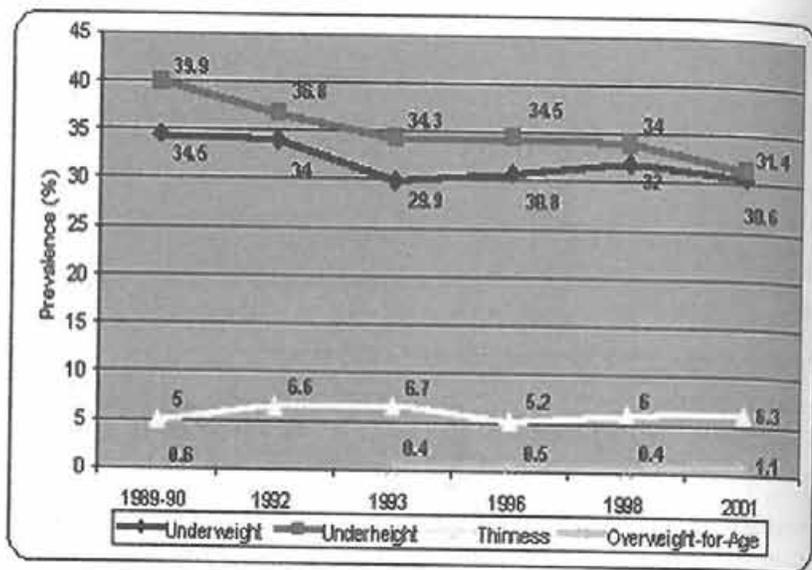


Source: National Statistics Coordination Board (NSCB)

Figure 4. Subsistence Incidence of Families by Region, 2000

Figure 4 shows that in terms of subsistence poverty, the highest proportions of families living in subsistence are found in Northern Mindanao (26.3%), Zamboanga (26.7%), Socsargen (28%) and the Bicol Region—all of which have a subsistence incidence twice the national average. The proportion is highest in the ARMM. The regions with the lowest proportion living in subsistence are in Southern Luzon (10.1%), Central Luzon (4.6%) and the NCR (1.5%).

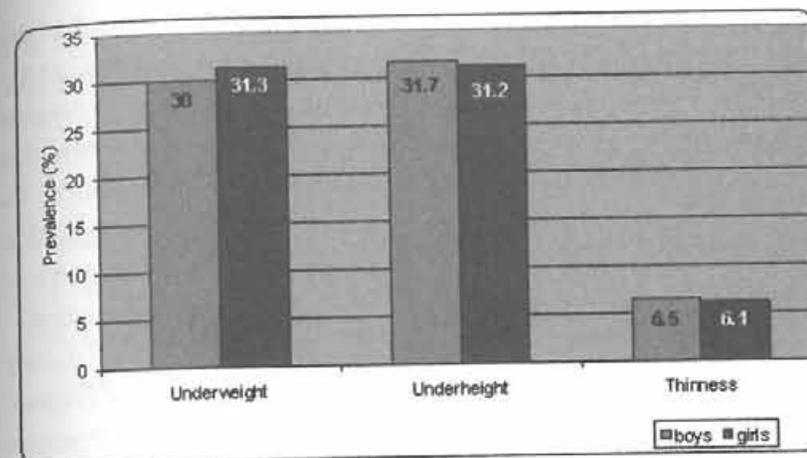
Further, majority or 78% of these deprived families live in the rural areas, which indicates that extreme poverty is primarily a rural phenomenon. Between 1985 and 2000 there was not much improvement in the lives of farmers as data revealed that poverty incidence was highest among households whose heads were engaged in agriculture.



Source: DOST-FNRI

Figure 5. Protein Energy Malnutrition Among 0-5 Children, 1990-2001

While the Philippines is not beset by famine, malnutrition continues to pose serious threats to Filipinos, especially children (Figure 5). Although malnutrition prevalence among children less than five years of age has improved over the past two decades, progress in its reduction has been sluggish and sustaining it has been a challenge. Data reveal that underweight prevalence among children in this age group had decreased from 34.5% during the period 1989-1990 to 30.8% in 1996, but slid back to 32% in 1998. Some relief was achieved in 2001 as underweight prevalence decreased to 30.6%. Underheight prevalence among 0-5 children on the other hand had decreased from 34% in 1989-1990 to 31.4% in 2001. In the same period, however, the incidence of wasting (low weight for height) among children in this age group deteriorated from 5.0% to 6.3%, indicating a negative progress. The modest progress made in reducing malnutrition is notable but quite far from the target as there still are three out of ten children aged 0-5 suffering from malnutrition in the form of stunting and wasting.



Source: DOST-FNRI

Figure 6. Protein Energy Malnutrition Among Children Ages 0-5 by Gender, 2001

Underweight malnutrition is slightly higher among female children aged 0-5 (31.3%) than among male children in the same age group (30%) but underheight malnutrition and wasting are more prevalent among boy children (31.7% and 6.5%, respectively) than among female children (31.2% and 6.1%, respectively) in this age group, though disparities are negligible.

Progress in child nutrition across geographic locations and income groups has likewise not narrowed inequities. Among pre-schoolers in 2001, Bicol posted the highest rate of underweight prevalence, with 37.8%, followed by Western Visayas, with 35.2% and Northern Mindanao, 34.1%. ARMM posted the highest underheight prevalence at 42%, followed by the Bicol and Western Visayas regions, with 39.3% and 38.5%, respectively. As to the pervasiveness of thinness among children in this age group, Region II recorded the highest prevalence rate of 10.4%, followed by Regions XII and IX with 8.8% and 8.4%, respectively. The NCR had the lowest prevalence rate in both underweight and underheight malnutrition at 20.3% and 20%, respectively, but had the highest prevalence of obesity with 2.5%. Next to the capital region, CAR had the lowest wasting prevalence rate at 4%.

At the provincial level, Biliran, Masbate and Northern Samar had the highest underweight prevalence with corresponding rates of 44%, 43.8% and 43.4%. Underheight prevalence among preschoolers in Negros Occidental (46.6%), Northern Samar (45.5%) and Biliran (43.8%) were also the highest. Wasting was also evident in the provinces of Biliran (7.7%), La Union (7.5%) and Antique (7.4%). The most severe deprivation prevailed in Masbate province: registering the highest prevalence rates in terms of underheight (49%) and wasting (8.6%) of the pre-school age population.

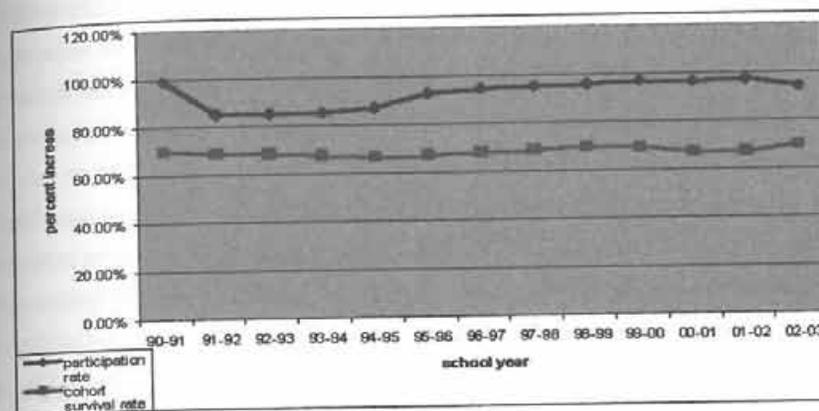
As to the proportion of population below the minimum level dietary energy consumption, evaluative studies on the nutritional profile of Filipinos indicate a significant decline in food and nutrient intake. Statistics indicate that the aggregate food supply in the country is more than enough to satisfy the consumption levels of the Filipino populace. The 1998-2000 Food Balance Sheets of the Philippines supports this claim, stating that food supply over consumption ratios for calories, protein and fats were estimated at 133.9%, 136.9% and 139.4%, respectively (NEDA 2003). However, the pattern of inadequate consumption of these food supplies indicates insufficiency of income to cope with the increasing prices of food commodities and or physical inaccessibility.

By and large, the slow progress in achieving the targets for goal one is indicative of governance deficiency or the inability of duty bearers to address fast enough poverty and hunger problems in the country. Without serious reforms and at the current rate of progress, the probability of achieving the 2015 for goal 1 targets is low.

Goal 2: To achieve universal primary education

The goal of achieving universal primary education in the Philippines is not farfetched as school participation rates in the Philippines have been historically high. The elementary school attendance rate for the year 2001-2002 had an outstanding national average rate of 97%, very close to the goal of a hundred percent school attendance rate. This marks a significant increase from the 1995-1996 elementary school attendance rate, which stood at 92.70%.

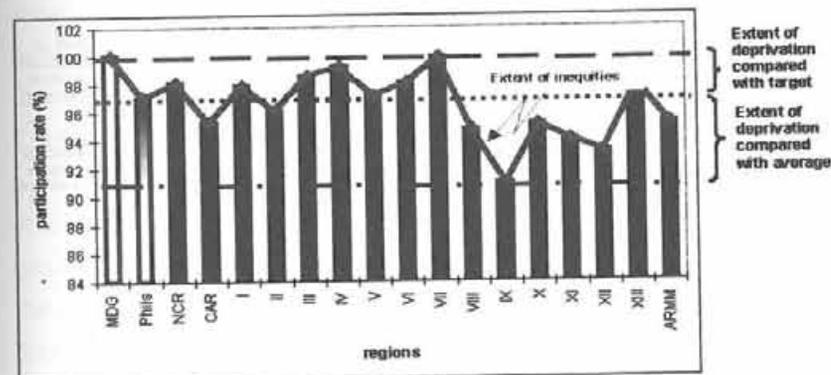
This figure, however, has not surpassed the highest elementary school attendance record of 99.1% in SY 1990-1991, a slight reversal of past gains.



Source: DepEd

Figure 7. Elementary Participation and Cohort Survival Rates, 1990-2003

Though regional elementary school attendance rates are not far from the national average, disparities still prevail across regions with Regions VII, IV and III occupying the top three slots and surpassing the national average at 99.83%, 99.17%, and 98.49%, respectively. Mindanao regions IX, XII and XI posted the three lowest attendance rates at 90.9%, 93.2% and 94.2%, respectively.

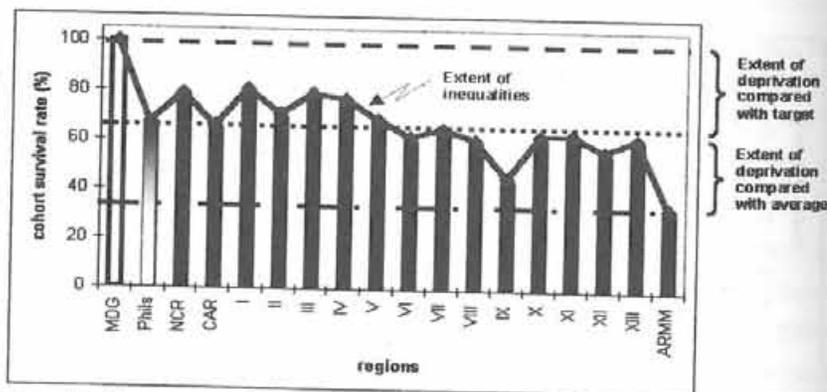


Source: DepEd

Figure 8. Participation Rate by Region, 2001

According to the Department of Education there were approximately 13 million elementary school children in SY 2002-2003, a 20% increase from the 10.4 million enrollees 10 years earlier. Both public and private elementary schools registered increases in enrolment rates since 1990. As expected, Regions III, IV and the NCR recorded the highest numbers of elementary school enrollees while the ARMM, CARAGA and CAR regions remained at the bottom three with the least number of enrollees.

In general, it is apparent that access to schools is no longer a severe problem at the primary level (DAP-UNICEF 2003). The more serious problem is school retention and quality of instruction. Despite the high rates of participation the ability of the schools to retain students is poor. Latest (2002-2003) estimates of cohort survival rate (CSR) at the elementary level shows a low 69.8%, or nearly the same CSRs (69.7) recorded in 1990-1991, which indicates that the ability of the school system to retain students remained the same over the 10-year period. Of every 100 pupils who enter the first grade, 30 do not reach grade VI. The latest disaggregated available data (2001-2002) reveal that among the regions, the Ilocos registered the highest CSR at 80.66%, followed by Central Luzon and NCR with 79.15% and 79.04%, respectively. The Mindanao regions, in this respect, are the poorest performers. ARMM posted the lowest CSR at 33.96%, followed by neighboring regions, Western and Central Mindanao, with 45.51% and 56.45%, respectively.



Source: DepEd

Figure 9. Cohort Survival Rate by Region, SY 2001-2002

While the national indicators for participation are high, the following statistics reveal the marginalization and inequities. The latest figures (SY 1998-1999) indicate that elementary CSR is much higher among girls at 73.31% in public schools than boys at 64.21%, whereas boys performed at par with girls in private schools. Private schools were able to retain more students at 79.17% CSR compared to public schools with only 66.28% CSR in SY 2001-2002 (DepEd 2003). Studies also disclose that children belonging to the lowest quintile income group or children coming from poor families are more vulnerable to dropping out, absenteeism and failures in school, owing to either poor health and nutrition and or pressure to work. Poor families may sacrifice the education or schooling of their children, particularly those considered employable, to augment family income. The higher survival rates indicate that male children are more likely to engage in early labor or heavy work to help the other working members in the family to the detriment of their schooling.

Both simple and functional literacy rates in the country have significantly improved over the years with no significant gender differences. Latest accounts reveal that simple literacy increased from 89.8% in 1989 to a high 94% in 1994. However, disparities across regions continue to exist in indigenous and cultural communities. Also, urban areas had higher literacy rates than rural areas. The Central Visayas region attained an almost universal literacy rate at 99.83%, placing it at the top slot, followed by the Bicol Region with 96.9% and Southern Tagalog with 96.4%. In terms of functional literacy NCR had the highest rate at 98.8%, followed by the Southern Tagalog region with 88.0% and the Central Luzon region at 87.3%. Of the regions in the country, the Western and Central regions of Mindanao, the ARMM and the CAR need the most improvement in both simple and functional literacy (DAP-UNICEF 2003).

In terms of educational inputs such as deployment of teachers, there still are some areas that are severely in need of additional teachers while

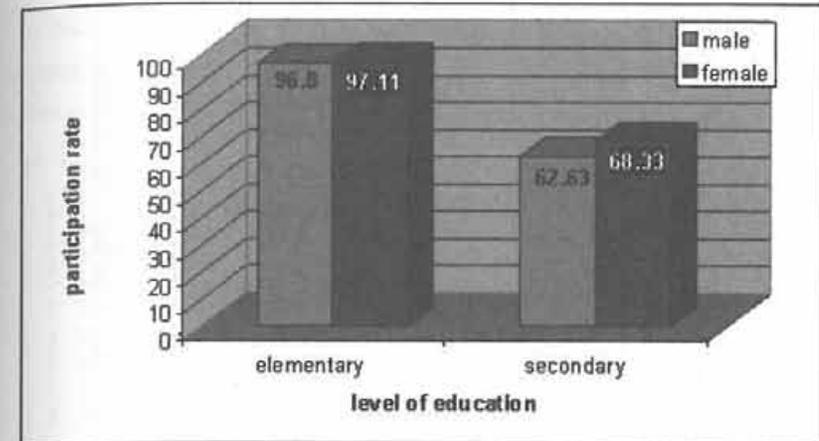
there are those with excessive surplus of teachers. In school year 2002-20003, Maguindanao in the ARMM and Bayawan and Talisay in Region VII are just three of the provinces in the country that are in dire need of additional elementary teachers. Some urban cities, such Muntinlupa and Las Piñas in the NCR, also need more teachers due to the increasing enrolment. In contrast, the provinces with excessive supply of teachers include Laoag, Ilocos Sur and Norte in Region I, Abra in CAR, and Batanes in Region II, Catanduanes in Region V and surprisingly Isabela City in Region IX (DepEd-BEIS 2003-2003).

Despite free primary education in the country, there still are a significant number of children out of the school system. The more than three million out of school children may be attributable to chronic poverty and the pressures from the parents to get their school-aged children work to augment family income.

Goal 3: To promote gender equality and empower women

Among the most tangible forms of promoting gender equality is providing equal access to education to both sexes. Education is considered a tool of empowerment as it enables the person to fully participate in the social and economic activities that nurture his or her potentials (UN 2003).

This particular goal is aimed at doing away with inequalities among girls and boys in primary and secondary education by 2005, and in all levels of education not later than 2015. In the Philippines, this goal is being monitored using several indicators including the ratio of boys to girls in elementary and secondary school enrolment and the proportion of literate females to literate males among the 15-24 age group. The share of women in wage employment in the nonagricultural sector and the proportion of seats held by women in national parliament are other important indicators of attainment being measured for this goal.



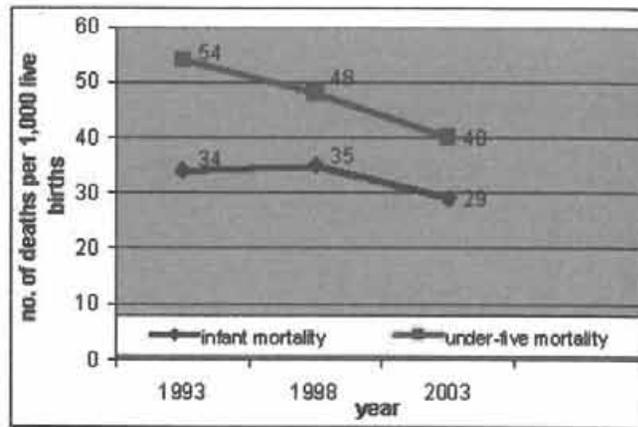
Source: MDG Progress Report, NEDA 2003

Figure 10. Elementary and Secondary Participation by Gender, 1999

Compared to other countries in the region, achieving parity in education is one area where the country enjoys a big lead. Though there still exist disparities in participation rates among male and female students in both elementary and secondary levels, the gap remains negligible and indicates a slight disadvantage for male children at the elementary level. The disadvantage shifts to female children at the secondary level but remains small (Figure 10). The absence of gender bias in participation rates places the country in a fair or better ranking in terms of achieving educational objectives compared to other Asian countries. Still, the ultimate objective is to bring both participation and literacy rates to universal levels. To this end, participation rates at the secondary level need to be improved.

Goal 4: To reduce child mortality

Child health and nutrition are often used as a barometer of health status of a country. The key indicators of child health are infant and child mortality and malnutrition, either undernutrition or overnutrition, such as in obesity. Other indicators include the proportion of children who were immunized.

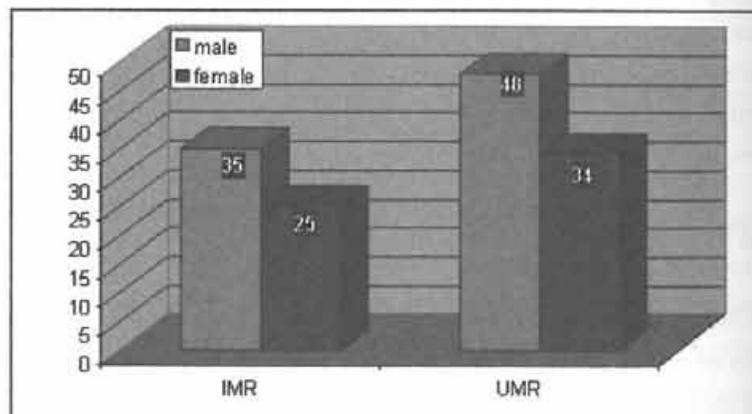


Source: NDHS 2003

Figure 11. IMR and UMR Trends, 1993-2003

The 2003 National Demographic and Health Survey reveals that under-five mortality rate in the Philippines declined from 48 to 40 deaths per 1,000 children aged 1-4 between the period 1998 and 2003, thus marking a 16.7% improvement over the five-year period.

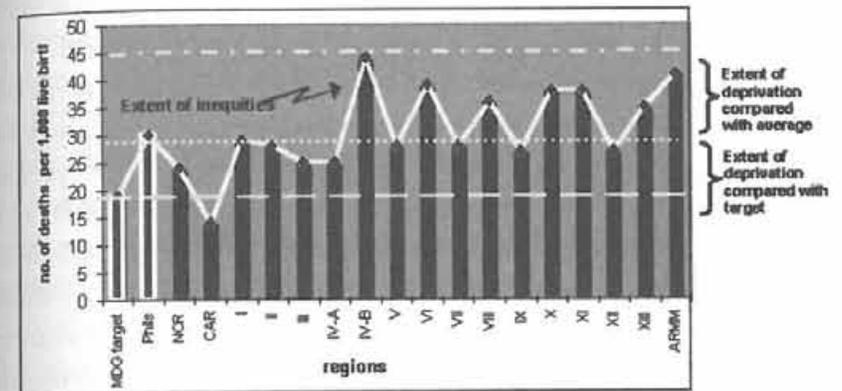
Infant mortality rate also shows considerable progress as infant deaths per 1,000 live births declined from 35 to 29 in 1998 and 2003, respectively, indicating a progress of 17% reduction for the five-year period.



Source: NDHS 2003

Figure 12. IMR and UMR by Gender, 2003

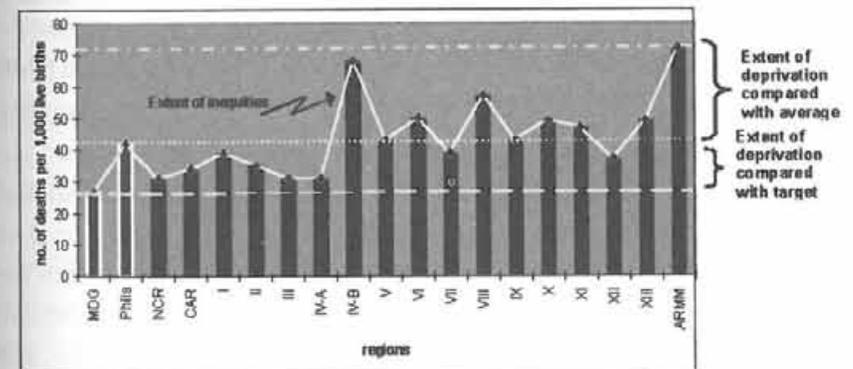
NDHS data further shows that mortality at the youngest ages is higher among males (see Figure 12) either in terms of infant or under 5 mortality rates.



Source: NDHS 2003

Figure 13. Infant Mortality by Region, 2003

While the Philippines has achieved positive development in terms of improving child health, disparities still exist across regions. Figure 13 shows that IMR in seven regions was higher than the national average of 30 infant deaths per 1,000 live births. Four of these seven regions are in the Mindanao area. It is worth noting here that the CAR showed an IMR that was even lower than the Philippine MDG target.



Source: NDHS 2003

Figure 14. Under-Five Mortality Rate by Region, 2003

Figure 14 features the under-five mortality rates across regions for the period 1993-2003. It can be gleaned from the graph that the ARMM and Region IV-B are the regions with the poorest performance in under-five mortality, with ARMM registering highest under-five mortality rate of 72 deaths per 1,000 children aged 0-4, followed by Region IV-B with 68.

Difference in terms of urban-rural performance is also evident for both infant and under-five mortality indicators. There is higher incidence of infant deaths in the rural area relative to the urban area. For the period 1993 to 2003, infant mortality rate in the urban area was recorded at 24 per 1,000 live births while that in the rural area was posted at 36 deaths, meaning for every two infants that die in the urban area, there are three infants who die in the rural area. Similarly, under-five mortality rate is more serious in the rural area than in the urban area. Incidence of deaths among children under five years old in the rural area was by far much higher with 52 deaths per 1,000 live births compared with only 32 in the urban area.

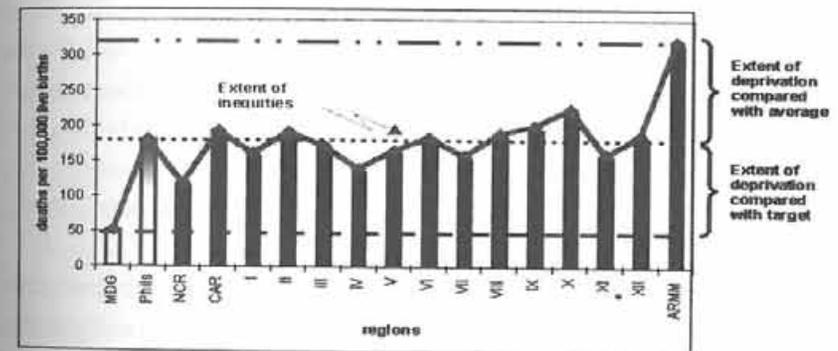
For economically deprived households or those who fall in the lowest quintile in the wealth index, the infant mortality rate was 42 per 1,000 live births, twice the national IMR of 19. In terms of under-five mortality, the rates for households in the lowest quintile is 66 per 1,000 live births, in contrast with 21 from the highest quintile. Education of mothers also has a direct effect on infant and child mortality. The 2003 NDHS shows that these are very much lower among mothers who had college or higher education than among mothers who did not have any education at all. IMR and UMR for mothers with college education or higher are 15 and 18; the corresponding rates for mothers who had no schooling are 65 and 105, respectively.

Comparative studies made on the progress on the MDGs in Asia and the Pacific in 2003 disclose that the Philippines is among the 18 out of 44 countries whose child mortality goal is likely to be achieved within the given target period. While this is a positive step, it must be recognized that disparities in child mortality exist across geographic location, income, and education groups. A rights-based perspective is important in order to focus future efforts toward minimizing if not totally eradicating these differentials.

Goal 5: To improve maternal health

Discrimination against women is not only manifested in inequalities in education but also in high maternal mortality rates or death due to pregnancy and childbirth complications per 100,000 live births. Maternal mortality is not just a public health problem. It is also a social justice and a human right issue. The inability to address maternal deaths means failure in addressing a person's right to life.

The ultimate objective in this millennium development goal is to reduce maternal mortality rate by three quarters by 2015. In the Philippines, maternal mortality dropped from 209 per 100,000 live births in 1990 to 172 in 1998, marking significant improvement of about 18% over the 8-year period. Though, official reports show that maternal mortality accounts for only nearly one percent of the total deaths in the country and only 14% of the deaths of women in the 15-49 age group (Tan, in DAP-UNICEF 2003), the Philippines remains one of the countries in the region with the highest MMR.



Source: NDHS 2003

Figure 15. Maternal Mortality by Region, 1995

At the regional level, disparities are marked between rural and urban areas. Latest available disaggregated data indicate that ARMM had almost three times the maternal mortality rate of the NCR (Figure 15). Also, the highest mortality rates are consistently recorded in the provinces and regions of Mindanao, e.g., Northern (225) and Western Mindanao (200), which ranked

second and third to ARMM, respectively. On the other hand, maternal mortality rates were lower than the national average in five regions in the country, three of which are in Luzon, one in the Visayas and one in Mindanao.

Of equal importance to improvement of maternal mortality is the increase in the proportion of births attended by skilled health personnel. Latest official figures show that in 2001, almost 70% of births were attended by skilled health personnel, an increase from the 1990 figures of 59%.

Obstetrical complication and other pregnancy or delivery-related health conditions, high incidence of abortion due to unwanted pregnancy, maternal malnutrition, limited access of mothers to post-natal care/services are among the leading causes of maternal mortality in the country. Poor health and nutrition among mothers are attributable to the gaps in women's health and care as a result of weak or lack of quality information on primary health care and service delivery, women's poor health seeking behavior owing to some cultural practices and some myths and misconceptions about pregnancy, child birth and family planning, among others.

Despite continuous improvements in maternal mortality in the country, experts predict that the Philippines will have to double its current efforts toward this goal as these efforts indicate so far a very slow progress. Given this rate of progress, it is unlikely that the Philippines can meet the maternal mortality target of 52.2 deaths per 100,000 live births by 2015.

Goal 6: To combat HIV/AIDS, malaria and other diseases

The incidence and transmission of HIV/AIDS in the country remains low and slow, respectively. It is estimated that in 2000, 43,000 individuals in the age group 15-49 or .08% of the total population have been infected. From January 1984 to February 2003, there were 1,834 HIV seropositive cases reported, of which 598 or 33% have developed into AIDS cases and of these, nearly half or 41% (251) have already died. Heterosexual intercourse was reported to be the predominant mode of transmission at 62.8%. Most HIV positive cases are males in the age group 20-39. A high proportion of HIV positive cases are returning overseas workers who were infected outside the country. About a quarter of these are women.

AIDS-related indicators of progress for this goal include the use of condoms. Data shows that the proportion of couples or partners using condoms is very low but has slightly increased from 1% in 1993 to 1.6% in 2002. Constraints to achieving high percentage of condom usage include religion issues and the lack of information on sexually transmitted diseases and lack of access to condoms.

While the spread of HIV seems under control, the same can not be said of other infectious diseases like malaria and tuberculosis. Tuberculosis (TB, all forms), has consistently been among the ten leading causes of mortality in the country. In 2000, it was the sixth leading cause of death. But progress has been noted in combating this disease with an observed decline in prevalence from 246 per 100,000 in 1990 to 157.6 per 100,000 in 2001. Deaths from TB has also declined albeit slowly from 39.1 per 100,000 in 1990 to 38.3 per 100,000 in 1998. Though improvement in the control of TB is evident much effort still needs to be exerted as this disease is a sensitive index of a nation's level of poverty. Its prevalence in the population is indicative of inequality. The majority of patients are poor with incomes that are insufficient to provide their families with basic needs. About 70% of those who are afflicted with the disease are breadwinners. This means that for every TB patient unable to work because of the disease, one family goes hungry. A study conducted by the Institute for Occupational Health Safety and Development (IOHSAD) in January 2000 found out that 80% of TB patients are dismissed from their job upon diagnosis.

Malaria, on the other hand, is one of the ten leading causes of morbidity in the country though not of mortality. Malaria morbidity rates have been delining, from 123 cases per 100,000 in 1990 to 52 in 2001. Similarly, mortality rate for this disease has steadily declined from 1.5 to .9 per 100,000 population for the period 1990-1998 (NEDA 2003).

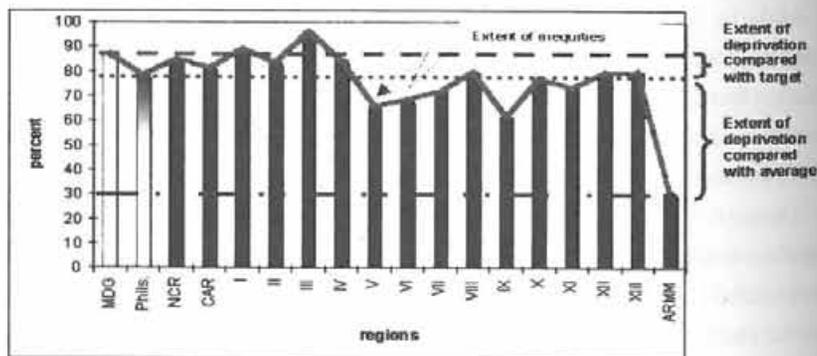
Though national health reports lack disaggregated data on the prevalence or incidence of deaths in the Philippines, studies report that the prevalence of both malaria and tuberculosis remain unacceptably high and that the risks of contacting these diseases are much higher among groups who are also vulnerable in other ways: indigenous people, upland subsistence farmers, forest workers, agricultural workers in remote areas.

Other research report that malaria is highly endemic in provinces and regions inhabited by indigenous and cultural groups as well as in areas with socio-political conflicts. It has also been reported that more than half of all malaria cases in the country are found in Mindanao.

Goal 7: To ensure environmental sustainability

Poor sanitation and lack of clean and safe water are indicators of poor living conditions. Governments are expected to respond to the need for a life lived in dignity of which these conditions constitute a threat. Furthermore, lack of sanitation facilities and inadequate supply of water exacerbate health problems.

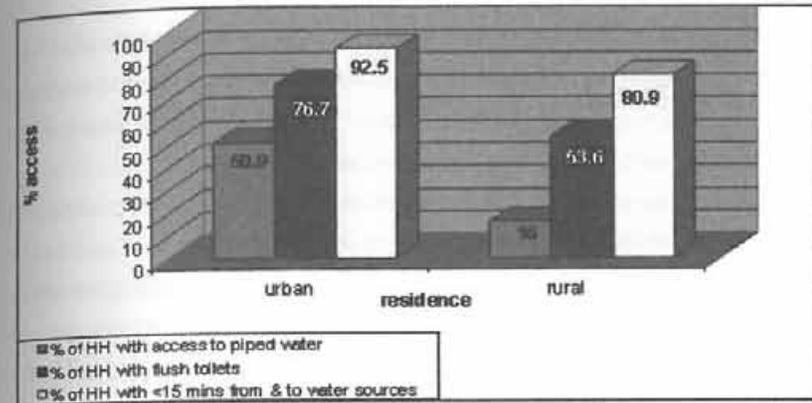
The proportion of families with access to safe drinking water increased from 73.7% in 1991 to 78.5% in 2000-2001. The goal is to bring this percentage to 86.8 by 2015. Again, data shows that despite the steady increase in the proportion of the population with access to potable water, there are still regions that fall below the national average level in access to this basic facility such as four regions in Mindanao and three in Visayas. The ARMM still has the lowest percentage of access to potable water which at only 30.6%, is more than 50% below the national average. Region III on the other hand, has the highest access at 96.3%, followed by Regions I and the NCR with 89% and 85.1%, respectively.



Source: NSO

Figure 16. Access to Potable Drinking Water by Region, 2000

Figure 17 presents disparities between urban and rural in access to potable water and sanitation facilities with rural areas showing more deprivation than urban areas in these basic amenities.



Source: NSO

Figure 17. Access to Water Sources and Sanitation Facilities by Residence, 2003

At the household level, women tend to bear the consequence of inadequate supply or limited access to water more than other household members since women, especially mothers, bear the burden of finding and fetching water, laundering, treatment (such as boiling) of water for drinking.

Limited access to clean and safe water also adds burden to poor families especially in terms of costs for the treatment of poor quality water. Studies show that the poor spends least on water treatment (WB 2003), thus, making them more susceptible to water borne diseases. Often the rural poor depend on alternative, untreated sources of water supplies like springs, rivers and ponds which expose them to health hazards (WB 2003). In areas or communities where there is lack of water resources or lack of government intervention, affluent households or families tend to exploit water resources through investments in self-provisioning of water to ensure them steady supply. Such actions by the rich deprive the other segment of society the right to equal access from the same water sources and these can in fact, lead to adverse environmental impacts such as excessive aquifer draw downs as in the case of Metro Cebu, Cavite and some parts of Manila (WB 2003).

While higher levels of water service supply may be made available, not all people can benefit from it due to high costs. In addition, only affluent households can afford to buy distilled, mineral, purified or other processed commercial water products, again, due to high prices.

Aside from access to adequate water and sanitation, people also have the right to a healthy environment. Thus, just like other rights integrated in the MDGs, the right to breathe clean air and the right to enjoy clean surroundings are considered basic for human existence.

While various technical and aggregate indicators are used in measuring improvements in this goal such as GDP per unit of energy use and carbon dioxide emissions per capita, the more practical determinants of improvements in the lives of people are through access to clean and safe drinking water and duly protected domiciles. However, threats to the environment today like deforestation, pollution from various industries and human waste as a result of poor ecosystem management, pressures from population and inconsistent application of environmental laws, further jeopardize the living conditions of people. While it is true that rapid industrialization leads to faster economic growth, its adverse consequences may cause more serious hazards to the environment, whose long-term effects may even be much more disadvantageous not only to the livelihoods of millions of people but largely to the human life. Achievement along this line needs to be documented properly in order for progress to be assessed accurately.

Goal 8: To develop a global partnership for development

Achieving international cooperation in breaking the chains poverty is one of the main objectives of the MDG initiatives. This goal promotes collective responsibility among state and non-state actors both at the local and international level through partnership and active participation.

Strong partnership is a key principle in making the attainment of MDGs feasible and possible. The Millennium Declaration requires among other things, the promotion of international finance and trade that is based on a more transparent and equitable system of sharing resources. This

international pact encourages developed countries to share their resources with developing countries, especially the highly indebted nation states through various forms of development assistance, be it financial or technology and knowledge transfers. It also ensures that commitment to good governance is promoted and fulfilled. Several partnerships have already been established between and among UN members-countries towards reaching the MDGs such as The 2001 Brussels Programme of Action for the Least Developed Countries, The 2001 Doha Declaration on a New Development Round, The 2002 Monterey International Conference on Financing for Development, and The 2002 Johannesburg World Summit on Sustainable Development.

The 20/20 Initiative is another effort to influence national priorities towards realizing the MDGs as it calls for the mobilization of public resources and the restructuring of budgets for basic social services as a major framework for poverty eradication and sustainable human development. The Initiative encourages both developing and developed countries to allocate at least 20 percent of their national budget and 20 percent of their official development assistance (ODA) to basic social services. The 20/20 Initiative can be traced back from the 1995 World Summit on Social Development. Both donors and the Philippine government have yet to fulfill this compact.

Duty Bearers' Issues

The state has established institutional arrangements to directly deliver on specific rights as well as put in place support mechanisms for the fulfillment of rights such as providing venues for civil society participation in policy setting and decision-making, monitoring, and generally facilitating access to various entitlements. Certainly, the country is on its way to achieving the MDG targets it has set to meet. But more needs to be done. Capacity issues of duty bearers—unawareness of obligations, unwillingness to comply, limited access to resources, and insufficient/lack of authority and legal capacity to enforce rules—threaten the attainment of the MDGs.

A common failure in governance is the diversion of public resources and basic services to the non-poor either intentionally or inadvertently. Even when resources are allocated to the poor, the money may not reach the intended benefactors due to leakages and corruption. In cases where resources reach the poor, the quality of provisioning may be another issue, i.e., providers do not have adequate capability to deliver quality service. Sometimes the failure to claim rights stem from lack of demand from claim holders, e.g., the poor not realizing how important it is to send their children to school or to bring them to health centers for medical check, immunization, etc., due to ignorance and cultural factors (WDR 2004). In such cases, duty bearers need to create awareness of rights and entitlements.

Awareness of Obligations

Steps have been taken to strengthen the country's social arrangements for securing entitlements to social and economic rights through institutions, legal frameworks and an overall enabling environment. Rights commitments and obligations are reflected in the Philippine Constitution, and other enabling laws, but many duty bearers, state or nonstate, remain ignorant of their obligations.

For instance, parents have the primary responsibility to provide for the development and well-being of their children. Yet some parents may be unaware of neglecting their duties to meet their own children's rights when, for example, they do not bring their child for primary health care or fail to send the child to elementary school.

The community may tolerate or even foster discrimination because of existing beliefs.

Some local and national actors also appear unaware of their rights-based, as is manifested by planners and legislators in the way they prioritize budgets and in legislations. The lack of disaggregated data on age, gender, ethnicity, social class, spatial and geographic location, speaks of the lack of awareness on the need to maintain databases that will allow for effective monitoring of rights-related performances by duty bearers.

Another serious concern is the lack of appreciation of the interrelatedness of rights embodied in the MDGs, for example, the correlation of basic education and health in which gains in fulfilling one right may be a progressive step towards achieving progress in the other. Consequently, efforts to address the MDGs appear disjointed when concerted efforts are called for.

Donors also need to be reminded of the 20/20 commitment, as their ODA spending priorities may be biased against human development priority needs. Certainly, proactive information, education and communication (IEC) measures can raise the level of awareness on rights-based accountabilities of duty bearers.

Willingness to Comply with Obligations

Awareness of rights-related duties is only part of the whole picture, however. A more important concern is the willingness to comply with their duties. Poor compliance is manifested in inefficiencies, poor enforcement, poor quality of service delivery, social exclusion, bias against particular groups, corruption that whittle entitlements.

The framework for realization of social and economic rights is enshrined in the Philippine Constitution, and translated in relevant government policies plans and programs on basic education, health, social and economic services.

Access to adequate health care remains constrained by inefficiencies of public health sector institutions, e.g., location of health facilities, poor distribution of health manpower across regions, biased spending in favor of hospital or curative care to the detriment of promotive and preventive health services. Fourteen years after the devolution of health services as provided for in the 1991 Local Government Code, issues of delineation of duties and responsibilities between the national and local governments remain unresolved. Consequently, accountability is not clearly defined between these levels of government. LGUs are unwilling to shoulder health-related expenditures such as repairs and maintenance of devolved hospitals

and health facilities. LGU compliance with their obligations is also undermined by the low priority accorded by local government officials to health services, which are oftentimes considered political commodities. LGU budget allocation for health is generally way below 20% of their internal revenue allotment (IRA). At the national level, the iniquitous allocation of internal revenues among LGUs, as dictated by the current IRA formula, further marginalize poorer LGUs.

While national level health data show that the overall performance of government in terms of nutrition, is generally satisfying, assessment reports reveal gaps in the implementation of food supplementation programs. In 1998 for instance, there have been large variations in terms of outreach and targets among micronutrient supplementation schemes and among vulnerable groups, i.e., preschoolers and schoolchildren. The absence of a system-wide collection of disaggregated data and situation analysis of health and nutrition (e.g., by gender, ethnicity, social class, geographic location, etc.) begets poor targeting of beneficiaries and to some extent results in wastage of resources and worsening health and nutrition conditions of affected individuals, groups or sectors.

Patterns of disregard are also apparent among nutrition security duty bearers, as seen, for example, in the poor enforcement of Republic Act 8172 or the ASIN Law which seeks to combat iodine deficiencies. Low compliance of salt producers; inadequate production and high price of iodized salt; and the slow response of LGUs to the Act are among the underlying causes of the low utilization of iodized salt in the country (NEDA 2002). Other factors contributing to the slow fall of malnutrition incidence in the country include violation of the Milk Code; delayed adoption of the guidelines, especially at the LGU level, of the Expanded Program of Immunization and the international reference standards for nutrition and other products (UNDP 2003).

As regards safe drinking water and proper sanitation, many areas in the country continue to have no access to water. And in some areas where water and sanitation services are available, the quality of service is far from satisfactory. The lack of access among poor families (especially the bottom

40%) to safe and potable water is caused by the absence of a well-functioning sanitation system at the local levels and the inadequate water service from public and private sector providers, particularly for Levels 2 and 3 water supply.

There exists enough legislation and policies that govern the water and sanitation sector such as the 1991 Local Government Code and the Water Code and Sanitation Code of the Philippines, but these are not being sufficiently implemented. Although there are various government agencies involved in the water and sanitation sector, there is often a lack of coordination in planning and policy formulation (LGSP 2003). The weakness or absence of regulatory systems for monitoring procedures and facilities of commercial water enterprises and private water service providers, particularly laboratories for testing water quality, also contribute to poor water quality and insufficient potable water supply in the country. The rapid increase in population mainly in urban areas fueled by high fertility and high rural-to-urban migration also leads to sanitation problems as demands for water services increase. Moreover, the inability of urban centers to accommodate all migrants has led to the emergence and rapid growth of slums and informal settlements. Aggravating the problem is the lack of reliable data on the water and sanitation situation in the country, which prevents planners and decision makers from formulating appropriate rights-based solutions to the problems (LGSP 2003).

To improve efficiency in water service delivery and expand coverage, the government corporatized water districts that provide water services at the local level. Metro Manila, where water service was privatized, is a case in point. Unfortunately, the move to privatize created further problems as poor collection of water payments and increasing cost of water leakages and pilferages resulted in revenue losses. These losses have limited the capacity of water service providers to finance expansion and improvements, and worst, forced government to bear contingent liabilities of the private concessionaire. In some areas where investments were made, expensive water systems caused high tariffs hence discriminating against those who cannot afford to pay.

In terms of basic education the major issue is the low cohort survival rate. Among students who stay to complete basic education another problem has been noted—low achievement rates and poor performance in standard assessment tests. Low student achievement points to inadequacies of the school system to provide quality education. Evidently, the education sector badly needs improvement in terms of school management; raising competence of teachers; ensuring adequacy and quality of instructional materials, school supplies and facilities and infrastructure; providing conducive learning environments; and ensuring the responsiveness and adaptability of the curriculum to changing conditions and specific groups, e.g., Madrasah education. These concerns are the same problems that have persisted for many years and now are being passed on to a new generation of learners.

Underlying these issues is the inadequacy and misallocation of resources for basic education. Although education gets the highest allocation in the national budget, legislators' bias on tertiary education tend to crowd out basic education in actual appropriations, as evidenced by rapidly increasing number of state universities and colleges in the country. With its limited resources, efforts must be exerted to ensure that public money is directed to the poor rather than the non-poor. However, the national government fails in channeling resources to the poor due to current practice of incremental budgeting and standard formula in the regional allocation of education funds. At the district level, spending is also biased in favor of central schools and centers of excellence. National funds for basic education can be supplemented by the Special Education Fund of LGUs, but the SEF tends to worsen disparities as richer LGUs can generate more income than poorer LGUs where disadvantaged groups tend to be higher in proportion. Moreover, some rich LGUs opt to put their funds to tertiary rather than basic education.

Corruption

Corruption is the worst form of indirect human rights violations. Corruption robs the poor of resources that are supposed to go into services

to help meet their basic needs. The Office of the Ombudsman, for example, has estimated that US\$48 billion has been lost by the Philippine government during the Martial Law regime on account of corruption, exceeding the current foreign debt of US\$40.6 billion (OMB 1997). Estimates of the Commission on Audit reveal that corruption costs the government about P2 billion each year (CSC 1998), a vast amount of resources which could have made a difference in realizing the basic economic and social rights of millions of poor Filipinos. Based on surveys, cases of corruption is perceived as high in revenue collection agencies such as BIR and BOC, and in service delivery agencies such as DPWH, DepEd, DOH, DENR and local governments, the legislative department and the judiciary. In the 2000 survey of the Social Weather Stations, the top six agencies cited by the public as the most corrupt are the DepEd, DPWH, BIR, Customs, PNP and DOH. Efforts that have been taken so far to address corruption in these agencies, for instance procurement of textbook and medicines, have paid off but a lot more needs to be done as can be seen from the 2000-2003 Enterprise Survey (See Figure 18). Allegation of rampant corruption in ARMM, where the most deprived groups are found, is also seen as a major cause of poor performance in terms of MDGs.

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ENTERPRISES 2000-2002/03: AGENCIES NAMED LESS CORRUPT NOW THAN 5 YEARS AGO (p1)

	2000	2001	2002/03
None are <u>less</u> corrupt	37%	25%	17%
DepEd	8	30	18
DOH	8	12	15
LTO	3	4	11
BIR	5	7	10
Supreme Court	4	6	8
Office of the President	0.3	8	8
SEC	1	3	7
Bureau of Customs	4	4	7
DBM		0.4	6
DENR	1	3	5
DILG	2	0.4	5
PNP	17	3	5

Figure 18. Perception of Corruption in Government

With the slow growth in revenue generation and the demand for bigger allocations to fund priority spending such as social services, combating corruption is a serious concern for duty bearers responsible for addressing the MDGs. The exponential effects of corruption breed further inadequacies in resources as corruption distorts policies to favor narrow private interests, and twists and diverts public funds away from those who need them most.

Corruption of public resources happens in three ways, i.e., by shaping original priorities of government, by deflecting allocated resources away from their original purpose and by undermining the tax base of government (CDG 1999). Within the framework of a rights-based governance, the state has the moral obligation to create policy environments and manage resources to facilitate the fulfillment of rights, especially of the poor. Corruption, thus, constitutes a clear violation of rights.

International perception on corruption has made the country a less-preferred destination of investments, a major economic stumbling block to the attainment of the MDGs. Global reports on corruption consider the Philippines as among of the most corrupt countries in Asia and in the world. In the 2003 Corruption Perceptions Index (CPI) of the Transparency International, the Philippines received a rating of 2.5 in a scale of 0-10 with 10 being the least corrupt rating. Among the 138 countries that were in the sample, the Philippines ranked 92nd in level of corruption when the countries are arranged from least to most corrupt. It does not help that while progress has been made by anti-corruption agencies such as the Office of the Ombudsman, media reports focus on corruption cases, and accord less publicity for gains in the fight against corruption. Moreover, private sector continue to point their finger to government as if private companies and individuals are not guilty of undue influence to twist public policies and divert resources in their favor.

Authority and Legal Capacity

Rights-based governance means that there are mechanisms to enhance the enforcement capacity of governance institutions committed to a rights-

based development. The Philippine Constitution laid down the framework for the fulfillment of rights; specific legislations provide the legal basis for enforcement of these rights. Among the notable ones are:

- Local Government Code
- Social Reform Agenda
- Comprehensive Agrarian Reform Program
- Indigenous Peoples Rights Act
- National Health Insurance Act
- Child Welfare Code
- Governance of Basic Education Act
- Gender and Development Act
- Water and Sanitation Code of the Philippines
- Philippine AIDS Prevention and Control Act
- Comprehensive and Integrated Shelter Financing Act.

These laws specify jurisdictions and accountabilities in meeting economic, social and cultural entitlements, but these regulations are not sufficiently backed by the “teeth” of enforcement. Many stakeholders claim insufficient authority, and inadequate legal capacity to force duty bearers to deliver their obligations and hold them accountable for negative actions. Some key duty holders likewise lack authority to compel other duty bearers to keep their obligations, e.g., education department cannot force parents to send their children to school, or health department cannot punish mothers for not having their children immunized.

Even if it wants to, the national government has no sufficient authority to coordinate local services that impact education partly because of the full autonomy given to local governments in providing for basic social services.

Access to Economic Resources

Access to economic resources is a key determinant to the fulfillment of rights. Poor parents, while recognizing their obligations, simply can't

provide for the needs of their households due to inadequate resources. A big proportion of households continue to suffer from food shortage, lack of access to safe water, inadequate medical attention, indecent housing due to limited income and high costs. Discontentment stem from the fact that growth in the country, especially in rural areas, is sluggish and that the purchasing power of a great number of households is very low given the long-standing disparity in the distribution of income and resources among class and geographical locations.

Even if basic education is free, parents are still unable to send children to school for lack of adequate income to support daily expenses and other schooling requirements. While government has been able to provide social health insurance for indigents, health expenditures continue to be financed from the pockets of poor patients and their families in the absence of sustained and more inclusive health insurance coverage.

Insufficiency of income of poor duty bearers speaks of governance failings in providing them with adequate economic opportunities.

Economic Growth

Economic growth that is equitably distributed is a necessary condition to attain the MDG targets and to maintain those gains. The decades-old boom-and-bust cycle of the Philippine economy has not secured enough economic opportunities for the poor.

Recently there appears to be a turn-around as the country's Real Gross Domestic Product strongly stood at 4.6% in 2002, from a 3.2% growth in 2001. Similarly, the Gross National Product rose to 5.2% from the previous year's growth. Growth in both GDP and GNP are essentially a result of improved performances of the manufacturing and services sectors, less on the part of agriculture sector where majority of the poor are. As of September 2003, GDP grew by 4.3%, making the Philippines one of the top performers in the region despite adverse conditions such as the conflict in Iraq, recurring peace and order problems in Mindanao and the outbreak of SARS. The latest GDP growth is also the fastest

recorded growth since the Asian Crisis in 1997. Similarly, GNP marked progress at 5.7% compared to 3.2% in the same period of 2002, mainly due to the boost in Net Factor Income from Abroad (e.g., remittances of OFWs).

Along with positive economic growth, the sector has managed to keep prices of basic commodities such as rice, sugar, canned sardines, soy sauce, fish sauce, iodized salt, laundry soap and detergent bars, at 2000 levels. According to the latest State of the Nation Address, the 3.1% inflation rate in 2003 is the lowest since 1998.

Yet, the current rate at which the economy is growing seems insufficient to speed up the realization of some MDGs. The macroeconomic measures will take time to trickle-down to the poor. Hence, affirmative actions for vulnerable groups must be strengthened, such as fast-tracking completion of the comprehensive land reform program, concrete social safety nets for groups affected by liberalization, and other targeted interventions for the most deprived sectors.

Spending Priorities and Budgetary Allocations

Inadequacies in the delivery of basic services such as basic education, primary health care, stem from insufficiency of resources, both at the national and lower tiers of government even as government expenditures continue to grow.

Despite the government's swelling deficit and slow increases in revenues, expenditures have continuously increased over the years. From P512.5B in 1998, expenditures rose to P590.2B in 1999, P649B in 2000, P710B in 2001, and P778.7B in 2002. The average rate of expenditure increase from 1998 to 2002 was 11.3%. As of November 2003, government disbursements increased to P741.9B, or P18.8B above the programmed level of expenditures for the same period. In fact, the current level of spending is 4.9% higher than what the government spent (P707.2B) from January to November of the previous year. From the deficit records, it is obvious that government spending has always exceeded its revenue collection.

The distribution of the budget reflects the priorities of both legislators and executives in government. At times prioritization problems come about as a result of competing preferences among politicians and various interest groups in the bureaucracy. The good news is that the social services sector, as mandated by the state, continuously gets the biggest share of the national budget. From P192.2B allocation in 1999, this sector's budget has increased to P238.1B in 2003—that is 23.5% higher than the allocation four years prior. While the figures suggest that the sector's allocation has increased considerably, its allocation growth rate over the five-year period has only averaged 5.5%. In reality, the sector's share in the total national budget has significantly declined by 11%—from 33.2% in 1999 to 29.6% in 2003.

Meanwhile, debt service allocation has grown phenomenally from P106.3B in 1999 to P223.2B in 2003, marking over a 100% increase in the sector's allocation in a span of five years. On the average, resource allocation for debt payment has reached 20%, which is very much higher than either the average allocation growth rate of the national government or the social services sector. Not only has the appropriation for debt payment increased tremendously; its share in the total national budget has likewise gone up by more than half from 18.3% in 1999 to 27.8% in 2003. This means that since 1999, the government spent an additional P117B for debt payment or 100% higher than it does for social services.

Except for the period 2000-2001, the economic sector had increases in allocations from 1999 to 2003, with a 5.8% average growth rate but its share in the total national funds has significantly contracted starting 2001. In the same way, budget allocations for defense have increased from P33B in 1999 to P40.7B in 2003 with an average growth of 6%. Its share in the national budget has remained at about 5% for the period 1999-2003.

A cursory look at inter-sectoral budget distribution reveals that education sector has constantly remained the social sector's top spending priority. Figures indicate that expenditures for education have consistently and significantly increased from P110.6B in 1999 to P129.9B in 2003. Though education continues to receive the biggest resource allocation, i.e., more than half (54.55%) of the social sector's total budget, its percent share relative

to the total national budget has declined as a result of the sector's narrowed allocation. From 19.1% in 1999, the share of education in the national budget has gone down to 16.2% in 2003. Also, as percentage of GDP, expenditure for education has gone down from 4% in 1998 to 3% in 2003.

Health expenditures, on the other hand, had quite a variable trend showing both decreases and increases in allocation at certain periods. Still, overall, the health sector allocation has been on the decline from 2.6 percent in 1999 to 1.7 percent in 2003. Meanwhile, the social welfare and employment sector, had almost constant 4% to 5% share in the national budget over the same period. The housing and community development sector experienced a drastic reduction in budget from a high P4.1B in 1999 to a low P1.7B in 2003. Except in 2000 when its share constituted 1.2% of the national budget, housing expenditure constituted a small part (from 0.2% to 0.7%) in the total government budget. With an average P3.5B allocation for the period 1999-2003, land distribution maintained a constant 0.5% share in the total national budget. Authorities reason that since both health and social welfare services have already been devolved to local government units, their shares in the national government budget will have to or are expected to decline in the succeeding years.

For services under the economic sector, expenditures for communications, roads and other transportation consistently account for the highest share in both the sector's total allocation and the national budget. National figures reveal that it constituted around 35% to 40% of the sector's total allocation and 7% to 11% of the entire national budget. Though its allocation fluctuated over the five-year period, its growth rate still averaged 3%. Allocations for agriculture and agrarian reform more or less constituted around 20% to 25% of the sector's total budget but did not exceed 1% of the entire national government resources. Agriculture and agrarian reform expenditures also posted a 3% growth during the period. Expenditures for water resources development in the country eat up a very small share in either the budget of the economic services sector or the entire national budget. Given the same period, development expenditures for water resources and flood control only took up around 4% of the sector's allocation and a meager

1% of the entire national expenditures. Compared to either communication and transportation and agriculture expenditures, water resources development expenditures recorded higher expenditure growth rate at approximately 7% per annum since 1999.

Despite constant increase in total government allocations, the distribution of allocations has not changed that much. As in previous years, among the current operating expenditures, 2003 personnel expenditures still account for the biggest share in the total national budget, taking up 34% of the entire pie, followed by debt service with 27.8% share, and internal revenue allotment to LGUs, and Maintenance and Other Operating Expenses (MOOE), with 14.1% and 9.8% shares, respectively.

Crowding out of other necessary expenditures is primarily caused by mandatory requirements and automatic appropriations, which in turn, limits the flexibility of the government to reallocate and realign budget. For instance, the MOOE's share in the total national budget has declined steadily since 1986. Its share started shrinking during the period 1986-1999 from 15.4% to 12.0%. It however, rose a bit to 12.3% in 2000, but since then, continued to contract until 2003 at 9.8%. Capital outlays have likewise tightened from a high 17.3% of the total national budget in 1998 to 12.7% in 2003. The constant decline of these expenditures' share in the total budget heavily contributed to the slow progress in the attainment of MDGs.

Resource Generation

As a consequence of the 1997 Asian financial crisis, revenues fell in 1998 by 2%. In 1999, revenues slightly recovered by 3.5% at P478.5B, followed by modest increases of 7.6% in 2000, 9.5% in 2001. Year 2002 registered the smallest revenue growth with 0.4%. The average rate of increase in revenues for the four-year period following the 1997 crisis noted a meager 5.3%. Revenues collected from January to November 2003 amounted to P569.7B, exceeding the target by 6.9% or P36.8B. The BIR's contribution to these collections totaled to P388.6B or a 9% increase from its performance for the same period in the previous year. Based on the BIR's 2003 target of P424.4B,

it seems that the remaining uncollected revenues of P35.B is attainable within a month's time. Correspondingly, the Bureau of Customs was able to raise P96.5B, yielding some P10.5B revenue gains from its collections for the same period in 2002. Given its P100.1B revenue target for 2003, the BOC is confident that the remaining P3.6B can be collected before the end of 2003. Nonetheless, both revenue collection bureaus need to further formulate strategies that enable them to hit their target collections as planned.

Though there was a constant nominal increase in revenues per year, data indicate that the ratio of actual collections to GDP has declined from 17.4% in 1998 to 14.1% in 2002. Furthermore, there was a decline in tax efforts as percentage of GDP from 15.6% in 1998 to 12.2% in 2002.

With a weak revenue performance the government as main duty bearer for social and economic rights is hardpressed to meet its obligations.

Debt Burden and Fiscal Deficit

The fiscal performance of the government plays a pivotal role in the country's overall social and economic development. Fiscal performance measures the ability of the government to generate revenues, regulate inflation, improve investments and manage debt. On top of all these, government has the responsibility to efficiently and effectively allocate the scarce resources. Recent data shows that the ballooning deficit of the country now serves as one of the biggest hindrances to achieving the MDGs. Economists, point out that the current stance of the country with regard to its debt obligations makes it more difficult for the country to reach all MDGs by the target date.

The 2004 SONA reports indicate that for the period January to November 2003, the national government has posted a fiscal deficit of P172B—a figure about P17.7B below or 9.2 percent lower than the target ceiling for the period of P189.7B. The 2003 actual deficit, is however, expected to be relatively lower than the 2002 level, which reached P212.7B or 5.4% of GDP. Apparently, the P147B deficit in 2001 (4.0% of GDP), implies better performance when matched against the current deficit level.

Official accounts and reports reveal that the government started incurring deficit in 1998, a year after the devastating Asian financial crisis in 1997. While the country seemed unaffected by the financial weaknesses in the region that time, year 1998 started showing macroeconomic weaknesses. From P49.9B in 1998, the government's deficit has ballooned to P111.7B the following year then soared to P134.2B in 2000. On record, the government registered an average of nearly 20% loss in resources since 1998.

For the year ended 2002, the national government owed its creditors US\$51.3B, accounting for 68% of the country's GDP, and marking an increase from 2001 figures which was recorded at US\$45B or 65% of the GDP (WB 2003). This means that while the country has posted around percent (5%) domestic growth over the two-year period, the national government appears to have not contributed to such improvement as it adds another significant 14% to its outstanding financial burden. The non-financial public sector debt, i.e., national government debt plus the debt of the 14 largest non-financial GOCCs and CB-BOL, exceeded the 2002 GDP approximately by 3% or a total of US\$ 78B.

The increase in debt arose largely from government borrowings to meet its financial requirements during the year and from the upward revaluation adjustments of liabilities and net obligations by non-bank borrowers from both the public and private sectors. The structure of the external debt has shifted toward longer maturities in recent years—long-term debt now accounts for 89% of total debt. The debt service ratio was 17% in 2002. Public sector obligations (including official public debts and debts of government-owned and controlled corporations) made up 64.6% of total external debt and official public debts for 48.7 of total external debts. The bulk of the country's external debt is denominated in dollars (56.2%) and yen (26%) [ADB 2003].

The widening fiscal gap due to rising interest payments for debt as well as nonstop borrowing of the Philippine government both contribute to the slow progress in the achievement of development goals as they take away resources that would have been allocated for meeting the MDG targets. The

challenge for the government therefore is to manage its debt at a sustainable level and espouse fiscal discipline for itself.

Other Issues

Apart from the noted problems on resources, other factors constrain the attainment of the MDGs: remnants of the Asian financial crisis, international terrorism, outbreak of SARS, and the incessant war in Iraq. Although the country has little control over such hostilities, governance duty bearers have to, as they are obliged to, take measures to reverse their consequences.

Reforms and Administrative Remedies

The government in general is responsible for providing for the legal and regulatory structure in order that the rights of claim holders and obligations of both state and non-state actors are clearly observed, established and realized.

Existing administrative remedies help bridge gaps and overturn neglect. To address deprivations in the right to food for instance, mobilization of rolling stores to provide basic commodities at lower prices, community food production, and distribution of affordable rice through the Targeted Rice Distribution Program are some of the concrete measures undertaken by government. The Food Insecurity and Vulnerability Information and Mapping Systems is also established to monitor food insecurity and pinpoint vulnerable sectors.

For the right to health the Health Sector Reform Agenda crafted new strategies and policy changes to address fragmentation of health services and improve the quality of health care. The National Health Insurance Program is also being strengthened to be able to enroll more indigents and poor families.

Augmentation of resources for education is done through the Adopt-A-School Program, with participation of the private sector, and reforms in the procurement of textbooks. Madrasah education is being reformed in order

to address the specific education needs of Muslim Filipinos, and remove discrimination. Food-for-school attendance program is offered to increase school retention. The New Basic Education Curriculum and programs to raise competence of teachers aims to bridge gaps in achievement outcomes.

The Community Mortgage Program has been designed to help provide housing for informal settlers. While local water supply and sewerage improvements projects are being hastened to narrow if not totally close access gaps.

The Kapit Bisig Laban sa Kahirapan-Comprehensive and Integral Delivery of Social Services (KALAHI-CIDDS) bridges provision of minimum basic needs of 5th and 6th class municipalities. Poverty mapping also made duty bearers more conscious of the most deprived groups and geographic areas, hence, enabling more focused targeting.

The government is pursuing structural revenue reforms to generate more resources and reduce debt. At present, the revenue agencies are very earnest in redeeming public confidence through tougher tax administration, higher revenue collections and improved transparency and accountability in revenue generation and administration. The Bureau of Internal Revenue, for instance, has come up with a five-point reform agenda to raise collection efficiencies, reduce leakage, and increase tax compliance.

To ensure steady and adequate financing and rationalize public sector spending, the government is pursuing a Public Expenditure Management Reform which uses a Medium Term Expenditure Framework, Effectiveness and Efficiency Review, and Organizational Performance Indicators Framework. Related to this is the Government Procurement Reform which simplifies pre-qualification procedures, encourages electronic procurement, reduces discretion on awarding of contract.

To focus government activities to core public services and improve quality and efficiency, the government is pursuing rationalization of its functions. The resources that can be freed up due to the Rationalization Program is expected to be channeled to the social service sector. Trade liberalization and related commitments are also being reviewed to halt their negative effects on vulnerable groups.

To enhance accountability and raise integrity of public officials and employees, the government is implementing a three-pronged strategy to fight corruption: fast-tracking prosecution, strengthening deterrence, and prevention. To provide wider access to and better administration of justice, the government carries on with its efforts institutionalize reforms in the five pillars of justice through the Action Program for Judicial Reform.

Design and implementation of many of these programs are under the watchful eyes of the private sector and civil society.

Participation and Partnership: The Roles of Non-state Actors, the Private Sector, Civil Society and Communities

Given the reforms and measures cited above and in the previous sections by different authors and development experts, this study recognizes the need to mobilize and entice participation from different sources of power and influence in society as this turns out to be one of the most important tasks in achieving the targets and goals of the Millennium Declaration as well as promote social, economic and human development. Partnership for development implies cooperation and interaction among governance stakeholders. Closer ties should be established between and among public sector authorities, business groups, community-based and local organizations, and the international community.

The roles of civil society organizations are very crucial in realizing and fulfilling the MDGs and the rights and entitlements of the populace. As non-state actors, CSOs help establish and promote citizen's rights. They can keep an eye on the quality and responsiveness of public services for improvement. The Citizen's Report Card Survey is one mechanism through which citizens and local communities can scrutinize performance of public sector institutions. To further advance rights, especially of children, women and less privileged and disadvantaged individuals or groups, civil society organizations can create pressures for social change. CSOs are firm believers and advocates of human rights for social change. Apart from crusades and

several social battles, CSOs are also service providers. Oftentimes, NGOs and other local communities partner with government and international organizations in service delivery. They sometimes get themselves involved in the provision of non-formal education and training, primary health care, credit or lending and small livelihood opportunities, especially in areas where opportunities are rare and conditions are worse, such as remote rural regions and urban slums.

The roles of the private sector are of equal importance. Business firms contribute to national productivity as they not only earn for the country but generate employment for the sector as well. They also provide goods and services for the populace and act on behalf of the government in supporting public service delivery through financial assistance mechanisms. In helping the state achieve its ultimate goals of human development, the paramount challenge to the sector therefore, is to pursue its activities within the framework of good corporate governance, i.e., not to rip apart the chains of accountability, transparency and code of conduct.

On top of all these, it is also important to consider the voice of the poor in making decisions and implementing them so that policies and programs address their needs, priorities and aspirations.

Notes

1. The discussion on levels of state obligations is primarily based on UNESCO, 2000. For brevity, the source will be cited only once.
2. For figures 3, 4, 8, 13, 14, and 15, the uneven lines indicate disparity; the peaks and valleys show the extent of inequality across regions and compared with the national average. The broken lines show the extent of deprivation compared with the national average and the MDG target. The wider the gap, the more severe the deprivation.

References

- The 1991 Local Government Code.*
- Asian Development Bank. 2000. *Country Assistance Plan.*
- . 2003. *Country Economic Review of the Philippines.*
- . 2003. *Asian Development Outlook for the Philippines.*
- Bureau of Internal Revenue. 2004. 2002-2004 Revenue Collection Reports. www.bir.gov.ph
- Center for Democracy and Governance. 1999. *A Handbook on Fighting Corruption*, United States Agency for International Development.
- Civil Service Commission. 1998. *Reforming the Bureaucracy*. Quezon City.
- Congressional Planning and Budget Office. 2003. An Analysis of the President's Budget for Fiscal Year 2003, House of Representatives.
- . 2003. Sectoral Budget Analyses, House of Representatives.
- Department of Finance. 2004. Fiscal Updates, July to October. www.dof.gov.ph
- Development Academy of the Philippines and United Nations Children's Fund. 2003. Situation Analysis of Filipino Women and Children.
- National Economic and Development Authority. 2002. Philippine Socio-Economic Report.

- . 2003. Philippines Progress Report on the Millennium Development Goals.
- . 2003. Philippine Socio-Economic Report.
- National Statistics Coordination Board. MDG Indicators Updates and other national accounts. www.nscb.gov.ph
- National Statistics Office. 2004. 2003 Family Income and Expenditure Survey.
- National Statistics Office, United States for Agency for International Development, et al. 2003. National Demographic and Health Survey.
- Office of the Ombudsman. 1997. Annual Report. Manila.
- Office of the President. 2004. State of the Nation's Address Updates, 2002-2004.
- Philippine Governance Report, Governance Forum.
- Transparency International. 2004. 2002, 2003 and 2004 Corruption Perceptions Index.
- United Nations Development Programme. 2003. Common Country Assessment for the Philippines, UNDP Philippines.
- . 2003. Promoting the Millennium Development Goals in Asia and the Pacific, UN.
- The World Bank. 2004. World Development Report.
- . 2000. Philippine Growth and Equity: The Remaining Agenda.
- . Philippines Policy Development Review, 2002, 2003.

VI. A Rights-Based Governance Review of Local Governance Indicators

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Introduction

Over the last decade, the concern for good governance has emerged across all sectors—the government, private and civil society. The impact of development efforts as well as the performance of government and other stakeholders are equated to the exercise of good governance. Hence, attempts to define and measure good governance have been made nationwide. *Good governance* is defined as the exercise of authority in a transparent, accountable, responsive and efficient manner. It is participatory, equitable, efficient and effective and promotes the rule of law. Good governance is not limited to government it includes the private sector and civil society (UNDP 1997).

With the onset of decentralization, initiatives to define and measure good governance have been directed to the assessment of local government performance and impact. Devolution, as laid out by the Local Government Code, promises genuine and meaningful local autonomy to enable local government units to attain their fullest development as self-reliant communities and to make them more effective partners in the attainment of national goals. The devolution of powers from national to local governments thus offers possibilities and opportunities for the local government units (LGUs) to promote meaningful local development.

Manasan et al. (1999) defines *good local governance* as primarily determined by how well LGUs perform in improving the quality of life of their constituents, i.e., how efficient and effective LGUs are in bringing about social and human development. UNDP, however, claims that local governance refers not only to LGUs. It comprises a set of institutions, mechanisms and processes through which citizens and their groups can articulate their interests and needs, mediate their differences and exercise their rights and obligations at the local level. It requires partnership between local governmental institutions, civil society organizations and the private sector for participatory, transparent, accountable and equitable service delivery and local development. It necessitates empowering local governments with authority and resources and building their capacity to function as participatory institutions responsive and accountable to the concerns and needs of all citizens. At the same time, it is concerned with strengthening grass roots democracy and empowering citizens, communities and their organizations, such as and NGOs, to participate as equal partners in local governance and in the local development process (UNDP 1997).

In the course of more than a decade of implementing the Code, various institutions have attempted to measure the impact of devolution on local development through multi-sectoral partnership. With the popularization of the rights-based approach to development, much focus has been given to how local governance institutions respect, protect, promote and fulfill individual and collective development at the local level.

Objectives of the Review

The Rights-Based Philippine Governance Review aims to evaluate the capacity, incentives and reform initiatives of local governance institutions, particularly the LGUs. Using the rights-based "lens," it will attempt to examine the quality of governing institutions, the functioning of civil society, and the enabling policies in place.

This Rights-Based Governance Review of Local Governance Indicators study aims to assess the local governance institutions' current performance

indicator system in terms of tool development, indicators setting and administration. It hopes to recommend ways to develop a rights-based performance measurement system at the local level. Initially, it hopes to identify local level claim holders and duty bearers in particular and to develop samples of rights-based local governance indicators.

Methodology

The review was conducted in two phases. The first involved the review and assessment of existing local governance indicators by a review of the literature on the subject: books, journals, academic papers, unpublished material and case studies. The second phase involved primary information gathering through consultations with local resource institutions and selected best-practice LGU officials in order to select and recommend rights-based indicators for local governance. The review was limited to available local government literature and did not seek to present a comprehensive review of local governance indicators. These limitations notwithstanding, this paper hopes to contribute to the ongoing discourse on rights based good local governance indicators in the country.

The Rights-Based Approach

The rights-based approach (RBA) to development was adopted in the 1990s when the international community realized that the traditional needs-based approach was not sufficient to achieve real development (Collins et al. 1999). RBA describes situations not in terms of human needs or areas of development but in terms of the obligation to respond to the rights of individuals. This empowers people to demand justice as a right, not as a charity (Robinson, Santos 1999).

The rights-based approach has three main features. The first is that all rights are equal and universal. Second, all people are the subject of their rights and should be participants in development rather than objects of

charity. Lastly, the rights-based framework obliges states to work towards ensuring that all rights are met.

Central to the RBA approach to development is the protection and realization of human rights. It uses established and accepted human rights standards as a common framework for assessing and guiding sustainable development initiatives. From this perspective, the ultimate goal of development is to guarantee all human rights for everyone. Progressively respecting, protecting and fulfilling human rights obligations is seen as the way to achieve development (HDR 2000).

The fundamental principles of RBA are as follows: universality, nondiscrimination and equality, indivisibility, interdependence, interrelatedness, accountability, attention to vulnerable sectors, equity, people's participation, independence of the judiciary, legislative capacity and the rule of law, transparency and empowerment (UNDP 2002).

The fundamental RBA principles are the same as the good governance principles. Thus, realization of human rights may be considered an indicator of good governance both at the national and local levels. On the other hand, since the government is responsible for the fulfillment of basic human rights, it may also be presupposed that citizens have the right to good governance. The RBA enhances the need for government to deliver good governance to its constituents not only because government leaders as duty bearers are elected by the people but more so because the claim to good governance falls within their rights.

Assessing Rights Using Rights-Based Indicators

The task of assessing rights became an important area for policy reforms, development assistance and development strategies and programming. Crucial to such an assessment is collecting credible information using quantitative and qualitative tools and techniques, and identifying the sources of information.

In an RB indicator system, people's needs are translated into rights (UNICEF 1999). The rights themselves are used as project assessment

indicators, and success is measured in terms of the extent to which the rights are guaranteed, promoted, fulfilled and protected. Increased focus on accountability holds the key to improved effectiveness and transparency of action.

Rights-based indicators have the following features (UNDP 2000):

1. The goal is to produce information that will give policy signals on how better to realize human freedom.
2. They rely on measures of outcome and inputs to tell the story.
3. They use measures of averages and disaggregations, global and local, to reveal information at many different levels.
4. They assess whether people are living in dignity and freedom and determine the extent to which critical actors have fulfilled their obligations to create and uphold just social arrangements to ensure this ideal.
5. They focus on human outcomes but also attend to the policies and practices of legal and administrative entities and the conduct of public officials.
6. They require additional data on the processes.

RB indicators explore four interlocking objectives:

1. Determining whether the state respects, protects and fulfills rights
2. Ensuring that key principles of rights are met
3. Securing access that turns needs met into rights realized
4. Identifying critical nonstate actors

Measuring the performance of LGUs using the RB indicators should thus disclose whether the LGU is respecting, protecting and fulfilling rights. Respecting rights means refraining from interfering with people's pursuit of their rights; protecting rights means preventing violations by other actors; and fulfilling rights means taking legislative, budgetary, judicial and other measures to realize people's rights.

Assessment of Existing Local Governance Indicators

There are more than 40 studies conducted by various institutions focusing on the identification of indicators of local governance. In 2001, the Philippine Business for Social Progress (PBSP)'s inventory of indicators totaled 383 drawn from only 29 institutional studies. To date many more agencies have gone into the development of good local governance indicators gauging the performance of local governments and their impact on the lives of their constituents. Annex A shows an inventory of those local governance indicator studies.

The purpose of assessing the existing local governance indicators is to determine whether the existing indicators are focused on revealing the roles and impacts of the two major actors, the duty bearers and claim holders, on the realization of rights or entitlements. The assessment also seeks to reveal the positive and negative influences of the various stakeholders on the realization of rights-based practices.

In assessing the existing indicators, the following guide questions were used:

1. What are these indicators measuring?
 - Rights-based indicators measure the realization of human rights.
 - Rights-based indicators measure human outcomes.
 - Rights-based indicators present processes (policies, practices) to see if the key principles informing human rights are met.
2. How are the indicators presented?
 - Rights-based indicators are disaggregated in terms of the critical actors' (duty bearers and claim holders) roles and their impact on the attainment of rights.
 - Rights-based indicators focus on the realization of the rights of vulnerable groups.

3. Who are involved in indicator setting? How is the information gathered?
 - Rights-based indicators are set by both duty bearers and claim holders.
 - Rights-based indicators measurement is conducted in a participatory manner.

Based on the above assessment criteria, the assessment arrived at the following findings:

1. In terms of objectives and what they measure. Most of the studies measured the duty-bearers' performance in accomplishing their mandated roles and functions. Although several studies used input, throughput (or process), output and outcome indicators, and while some used governance principles as indicators of local governance performance, the indicators were not directed at measuring the realization of human rights.

Majority of the studies intended to:

 - a. measure the performance of the primary duty bearers, the local governments—their innovativeness, efficiency and effectiveness along such areas as delivery of basic services, LGU management (management, service delivery, resource mobilization, leadership, etc.)
 - b. measure the competencies of the LGUs in program or organizational management
 - c. measure input indicators, process indicators, output indicators and/or outcome indicators of LGU performance in programs or projects. The database however revealed that there were more input/output indicators than outcome and process indicators. Although there were identified outcome indicators, many of them were not necessarily designed to protect local governments and ensure the attainment of rights
2. In terms of presentation, none of the studies disaggregated the indicators in terms of major actors' groupings, roles and entitlements. The

indicators were classified by thematic, performance areas or service areas (Table 1). While some studies incorporated client feedback indicators, these were limited to their perception or judgment of the duty bearers' local governance performance or their own (clients') participation in program development and/or implementation. The "clients" were not further segmented into more distinct groupings, i.e., vulnerable groups and their roles in the realization of these rights were not articulated.

Table 1. Indicators Per Service Area/Sector

Area/Sector	No. of Indicators	Percentage
Social Welfare	47	12.3
Health	68	17.7
Education	22	5.7
Infrastructure	29	7.6
Local Finance and Economic Services	80	20.9
Development Planning	5	1.3
Organizational Management	37	9.7
Local Legislation	20	5.2
Political Will	6	1.6
Environmental protection	23	6.0
Participatory Governance	16	4.2
Transparency	4	1.0
Fairness	1	0.3
Children's Rights	5	1.3
Civil Society participation	8	2.1
Welfare of Women	8	2.1
Population	4	1.0
TOTAL	383	100%

Source: Philippine Business for Social Progress, 2001

The lack of proper groupings of indicators is one reason why LGUs are incapable of responding to the felt needs of some particular groups—their rights included. It has also caused the overlaps in the roles of the local government and the people. Such overlaps result in people's dependency on the government even for some private undertakings. In the same vein, the government fails to address the real concerns of the people in the belief that these concerns are beyond their responsibilities.

3. In terms of methods/ approaches of indicator setting:

Estrella (1994) observed that studies on good governance indicators generally rely on more traditional or conventional research methodologies for developing, measuring and analyzing indicators (e.g., use of self-assessment survey forms and questionnaires, end of the year accomplishment reports, financial statements and records). Indicators are usually defined in quantitative terms and the tools administered by more influential and higher level stakeholders, such as donors, government agencies and the academe. Self-assessment tools, such as the Local Productivity and Performance Measurement System (LPPMS), are still directly administered or facilitated by "experts," not by the LGUs or clients. Clearly, the current modes of setting indicators are expert- or researcher-led, and they, in fact, could lead to the imposition of inappropriate responses from the target clients.

The use of more innovative and more participatory approaches to indicator development and measurement, such as the use of group interviews, case studies, group validation workshops or verification techniques, have been recently introduced by the academe and donor agencies. These methods attempted to draw out not just duty bearers but also claim holders' perceptions or ratings of local governance performance. However, most of these were conducted on a few selected sites only. LGUs and even donors found it difficult (time consuming and costly) to use such participatory processes widely in local governance performance measurement.

The studies revealed that various stakeholders were involved in the development and use of the indicators. Stakeholders included government agencies, academe, donors, international organizations, civil society and local communities. However, besides the local government, there were only a few indicators of the vulnerable groups' perceptions of local governance performance.

Finally, despite the availability of these tools and studies on performance measurement, local governance institutions (LGUs, POs,

NGOs, etc.) did not regularly assess and evaluate their organizational performance. Most LGUs regularly assessed and evaluated their program or project performance but not their organizational performance and impact on their constituents. For these evaluations, the LGU departments and subunits devised and used their own performance measurement tools and processes.

Overall Assessment Findings, Issues and Concerns

Various performance measurement systems for local governments have been developed to come up with indicative findings on good local governance. Most of these systems and their indicators have been developed and administered by the academe, national government agencies and donor agencies. More than 45 studies with more than 500 indicators were made available for local government and institutions use but only one has been used widely, the Department of the Interior and Local Government's (DILG) LPPMS. Most LGUs used their own assessment tools, several of which were not even found in their operations manuals.

Despite the number of measurement systems developed by various institutions, not one of these indicators systems has all the features of a rights-based performance measurement and indicator system. Though several have one or two features, such as being outcome and process focused, or have incorporated client feedback and adopted participatory techniques, not even a single system highlighted the claim holders' entitlements and roles and their performance in terms of respecting basic human rights, for instance. As both LGUs and other stakeholders have responsibilities and claims for respecting, protecting, promoting and fulfilling individual and collective rights, it is important not only to define their duties and claims but also to measure how they uphold human rights especially at the local level.

Besides limitations in rights-based orientation, consultations with various stakeholders revealed the following issues and concerns in the development and administration of existing performance measurement systems:

1. The development of indicators do not consider the differences among local governments (i.e. income class, ecosystem, population or household characteristics, etc.); thus, the tools developed and used are not customized to the specific local environment resulting in a virtually "One size fits all" performance measure.
2. There are too many indicators per performance system. The belief is that the more indicators are set, the more accurate the performance evaluation is.
3. Participatory and more effective data-gathering approaches for performance measurement are often time-consuming and costly to adopt, especially for poor LGUs and local institutions.
4. The sources of information are often limited to LGUs and organized citizens' groups, which may not be representative of the various stakeholders.
5. Most of the LGUs and local institutions do not have access to these performance measurement tools and systems.
6. Assessment is simply a matter of compliance to requirements and not for planning and decision making.
7. There is little effort among LGUs, local institutions and citizens to measure their performance and impact jointly.
8. Documents to support performance are prepared by the LGUs being evaluated not by the external party. Hence, there is a tendency to "window dress" performance reports.

Development of Rights-Based Indicators: The DILG's LPPMS and LGPMS

Among the performance measurement studies developed and used, only one measurement system is currently being widely used at the local level—the DILG's Local Productivity and Performance Measurement System.

The LPPMS was introduced by the DILG to the LGUs in 1984. It was designed to determine how local governments were performing their mandated roles and responsibilities defined in the Local Government Code

(LGC). Although intended as a self-assessment tool for the LGUs, the LPPMS is still administered by the DILG's Local Government Operations Officers (LGOOs). Thus, the regular annual assessment of LGUs performance is assured by LGOOs' compliance with their task as DILG officers. The tool or data capture form is actually a checklist of what LGUs should have (inputs) and have actually accomplished (process, outputs, outcomes).

The LPPMS continues to evolve as the DILG actively improves the instrument. Initially conceptualized as a monitoring mechanism for the DILG, the LPPMS was enhanced as a management tool for the LGUs. It helps LGUs evaluate their performance and responsibilities. Most of the indicators used in the LPPMS were derived from the LGC.

Recognizing that the LPPMS was not a perfect measure of the state of local governance, the LPPMS indicators were further improved and in May 2004, the Local Government Performance Measurement System (LGPMS) was introduced and pilot tested in 92 LGUs in the 12 regions of the country.

The LPPMS and LGPMS are reinforced by other initiatives of the DILG, such as the Citizens' Satisfaction Index System (CSIS) and the Local Development Watch (LDW). The CSIS makes use of a survey enabling citizens to rate the services rendered by the LGUs. The LDW measures the state or level of local development along economic, social and ecosystem well-being. These indicator-based measures complement the LPPMS in assessing good local governance. Just recently the DILG commissioned the Ateneo School of Government to develop the LGU Competency Assessment Tool. With the use of process indicators, the tool intends to measure the organizational competencies of LGUs. Designed also as a self-assessment tool, this was pilot tested in 150 LGUs in September 2004 and will be fully administered to all LGUs by 2005.

Past experiences have shown that the DILG is the major institution capable of meaningfully spearheading the development and implementation of a rights-based performance measurement and/or indicator system. It is in this context that this study takes a look at the LPPMS/ LGPMS indicators and attempts to enhance them using a rights-based perspective. Applying LPPMS/LGPMS indicators, it hopes to suggest rights-based indicators.

Assessment of Indicator Development and Data Gathering Practices in LGPMS

Based on the RBA indicator system assessment criteria, the evaluation of the LPPMS/LGPMS came up with the following findings:

1. In terms of objectives and what they measure

The LPPMS/LGPMS indicators measured the duty bearers', specifically the LGUs' performance in fulfilling their mandated roles and functions as spelled out in the Local Government Code of the Philippines. It presented input, throughput (or process), output and outcome indicators and used the governance principles also as indicators of local governance performance. The indicators, however, did not measure the realization of human rights.

The LPPMS/LGPMS specifically measured the organizational competencies and performance of LGUs in service delivery along the following areas:

- a. Inputs: State of Resources
- b. Process Indicators: Performance Measurements
 - Development Planning
 - Local Fiscal Administration
 - Organization and Management
 - Local Legislation
- c. Outputs: Productivity Measurements
 - social services
 - economic services
 - political services
 - environmental protection services
- d. Outcomes: Measuring Results and Impacts of Local Service Delivery
 - Intermediate Level Outcomes
 - Programs/projects
 - Fund sources

- Increase in tax collection efficiency rate
- Increase in revenue from local sources
- Presence of organizations devoted to crime/fire prevention and disaster preparedness
- Bulletin board display of financial statement
- High Level Outcomes
 - Social services
 - Economic Services
 - Protective Services
 - Environmental Protection Services

2. In terms of presentation

The LPPMS/LGPMS did not disaggregate the indicators according to major actors' groupings, roles and entitlements. Indicators were grouped by theme, performance areas or service areas. While some studies incorporated client feedback indicators, these were confined to their perception or judgment of the duty bearers' local governance performance or their own (clients') participation in program development and/or implementation. Although to some extent, the tools included indicators for women and children, the stakeholders were not further segmented into more distinct groupings, i.e., vulnerable groups in terms of social status, for instance, and their roles in the realization of these rights were not articulated.

3. In terms of methods or approaches to indicator setting and administration

The Bureau of Local Government Supervision (BLGS) is the lead unit responsible for the data collection, collation and analysis of the LPPMS. The tool itself was developed by academic consultants. LGOOs of the DILG administer the LPPMS. An evaluation entitled "The State of Philippine Cities: A Self-Assessment of Cities" based on the LPPMS was administered by the DILG's Local Governance Performance Measurement System composed of its regional and field offices. The Center for Local and Regional Governance, National College of Public Administration and Governance, University of the Philippines (CLRG-

NCPAG-UP) provided the technical assistance in writing the report. Despite the fact that the LPPMS has been institutionalized since 1984, the LGOOs continue to initiate it. No information is available on whether the results of the LPPMS have been used by the LGUs to improve their plans or performance. But interviews with some LGOOs revealed that the LPPMS is more useful to the DILG than to the LGUs.

According to the LGOOs, they used a single data capture form and routed it to the LGU units. The unit heads or appointed LGU staffers answered the form. The LGOOs collected the form and forwarded it to the BLGS to file. To date, no consolidated report of the LPPMS results has been made except for the "State of Philippine Cities" report. Some LGOOs criticized the "one-size-fits-all" character of the LPPMS, claiming some indicators are not applicable to the LGUs. For instance, the presence of a basketball court as a measure of performance may not be relevant to a 6th class municipality whose priority is economic development. Some also said that there is a need to validate the responses of unit heads from within the LGU, since most of them were afraid to be critical for fear that their unit performance would suffer. They also suggested setting up a citizens' feedback mechanism or enabling their participation in the validation of the response.

Just recently the DILG through the LGA developed two additional tools. The first is the LGU Organizational Competency Tool, which assesses LGU organizational competencies. This tool complements the LPPMS/LGPMS, focusing on the development of throughput or process indicators. The other is the Gender Indicator System (GIRL), which measures LGU gender sensitivity.

More innovative and more participatory approaches to indicator development and measurement, such as the use of group interviews, case studies, group validation workshops or verification techniques, have been used in the administration of these tool. However, the respondents are limited to duty bearers only. The LGOOs find it difficult to use such participatory processes widely primarily because of time constraints and difficulty in organizing Focus Group Discussions (FGDs) to target respondents.

Recommendations

The DILG is one of the agencies that can be relied on to push forward the development and administration of indicators and performance measurement systems. Other stakeholders that can also advance such efforts are the leagues of cities, municipalities and provinces. The academe can help in the development of the tools.

The existing performance measurement systems in place have to be improved to incorporate a rights-based perspective. The claim holders as major actors in local governance have to be made more visible. Indicators measuring their roles, obligations and entitlements have to be defined and used.

In terms of data collection, self-assessment or third party data-gathering and tool administration could be improved by:

- focusing on the inclusion of vulnerable groups in data gathering processes; this will require information on the demographic characteristic of the locality and targeting representatives of various sectors as sources of information
- complementing individual interviews with group interviews, preferably conducted among the various stakeholders (duty bearers and claim holders)
- training and development of in-house LGU or local level tool developers, researchers or administrators

In terms of tool development and performance measurement system development

- efforts should be made to get the claim holders' views and inputs to incorporate indicators of their own performance and judgment
- studies of local governance best practices can serve as benchmarks for local governance indicators

Sample of Rights-Based Indicators

The importance of measuring local governance performance using the RBA in ensuring that human rights are addressed is undisputed. Performance measurement, however, is easier talked about than done. There are about 12 international agreements containing universally accepted rights and the Philippines, by ratifying these human rights treaties, accepted the responsibility of addressing the rights enshrined therein. Thus, the country became legally accountable and has a moral and legal obligation to make sure that everyone's rights are respected. The reality, however, is that there are state limitations in addressing people's rights, especially the rights of the more vulnerable and marginalized sectors of society. For instance, there are rights (such as civil and political rights contained in the International Covenant on Civil and Political Rights) presumed to be immediately demandable by the claim holders (the citizens) from the duty bearers (the state). However, there are rights (such as those under the International Covenant on Economic, Social and Cultural Rights) that can be gratified gradually, depending on the resources available to the duty bearer or the government.

As stated earlier, local governance is not the job of the LGUs alone. The rights-based approach focuses on raising levels of accountability in the development process by identifying claim holders (and their entitlements) and corresponding duty holders (and their obligations). In this regard, an RB indicator system looks both at the positive obligations of duty holders (to protect, promote and provide) and at their negative obligations (to abstain from violations). It is necessary to take into account the duties of the relevant actors, including citizens, governments, local authorities and organizations, and private companies.

To develop rights-based indicators, the following steps are recommended:

1. Identify what rights have to be addressed immediately or gradually
2. Identify the duty bearers

3. Identify the claim holders
4. Determine the levels of obligations
5. Identify performance indicators measuring the levels of obligations

Identifying the Rights to be Addressed

The devolution of power to the local governments was seen as a response to the need for government to be closer to the marginalized sectors and to address their concerns. It had thus made the LGUs accountable and responsible for realizing these rights at the local level. The LGC had mandated the LGUs to exercise specific powers to enable it to attain efficient and effective governance, and to promote general welfare. The LGUs shall ensure and support:

1. the preservation and enrichment of culture
2. the promotion of health and safety
3. the enhancement of the right of the people to a balanced ecology
4. the encouragement and support of the development of appropriate and self-reliant scientific and technological capabilities
5. the improvement of public morals
6. the enhancement of economic prosperity and social justice
7. the promotion of full employment among their residents
8. the maintainance of peace and order
9. the preservation of the comfort and convenience of their inhabitants.

The delivery of basic services and facilities was devolved to the provinces, cities, municipalities and barangays so that each LGU shall be responsible for a minimum set of services and facilities. (See Annex B: Basic services and facilities devolved to LGUs.)

Since the LGUs have been granted executive, legislative and judicial powers at the local level, they are thus mandated to protect, fulfill, and promote the following rights:

Civil and Political Rights

- The right to life
- The right to liberty and security of person
- Freedom of movement
- Equality before the law
- Freedom of expression
- Freedom of association
- The right to take part in the conduct of public affairs
- The right to vote and be elected
- The right to determine political status freely

Economic, Social and Cultural Rights

- the right to work, form trade unions, work in safe and healthy conditions
- the right to health
- the right to education
- the right to adequate standard of living, including adequate food, housing and clothing
- the right to take part in cultural life
- the right to pursue economic, social and cultural development freely

The devolution of powers to the LGUs in the Philippines is, however, not absolute. In several areas, functions and powers may still be "centralized." For instance, the right to pursue economic development freely is affected by the laws and policies governing land use rights. Land rights and titling are still within the purview of the national government, particularly the Department of Environment and Natural Resource (DENR) and Department of Agrarian Reform (DAR). The right to adequate housing may be affected by the national housing programs of the National Housing Authority (NHA) and the development programs of the Philippine National Railways (PNR) and the Department of Public Works and Highways (DPWH). The right to education is definitely affected by the policies and programs of the Department of Education (DepEd).

On the other hand, the Local Government Code (LGC) also serves as a major legal mandate highlighting the importance of collaboration and partnerships among different stakeholders in addressing local development and good local governance as some of its provisions indicate:

Section 2: Declaration of Policy. It is hereby declared the policy of the State that the territorial and political subdivision of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and to make them more effective partners in the attainment of national goals.

Section 34: Role of People's and Nongovernment Organizations. LGUs shall promote the establishment and operation of people's and NGOs to become active partners in the pursuit of local autonomy.

Section 35: LGUs may enter into joint ventures and such cooperative arrangements with people's and NGOs to engage in the delivery of basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

The last section specifies how partnerships between LGUs and the NGO/PO may be implemented.

Identifying the Duty Bearers

While the LGUs are the primary duty bearers of the rights of their constituents at the local level, the national government or the state is still the primary duty bearer of rights of the Filipino people as a whole as most regulations and functions remain and are placed in its hands. On the other

hand, POs and NGOs as well as private and socio-civic groups may serve as secondary duty holders if they are implementing programs and projects affecting (either positively or negatively, in partnership or not with the LGUs) people's rights.

The concept of state arose when groups within a society realized that it was for their own welfare to centralize authority, set up rules for settling disputes and apply force to maintain obedience and loyalty to the social norms and values of society. The main functions of the state are the maintenance of peace and order and the regulation and control of the lives of the people. The state is expected to answer the need of the citizenry to a certain degree of social order. There are certain things people must do and/or refrain from doing for the benefit of the entire group. Hence, people create norms and values that define what is wrong and immoral, to make sure that important norms are upheld by laws, and to settle numerous disputes that arise when people live together and to determine who gets what in terms of rewards or punishment.

The increased complexity of society has caused the transfer of some institutional functions to the state:

1. From the family: the state has taken over the provision of protection for the home, the formal education of the youth and the maintenance of public welfare programs for the sick and differently abled, the unemployed and underemployed, the widowed and the orphaned, the aged, abused, and others.
2. From the business/economic sector: the state has taken over the resolution of labor-capital disputes, the limitation or regulation of production, distribution and consumption of economic resources, goods and services, the control of wages, prices, taxes and savings, the operation of research, the allowances of fringe benefits, and others.
3. From the church: the state has taken over the regulation of the conditions for contracting and dissolving marriages, family planning, the moral and spiritual training of the youth, the provision of relief for the poor, the disposal of the dead, and others.

In times of crisis, the state is vested with emergency powers, such as:

1. regulation of manpower resources and the control and allocation of labor during war and national disaster
2. mobilization of agriculture and industry particularly the apportioning of raw materials and other facilities
3. control of wages in collective bargaining agreements
4. curbing of prices to subvert disastrous inflation
5. formation of capital and control of investments to be made and profits to be realized.

Like other institutions, the state also has latent functions, which may produce results that are neither desired nor intended, such as the creation of political parties that are corrupt and inconsistent with democratic ideology. The state also creates power elites and social classes, the relationship between political and socio-economic status.

Identifying the Claim Holders

Who then are the claim holders of the people's rights? At the national level, the Filipino citizens are the primary claim holders. At the local level, the claim holders are the constituents of the locality or people who have lived for at least 6 months within the LGUs' jurisdiction. The latter, however, is difficult to determine, especially considering that LGUs do not keep updated records of the whereabouts of their constituents. For instance, urbanizing LGUs are faced with the problem of in-migration of people from nearby towns. Once these people enter their territory, the LGUs have to address their needs and concerns as well, such as providing shelter and other basic services to urban informal settlers.

The claim holders have different interests and roles in a community. They may be grouped according to social groups and institutions or by social stratification. The basic social institutions are the family, the economic groups (private sector), the church and the communities (NGOs, POs). The

family is the basic social institution in society. Murdock (1949) defines the family as a social group characterized by common residence, economic cooperation, and reproduction. Locke (1963) defines the family as a group of persons united by ties of marriage, blood or adoption, constituting a single household and creating a common culture. The family performs reciprocal roles and functions to make the relationship enduring.

Economy is one of the social systems in the totality of social organization. It refers to the structuring and functioning of the development and utilization of human and natural resources in the production, processing, distribution, and consumption of materials, goods and services.

Religious organizations are composed of families or communities of adherents. These groups may be in the form of ecclesia, sect, denomination or cult. Religious groups have many functions for the individuals who believe in them and for society as a whole.

Community is a social organization that is territorially localized and through which members satisfy most of their daily needs and deal with their most common problems (Olsen 1968). The community may also be viewed as a process or a movement toward unity in the system of social life. The essence of community lies in the relationships within it. As a social organization, the community has a structure and a dynamic phenomenon of a special function. The members interact and share common services and they carry on their respective roles to enhance their common goals of fostering solidarity and unity.

Nongovernment organizations and socio-civic groups are also social organizations from the communities. They are private, nonprofit, nongovernmental groups, which endeavor to bring socioeconomic development and service to their communities. There are hundreds of NGOs performing various functions like networking, building infrastructure, providing extension services and helping with people's problems.

The claim holders may be further segmented according to class, gender, age and ethnicity. Social segmentation, on the other hand, establishes certain relationship—whether economic, political, cultural—giving claim holders

not just claims on certain rights but also responsibilities for the rights of their superiors or subordinates or members of society.

One of the features of the rights based indicator system is that it focuses on the rights of the vulnerable groups. The International Covenant on Civil and Political Rights emphasizes that rights should be recognized without distinction of any kind—of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Thus, vulnerable groups in the Philippines may include but are not limited to, the following:

- By race or ethnicity – indigenous people
- By sex – women
- By religion – non-Christians (since Christianity is the dominant religion)
- By age – youth, children, elderly
- By class – the poor

Determining the Levels of Obligations

Table 2 shows the summary of rights, levels of obligations and the primary duty bearers and claim holders at the local government level.

Table 2. Primary Duty Bearers and Claim Holders at the Local Level

Rights	Levels of Obligations (Duty Bearers)			Claim Holders
	Respect	Protect	Fulfill (Facilitate or Provide)	
Civil and Political Rights				
The right to life	National	National	National	Citizens
The right to liberty and security of person	Government	Government	Government	
Freedom of movement				
Equality before the law	LGUs	LGUs	LGUs	

Rights	Levels of Obligations (Duty Bearers)			Claim Holders
	Respect	Protect	Fulfill (Facilitate or Provide)	
Freedom of expression Freedom of association The right to take part in the conduct of public affairs The right to vote and be elected The right to determine political status freely	Citizens			
Economic, Social and Cultural Rights The right to work, form trade unions; right to safe and healthy working conditions The right to health The right to education The right to adequate standard of living, including adequate food, housing and clothing The right to take part in cultural life The right to pursue economic, social and cultural development freely	National Government LGUs Citizens	National Government LGUs	(Primary) National Government LGUs (Secondary) POs NGOs Private Sector	Citizens

Identifying Indicators

To develop a sample of rights-based indicators, the study will use the health services indicators contained in the LPPMS and LGPM as bases of comparison. Tables 3 and 4 show the LPPMS and LGPM indicators on health. Table 5 shows a sample of rights-based indicators in the health sector.

Table 3. LPMMS Indicators

<p>Input Indicators: Presence of LGU-owned health building or office Percentage of prescribed mandatory health positions filled up Percentage of compliance with the prescribed membership in local health board Percentage of barangays with IEC conducted</p>
<p>Process Indicators: Available health planning policies and guidelines Available updated annual health plan or program Existing health data base system Available annual budget Existing Manual of operations Timely submission of annual accomplishment report Ongoing LGU-Initiated training Percentage of serviceable vehicles and equipment</p>
<p>Output Indicators: Existing LGU Initiated health programs Increase in the number of health program beneficiaries Percentage of barangay with day care centers</p>
<p>Outcome Indicators: Number of LGU-initiated health programs Reduction in morbidity rate Reduction in mortality rate Reduction in infant mortality rate Reduction in maternal mortality rate Percentage of hospitals complying with standards</p>

Table 4. LGPMS Tool/Indicators on Health and Nutrition

<p>Service Area: Health and Nutrition Service Mission: To promote good health and nutrition among citizens</p>	
Input Indicator	Appropriate structures, human resources and facilities to provide health and nutrition services Effectiveness of Local Health Board Percentage of barangays with functioning Barangay Health Centers Ratio of public health workers to population
Output Indicator	Effective provision of health and nutrition services Percentage of women provided pre-natal care Percentage of children immunized
Outcome Indicator	Healthy citizens Percentage of malnourished children Infant mortality rate Mortality rate Morbidity rate

Table 5. Sample of Rights-Based Indicators

Right	Levels of Obligations: LGU as Primary Duty Bearers		
	Respect <i>(refraining from interfering with people's pursuit of their rights)</i>	Protect <i>(preventing violations by other actors)</i>	Fulfill <i>(taking legislative, budgetary, judicial and other measures)</i>
Right to the highest attainable standard of physical and mental health	INPUT INDICATORS		
	Presence of IEC in all areas, especially in the far-flung areas, on people's right to health Percentage of participation in collaborative efforts indicating respect for carers as equal partners in health care	Availability of information and local policies against practices that may affect health i.e. anti-smoking, clean air act, etc. Availability information and policies regarding clinical information confidentiality	Presence and distribution of health centers, health workers: Quality of health personnel hired to provide services in different areas Percentage of members representing the vulnerable sectors-women, youth, IPs, etc. in local health bodies Conditions and availability of health facilities in various areas Availability of quality/appropriate medicines and medical supplies in different areas or sectors Availability of social health insurance
	PROCESS INDICATORS		
	Number of violators of clinical information confidentiality apprehended or penalized Percentage of participation in collaborative efforts	Number of violators apprehended or penalized for violating policies on clinical information confidentiality Number of violators apprehended or penalized for	Identification of the health care needs of all constituents (segmented according to sectors or local groupings) Presence of cost effective and operational delivery

Right	Levels of Obligations: LGU as Primary Duty Bearers		
	Respect (refraining from interfering with people's pursuit of their rights)	Protect (preventing violations by other actors)	Fulfill (taking legislative, budgetary, judicial and other measures)
	indicating respect for carers as equal partners in health care	violating local policies against practices that may affect health, e.g., anti-smoking, clean air act, etc.	<p>systems or medical services to address the health care needs of all constituents (segmented according to sectors or local groupings)</p> <p>Customer-focused treatment, health services to vulnerable groups i.e. waiting or response time in attending to constituents/ vulnerable groups</p> <p>Medical personnel's' attention/behavior/ time allocated to treatment of constituents/ vulnerable groups</p> <p>Existence of medical records management system and use of clinical information (confidentiality)</p>
	OUTPUT		
	<p>Percentage of compliance with basic health standards</p> <p>Effectiveness of service programs for specific patient groups, i.e. elderly, women, children, youth; cancer, TB, etc. patients in different areas</p> <p>Effectiveness of preventive and curative programs among different sectors in different areas</p>		
	OUTCOME		
	<p>Above average attainment of Asian or World Health standards or indicators</p> <p>Reduction in incidence of the top ten diseases affecting different groups in the locality</p> <p>Improved physical and mental health of constituents, especially in vulnerable people/ communities</p> <p>Health for all Filipinos</p>		

Right	Levels of Obligations: LGU as Primary Duty Bearers	
	Respect (refraining from interfering with people's pursuit of their rights)	Protect (preventing violations by other actors)
Right to the highest attainable standard of physical and mental health	<p>Input Indicators</p> <p>Attendance or support of locally initiated health orientation and training</p> <p>Acquisition of health information materials</p> <p>Process Indicators</p> <p>Adoption of preventive health practices</p> <p>Adherence to good nutrition, hygiene, etc.</p> <p>Training dependents or other members of the family on health and nutrition</p> <p>Frequency of regular checkups to prevent illnesses</p> <p>Adoption of good health practices (no to smoking, etc.)</p> <p>Percentage of compliance with medical treatment, prescriptions</p> <p>Percentage of compliance with clinical information confidentiality</p> <p>Percentage of participation in collaborative efforts indicating respect for carers as equal partners in health care</p> <p>Percentage of compliance with good health practices (anti-smoking, guided self-medication etc.)</p>	<p>Input Indicators</p> <p>Percentage of assistance in distributing available health information materials</p> <p>Process Indicators</p> <p>Participation in health policies advocacy</p> <p>Partnership with LGUs and other stakeholders in health care programs or efforts</p>
	OUTPUT INDICATORS	
	<p>Percentage of compliance with or attainment of basic health standards</p> <p>Effectiveness of service programs for specific patient groups, i.e. elderly, women, children, youth; cancer, TB, etc. patients in different areas</p> <p>Effectiveness of preventive and curative programs among different sectors in different areas</p>	

Right	Levels of Obligations: LGU as Primary Duty Bearers	
	Respect (refraining from interfering with people's pursuit of their rights)	Protect (preventing violations by other actors)
	OUTCOME INDICATORS	
	Above average attainment of Asian or World Health standards or indicators Health for all Filipinos Reduction in incidence of the top ten diseases affecting different groups in the locality Improved physical and mental health of constituents, especially in vulnerable people/ communities	

NOTE: Health Standards

- a. medical personnel
 - 1 government physician per 20,000 population
 - 1 public health nurse per 20,000 population
 - 1 rural health midwife per 5,000 population
 - 1 government dentist per 50,000 population
 - 1 rural sanitary inspector per 20,000 population
 - 1 rural health officer per 20,000 population
 - 1 barangay health worker per 20 households
 - 1 barangay nutrition scholar per barangay
 - 1 health educator per 50,000 population
- b. Primary Hospital- 10-bed capacity
- c. secondary hospital- 25 to 50-bed capacity
- d. Medical transport
 - 1 ambulance
 - 1 service vehicle

Annex A: Inventory of Studies on Good Local Governance Indicators

Project Title	Donor/ Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
1. Accelerating Growth, Investment and Liberalization with Equity	United States Agency for International Development (USAID) Congressional Committees on Local Governments Department of Finance (DOF)			
2. Assessing Local Government Financial Condition (ALGFC)	USAID Bureau of Local Government Finance-DOF Bulacan, Naga City			
3. Cities on the Rise: A Competitive Ranking of 10 Philippine Cities	Konrad Adenauer Stiftung and APEC Study Center Network (KAS-ASCN) Asian Institute of Management (AIM)	2002	To determine the competitiveness of selected local cities using indicators selected on the basis that these attributes are valid factors for measuring the competitiveness of a city and the performance of cities	Input/Output indicators such as cost of doing business, human resource endowment, infrastructure, linkages with growth areas, dynamism of local economy, responsiveness of local government
4. Citizen's Feedback Research System	AIM, Dr. Ned Roberto	2002	To help address two differing sets of good governance- satisfying social and development needs of citizens and satisfying unexpressed needs of citizens via government institutions	Monitoring research that tracks perceptions of governance, and predictive research to find out target constituents response to projects

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
5. Citizen's Satisfaction Index System	DILG	On-going	To identify gaps in the delivery of performance of local governments, determine citizen awareness and satisfaction of local governance along the areas of economic services, social services, peace and order and environmental protection	Dimensions of efficacy, adequacy, and quality that looks into the level of satisfaction of the individual, family and community
6. Citizen's Monitoring and Feedback Mechanism (CMFM)	USAID Selected GOLD Project Sites	2000	To provide guide in installing participatory monitoring and evaluation system, perspective on how citizens can engage with government	Quality institutions based services and programs, quality of community based development programs
7. City Development Strategy	World Bank League of Cities	2003	To guide the cities' direction for economic development	Focus on livability, competitiveness, bankability and good governance
8. Clean and Green Awards (Gawad Pangulo sa Kapaligiran)	DILG		To propel local government officials and constituents to achieve a tradition of excellence in environmental management	Indicators on physical appearance and social support of local environmental program or project
9. Collaboration Capacity Framework and Assessment Tool	NAPC Ateneo School of Government	2003	To measure different components of collaboration at the individual and organizational level.	Indicators that measure individuals' attitudes toward collaboration, organizations' capacity for collaboration.

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
10. Community based Forest Resource Management	Asian Development Bank DENR LGUs		To enhance management of renewable natural resources	degree of satisfaction with on-going collaboration and assessment of overall collaborative experience
11. Development and Installation of a Local Government Capability Classification Scheme	DILG CLRG BLGD	1999	To determine the LCU capability building areas or targets	Indicators on service areas: social services, economic services, infrastructure facilities, government management
12. Developing Indicators of Good Governance for Local Government (DIGLGL)	United Nations Development Programme (UNDP) PIDS National Economic Development Authority (NEDA)	1999	To develop measurable indicators of good governance at the local government level, to evaluate their local applicability and acceptability and to assess their usefulness for monitoring and evaluation sustainable human development	Indicators on optimized resource support for human priority concern, enhanced effectiveness in service delivery, support systems and accountability measures
13. Developing Indicators of Local Governance in the Philippines: Towards an ISO for LGUs	Asian Development Bank (ADB) Dr. Alex Brillantes, UNDP	2001	To develop appropriate measures an indicators of good governance that would serve as some kind of an ISO	Measures performance on transparency, participation, accountability, leadership, general organization and

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
				degree of satisfaction with on-going collaboration and assessment of overall collaborative experience
14. Community based Forest Resource Management	Asian Development Bank DENR LGUs		To enhance management of renewable natural resources	
15. Development and Installation of a Local Government Capability Classification Scheme	DILG CLRG BLCD	1999	To determine the LGU capability building areas or targets	Indicators on service areas: social services, economic services, infrastructure facilities, government management
16. Developing Indicators of Good Governance for Local Government (DIGGLG)	United Nations Development Programme (UNDP) PIDS National Economic Development Authority (NEDA)	1999	To develop measurable indicators of good governance at the local government level, to evaluate their local applicability and acceptability and to assess their usefulness and to monitor and evaluation sustainable human development	Indicators on optimized resource support for human priority concern, enhanced effectiveness in service delivery, support systems and accountability measures
17. Developing Indicators of Local Governance in the Philippines: Towards an ISO for LGUs	Asian Development Bank (ADB) Dr. Alex Brillantes, UNDP	2001	To develop appropriate measures an indicators of good governance that would serve as some kind of an ISO	Measures performance on transparency, participation, accountability, leadership, general organization and

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
				discipline, administrative effectiveness, service delivery and social programs, economic development and poverty reduction, sustainable environment, land use, peace and order
18. Gawad Galing Pook Program	Ford Foundation (FF) DILG-LGA AIM-CDM	1993	Identify best practices in local service delivery and other innovation in local governance	Criteria on effectiveness, socio-economic and environmental impact, effect on people empowerment, replicability and sustainability
19. Good Governance Index: A Measure of Good Governance and Local Development (GGI)	Ford Foundation (FF) UP-Philippine Center for Policy Studies (UP-PCPS)			
20. Governance for Local Development (GOFORDEV)	Ford Foundation PCPS LGUs	2002	To institutionalize a simple, understandable and useful set of indicators to assess local government performance	Indicators on Development Needs, Development Orientation Index, and Participatory Development Index
21. Governance and Local Democracy (GOLD) Project	USAID NGAs LGUs, Leagues of LGUs Civil Society	2001	To demonstrate that local communities can accelerate the development process and improve government	Indicators of participatory governance

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
22. Improved Coastal Resources Management (ICRM)	USAID	1995	To develop a diverse set of activities designed to bring about effective management of coastal resources at both the national and local levels	Indicators on resource management organizations formed and active, annual LGU budget for CRM
23. Improved Forest Resource Management (IFRM)	USAID LGUs		To address key jurisdictions issues on forest resources management	Indicators on hectareage of forest where improved management of coastal resources is implemented, forest cover indicators
24. Improved Municipal Coastal Environment Management (IMCEM)	USAID		To enhance management of renewable natural resources	EMS/CP implemented in target sites and industries, enhanced community protection, institutional capacity
25. Integrated Family Planning and Maternal Health Program (IFMHP)	USAID DOH LGUs			
26. Integrated Rural Accessibility Planning Phase III (IRAP III)	The Royal Government of Netherlands International Labor Organization (ILO)	2002	To refine and improve the IRAP process to increase its responsiveness and	Indicators on access to potable drinking water, access to fuel & wood and access to food crops

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
27. KALAHI-CIDSS Institutional Mapping Tool	World Bank DSWD Ateneo School of Government	2002	appropriateness to local conditions. Introduce and practice IRAP as a sound basis for regional and national development and investment plans and develop pilot-test poverty reduction monitoring and evaluation tools.	Indicators of formal and informal institutions and actors structural framework, leadership patterns and institutional competencies
28. LGSP Logical Framework Analysis/Performance Information System	Canadian International Development Agency Local Government Support program (LGSP)	2001 / 2002	To assist the implementors in identifying institutions that facilitate and hinder community involvement in decision making processes To define expected program results, describe LGU strategies, competencies and systems for effective local governance	Logframe indicators to measure program results, process indicators to measure capacity and performance of LGUs in Local Government management, Service Delivery, Resource Generation and Participatory Governance
29. LGU Internal Credit Screening and Rating System (LGUCRS)	USAID DBP BAP FINEX LGU Guarantee Corporation (LGUGC)		To provide creditworthiness profile of LGUs intending to obtain financing for their revenue-generating projects, capacity of LGUs to pay	Financial condition, operating performance, management factors

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
30. LGU Organizational Competency Assessment	UNDP-DILG-LGA Ateneo School of Government	2004	Promote continuous capability development through the identification of organizational competencies and development areas	Organizational competency indicators on financial accountability, local legislation, development planning, revenue generation, resource allocation, human resource, services
31. Local Development Indicators: A Prioritized Listing And Procedure For Compiling Local Statistics	Statistical Research and Training Center UP Statistical Center for Research Foundation (UPSCRF)	1995	To develop a local statistical information system for development planning, monitoring and evaluation; and to identify the data gaps	Indicators on physical, social and economic development indicators and local fiscal performance measures
32. Local development Watch (DevWatch)	UNDP DILG		To develop a system for monitoring and evaluation both the state and trend of local development for purposes of incorporating sustainable development in policy-making and planning, and to give the DILG-BLGS and LGL's indicator data base	Indicators assessing and measuring social, economic and environment dimensions of development
33. Local Fiscal Performance Monitoring System	World Bank DOF-BLGF	2000	To evaluate LGU Fiscal Performance	14 Indicators on Local Finance
34. Local Policy and Institutional Development Indicators (LDIP) Barangay Child Friendly	United Nations Children's Fund (UNICEF)			

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
35. Local Productivity and Performance Measurement System (LPPMS)	UNDP DILG	2000	To develop efficiency measures for an improved delivery of basic services at the LGU level	Input, Output, Process and Outcome Indicators of Local Government Performance
36. Local Governance Performance Measurement System (LGPMS)	DILG	2003	To develop self assessment tool for LGUs with feedback from clients	Input, Output, Process and Outcome Indicators of Local Government Performance
37. Minimum Basic Needs Approach	DSWD NSO/NEDA	1999	To measure unmet needs	Indicators of survival, security and enabling needs
38. Participatory Strategic Organizational Assessment (PSOA)	USAID GOLD Project Sites	2000	To assess the systems, structures, and practices that impact on the LGU performance in the delivery of services and to harness the participation of their peers in government and private sectors assessment of LGUs	Indicators of service efficiency and speed of service
39. Political Mapping Tool	Ateneo School of Government	2001	To measure the stakeholders' interests, positions, contributions in selected issues, projects or interventions.	Indicators of influence, intervention, support or hindrance to selected issue, project or intervention.
40. Promoting a Report Card Survey of Urban and Municipal Services (RCS)	Asian Development Bank DAP		To measure the average level of satisfaction of the local	Governance rating system (Citizen's satisfaction survey)

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
41. Provincial Strategic Development Program	PCJC-HRD PHILDHRA	1997	To integrate and rationalize the various program components and structures of the network towards development	
42. Regional Project Monitoring and Evaluation System	NEDA		To facilitate project implementation, devolve project facilitation, problem solving monitoring and evaluation to the regional, provincial and municipal levels	
43. Strengthening and Enhancing Research and Action on Trafficking of Women: Focus on Health Consequences (SERATW)	United Nations Population Fund (UNFPA) Coalition Against Trafficking of Women-Asia Pacific National Commission on the Role of Filipino Women (NCRFW)			
44. United Nations Population Fund (2000-04) Advocacy Sub-Programme (UNFPA-ASP)	UNFPA LGUs DOH			

Project Title	Donor/Funder/Proponent	Year/s of Implementation	Objectives	Types of Indicators
45. UNFPA Projects and Programmes (2000-2004) Population and Development Strategies Sub-Programme (UNFPA-PPDSS)	UNFPA Commission on Population (POPCOM)		To determine the individual competencies of key local government officials	
46. UNFPA- Reproductive Health Sub-Programme (UNFPA-RHSP)	UNFPA LGUs DOH NEDA POPCOM NGOs			
47. World Governance Report	UNDP/ United Nations University			
48. Urban Cities Individual Competency Assessment	LGA Bridges	2003		Individual competency indicators

Annex B: Local Government Units Obligations as Mandated by the LGC

The delivery of basic services and facilities was devolved to provinces, cities, municipalities and barangays so that each LGU shall be responsible for a minimum set of services and facilities. The basic services and facilities devolved to them covered the following:

Barangay

- a) agricultural support services through a distribution system for agriculture and fishery inputs and the operation of agricultural and fishery produce collection and buying station
- b) health and social welfare services, through maintenance of barangay health and daycare centers
- c) Services and facilities related to general hygiene and sanitation, beautification, and solid waste collection;
- d) Administration and maintenance of the *Katarungang Pambarangay*
- e) Maintenance of barangay roads and bridges and water supply systems
- f) Infrastructure facilities such as multipurpose hall, multi-purpose pavements, plaza, sports center, and other similar facilities
- g) Information and reading center
- h) Satellite public market, where viable

Municipality

- a) Agriculture and fishery extension and on-site research through:
 - 1) dispersal of livelihood and poultry, fingerlings, and other seeding materials for agriculture;
 - 2) establishment and maintenance of seed farms for *palay*, corn and vegetables; medicinal plant gardens, seedling nurseries for fruit trees, coconuts and other trees or crops; and demonstration farms

- 3) enforcement of standards for quality control of copra and improvement and development of local distribution channels, preferable through cooperatives
 - 4) maintenance and operation of inter-barangay irrigation system
 - 5) implementation of fishery laws in municipal waters, including conservation of mangroves
- b) In accordance with national polices and subject to supervision, control and review of DENR, implementation of community-based forestry projects through:
 - 1) integrated social forestry programs and similar projects
 - 2) management and control of communal forests with an area not exceeding 50 kilometers, and
 - 3) establishment of tree parks, greenbelts and similar forest development projects
 - c) In accordance with the standards and criteria of the DOH, the provision of health services through:
 - 1) implementation of programs and projects on primary health care, maternal and child care, and communicable and non-communicable disease control services
 - 2) access to secondary and tertiary health services, and
 - 3) purchase of medicines, medicinal supplies and equipment needed to carry out the devolved health services
 - d) Provision of social welfare services through:
 - 1) programs and projects for the welfare of the youth and children, family and community, women, the elderly, and the disabled;
 - 2) community-based rehabilitation programs for vagrants, beggars, street children, scavengers, juvenile delinquents, and victims of child abuse;
 - 3) livelihood and other pro-poor projects
 - 4) nutrition services
 - 5) family planning services

- e) Provision of information services through investment and job placement information systems, tax and marketing information systems, and maintenance of a public library
- f) Provision of solid waste disposal or environment management systems and services or facilities related to general hygiene and sanitation
- g) Construction and maintenance of infrastructure facilities funded by the municipality to serve the needs of the residents including, but not limited to:
 - 1) municipal roads and bridges;
 - 2) school buildings and other facilities for public elementary and secondary schools
 - 3) clinics, health centers and other health facilities necessary to carry out health services
 - 4) communal irrigation, small water impounding projects and other similar projects
 - 5) fish ports
 - 6) artesian wells, spring development, rainwater collectors and water supply systems
 - 7) seawalls, dikes, drainage and sewerage and flood control
 - 8) traffic signals and road signs; and,
 - 9) other similar facilities
- h) Construction, maintenance and operation of municipal public markets, slaughterhouses and other economic enterprises
- i) Construction, maintenance and operation of municipal cemeteries
- j) Construction, maintenance and operation of tourism facilities and other tourist attractions, including acquisition of equipment, regulation and supervision of business concessions and security services for such facilities; and
- k) Provision of sites for police and fire stations and substations and municipal jail.

Province:

- a) Agricultural extension and on-site research services and facilities through:
 - 1) prevention and control of plant and animal pests and diseases
 - 2) establishment and maintenance of dairy farms, livestock markets animal breeding stations and artificial insemination centers
 - 3) assistance in the organization of farmers and fishermen's cooperatives and other collective organizations; and,
 - 4) transfer of appropriate technology
- b) Industrial research and development services, as well as transfer of appropriate technology
- c) Pursuant to national policies and subject to supervision, control, and review of DENR, enforcement of forestry laws limited to community-based forestry projects, pollution control law, small scale mining law, and other laws on the protection of environment and mini-hydro electric projects for local purposes
- d) Subject to the provisions of rule XXIII on local health boards, health services which include hospitals and other tertiary health services
- e) Social welfare services which include programs and projects on rebel returnees and evacuees, relief operations, and population development services
- f) Construction and maintenance of provincial buildings, provincial jails freedom parks and public assembly areas, and other facilities
- g) Construction and maintenance of infrastructure facilities funded by the province to serve the needs of the residents including but not limited to:
 - 1) provincial roads and bridges
 - 2) inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems
 - 3) reclamation projects and
 - 4) other similar facilities

- h) Planning and implementation of the programs and projects for low cost housing and other mass dwellings except those funded by the SSS, GSIS, and the HDMF. National funds for these programs and projects shall be equitably allocated to the regions in proportion to the ratio of the homeless population;
- i) Provision of investment support services, including access to credit financing
- j) Upgrading and modernization of tax information and collection services through the use of computer hardware and software and other means
- k) Provision for inter-municipal telecommunications services, subject to national policy guidelines and standards; and,
- l) Planning and implementation of tourism development and promotion programs

City

All services and facilities provided by the municipality and the province and, in addition thereto, the following: adequate communication and transportation facilities support services and facilities for education, police and fire protection

Source: *Local government Code of the Philippines*

References

- BLGS-DILG-CLRG-NCPAG. 2003. *The State of Philippine Cities: A Self-Assessment of Cities*.
- Collins, Tara, Senator Landon Pearson, and Caroline Delany. 1999. "A Rights-Based Approach to Development." www.un.or.th/ohchr/issues/rba/Pdf/backgroundrba.pdf.
- Manasan, Rosario G., Romualdo Gaffud, and Eduardo T. Gonzalez. 1999. *Indicators of good Governance: Developing an Index of Governance Quality at the LGU Level*. PIDS.
- Philippine Business for Social Progress. 2001. *Inventory of Indicators*.
- Robinson, Mary. 1999. "Introduction." In *A Human Rights Conceptual Framework for UNICEF* by Marta Santos Pais Florence. UNICEF.
- United Nations Development Programme. 1997. *Governance for Sustainable Development*.
- . 2000. "Using Indicators for Human Rights Accountability." In *UNDP Report*.
- 1995 Local Government Code of the Philippines

VII. A Review of the Justice Sector Using the Rights-Based Approach

Grace R. Gatarin and Ophelia P. Tongco

Introduction

Human rights are fundamental, inalienable and universal entitlements of all human beings, regardless of race, culture or class governing all aspects and spheres of life. The highest standards of governance derive from and only gain meaning with the unconditional and absolute recognition of, respect for, protection, and fulfillment of human rights. Consequently the primary concern is to valorize this ultimate prerequisite by placing it at the center of the country's development programs particularly on behalf of the economically and socially disadvantaged sectors in the country.

While there have been several studies of the justice system, this DAP study attempted to review the Philippine justice sector from the rights perspective as a component of the State of Governance Review Project under the auspices of and with financial assistance from the United Nations Development Programme (UNDP).

Using the rights-based approach (RBA) lens, the justice sector governance review aimed to: 1) identify dysfunctions and problems in the justice system directly affecting individuals, public and private sector institutions, civil society organizations, and the community at large; 2) analyze the mechanisms

and processes through which reforms have been implemented; and describe the successes and failures of the sector's reform efforts; 3) review existing indicators in evaluating performance of the justice sector and determine whether they are rights-based or not; and 4) explore potential interventions to sustain and build support for justice sector reforms.

The Project was implemented in two phases. The initial phase consisted mainly of a study and review of various assessment reports, surveys and baseline studies on the Philippine justice system which began with the identification of major issues with respect to reported violations of rights. Duty bearers and claim holders of the five pillars of the justice system—law enforcement, prosecution, judicial, correction, and the community—were identified. The capacity of claim holders to assert their rights and of duty bearers to meet their obligations were also assessed. Existing performance indicators were also analyzed to check whether they capture the essence of RBA or not. For the second phase, a workshop with stakeholders of the criminal justice system was held to validate the key findings of the initial phase and solicit recommendations from participants based on the RBA principles.

The Rights-Based Approach to Development

Regardless of culture, religion, and tradition, human beings have innate entitlements in the form of their human rights. This is highlighted in the Declaration on the Right to Development, which places the individual at the center of the development exercise.

The reality is, however, that there are inherent power imbalances in societies that prevent the actual enjoyment and fulfillment of human rights, particularly of the marginalized / vulnerable sectors. This constrains public access to critical government services such as fair, inexpensive, and speedy justice. Hence, the absence or lack of access to justice services by the people poses a serious threat to the ability of all citizens to equally lay claim to their rights to seek judicial redress. At the aggregate level, this situation can pose a huge risk to peace and order and national security.

The rights-based approach is guided by the basic principles of universality, nondiscrimination and equality, indivisibility, interdependence and interrelatedness, accountability, attention to vulnerable sectors, equity, people's participation, independence of the judiciary, legislative capacity and the rule of law, transparency, and empowerment (UNDP 2002). In the case of the justice system, such principles as independence, access, speed, quality and impartiality and integrity need to be additionally observed by the different justice sector institutions for the sector to function optimally. In assessing how well the state performs its rights-related functions the application of these principles is evaluated. The justice sector is the state's mechanism for protecting human rights, and providing judicial remedies for those whose rights are violated.

Human rights include the following:

- The right to life
- The right to equality and non-discrimination
- Political rights and freedoms
- The right to participation in government
- Freedom of opinion and expression
- The right to movement and residence
- The right to peaceful assembly and association
- The right to social security
- The right to work
- The right to health
- The right to food
- The right to housing
- The right to education
- The right to reparation

These universally accepted rights are enshrined in various international treaties, protocols, and standards which have been either adopted, ratified and/or enacted in many states, including the Philippines. Among these international agreements and conventions are:

- Universal Declaration on Human Rights which contains the various civil and political as well as economic and social rights (e.g., rights to life, free speech, freedom of religion and freedom to take part in government) to be upheld
- International Covenant on Civil and Political Rights such as the Optional Protocol to the International Covenant on Civil and Political Rights, and the Second Optional Protocol to the International Covenant on Civil and Political Rights (for the abolition of the death penalty)
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Economic, Social, and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of the Child
- Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Prevention of Genocide
- Declaration on the Right to Development
- Rio Declaration on Environment and Development

These treaties, protocols and standards serve as frameworks for national laws and policies on human rights. The 1987 Constitution is tangible proof of how the Philippines denounced the massive human rights violations during the Marcos regime specifically, through the Bill of Rights (Article III) which identifies fundamental civil and political rights and freedoms upon which all national and local laws are based.

Other laws that enable the justice sector to execute its mandate are as follows:

- Republic Act (RA) 6975 creating the People's Law Enforcement Boards (PLEBs) nationwide. PLEBs enable local governments and the community to participate meaningfully and substantially in governing the police. PLEBs are empowered to hear and decide on citizen's complaints filed against erring police personnel.
- RA 6981 establishing the structure, policies, and management systems and provides for funds for the Witness Protection, Security and Benefit Program (WPSBP). The WPSBP, administered by the Department of Justice (DOJ), has been a very effective tool for ensuring criminal prosecution.
- RA 7309 creating the Board of Claims (BOC) under the DOJ. The BOC provides and implements policies and mechanisms for compensating victims of unjust detention, imprisonment, and violent crimes.
- RA 7438 defining certain rights and measures to protect the interests and welfare of persons who are arrested, detained or under custodial investigation. It also clarifies the duties of and sets procedures and guidelines for arresting, detaining and investigating officers as well as assisting legal counsels.
- RA 7610 providing for strong deterrence and special protection against child abuse, exploitation and discrimination. It defines and provides controls on prostitution and other forms of sexual abuse, trafficking, obscene publications and indecent shows, neglect, abuse, cruelty, exploitation, and other issues prejudicial to the welfare of children. It also sets guidelines and procedures safeguarding the rights of working from indigenous cultural communities or in situations of armed conflict.
- RA 8505 enacting measures and setting aside funds to assist and protect women rape victims. It provides for the creation of local rape crisis centers and special measures to guide police, welfare and medical officers, prosecutors, court officials, and other concerned parties in dealing with these cases.
- RA 8493 or the Speedy Trial Act of 1998.

There are also a number of policies and advisories issued by the Commission on Human Rights to underscore the state's obligations to respect, protect, and fulfill the rights of Filipinos.

To realize and fulfill human rights effectively, various stakeholders must perform their roles and functions. In the RBA parlance, these involve duty bearers and claim holders.

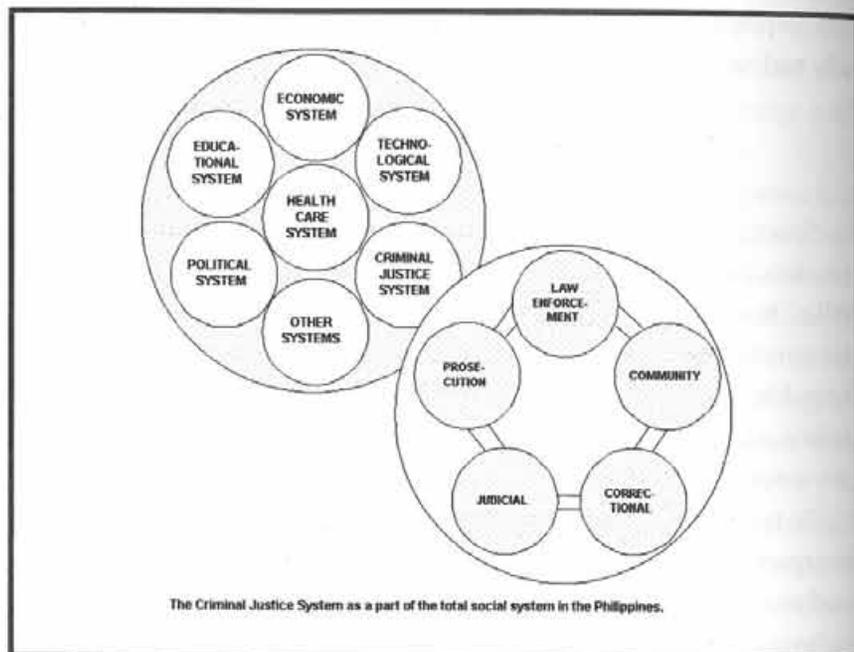
Duty bearers are individuals or institutions, (usually) representing the state which in turn is legally bound to respect, protect and fulfill human rights (UNDP 2002). This obligation arises from the fact that the state has the power and machinery to either protect or threaten the human rights of people. However, this task also extends to non-state actors obliged to provide assistance necessary to uphold human rights. *Claim holders*, on the other hand, are individuals or sectors whose rights are being affected or violated (UNDP 2002). This does not mean, however, that claim holders are not obligated to defend their rights vis-à-vis that of others. They, too, have their own responsibilities to live up to and roles to play if their rights are to be fully realized.

The Philippine Criminal Justice System

Society generally puts value to peace and order because it is essential to economic development and sustainable development in the long run (NEDA 2001). Thus, the state is bent on providing services enhancing public safety and national security because markets are not keen on providing them to the public adequately nor on making sure that these services are of good quality. Also the state has the duty to ensure that the rule of law prevails to guarantee peace and order.

To realize this, the state must be able to curb criminal activities and insurgency through its institutions. But to solve these societal problems head on requires winning the war against poverty and preventing societal exclusions (NEDA 2001). Critical also in the maintenance of peace and order is strengthening the pillars constituting the Philippine Criminal Justice System. The Criminal Justice System (CJS) is one of the important

and complex systems operating in our society. It is defined as “the system or process in the community by which crimes are investigated, and the persons suspected thereof are taken into custody, prosecuted in court and punished if found guilty, provision being made for their correction and rehabilitation” (Supreme Court 2003). The Philippine CJS is composed of five pillars, namely law enforcement, prosecution, judicial, correction, and the community. While that of the United States after which the Philippine CJS was patterned has only the first four pillars, the Philippines added a fifth, the community which it considers an informal, yet vital component of the CJS. The community is supposed to instill conformity to the law from its members, including ex-convicts who go back to their communities after serving their prison terms. The community pillar also includes other government agencies providing assistance to the CJS.



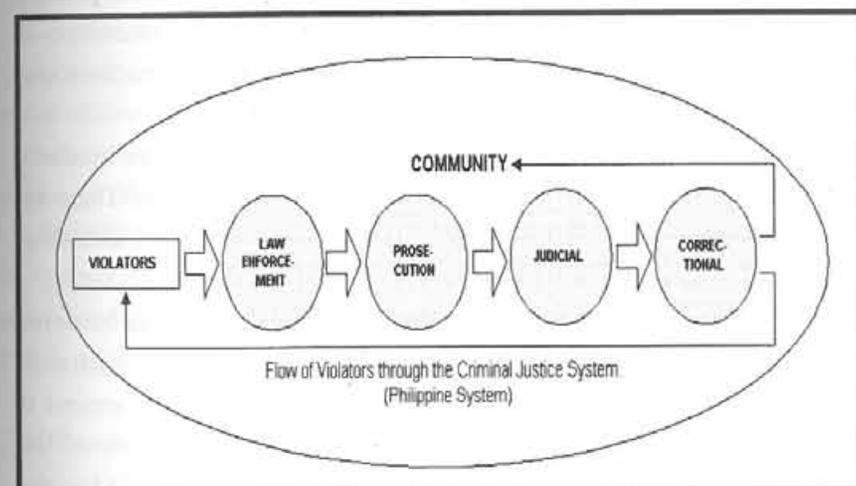
Source: Supreme Court

Figure 1. The Criminal Justice System

Figure 1 shows the systems that ensure the smooth functioning of a society’s affairs. The CJS is vital to maintaining peace and order, which in turn is a fundamental requirement for development.

The governing philosophy within the justice system is that under the law, the right of the person, accuser or accused, should be respected equally. The same applies to anyone who seeks justice. Justice administration in general rests on the principles of access; speed, quality and impartiality; independence; and integrity (Supreme Court/UNDP/DOJ 2004).

Under the Philippine justice system, the five pillars take turns doing their work in a tightly coordinated fashion. Figure 2 presents the sequence through which a person goes when accused of committing a crime, each step corresponding to a pillar in the CJS—from investigation and apprehension (law enforcement), to prosecution, to trial and conviction (judicial), and finally to punishment and correction. The fifth pillar comes into the picture after the person is released either through an expired sentence, probation, or parole, when the ex-convict returns to the community (Supreme Court 2003).



Source: Supreme Court

Figure 2. The Pillars of the Criminal Justice System

Collectively, the five pillars of the CJS are important mechanisms for crime prevention and control. As a system, its effectiveness depends largely on how each of its components function. Failure of any of the pillars to do its job in a speedy and fair manner will undermine the credibility of the entire CJS.

For a better understanding of how the different pillars of the CJS work and their interrelatedness, a brief description of each component follows.

The Law Enforcement Pillar

The law enforcement pillar is primarily involved with the investigation of a crime, collection of evidence, arrest of suspects, and referral of the case to the Office of the Public Prosecutor or to the lower courts, either for preliminary crime investigation and/or eventual filing of the case and adjudication (Supreme Court 2003). Since it has the largest membership, law enforcement is the most visible pillar.

In brief, crime investigation is essentially the gathering of evidence for the use of the prosecution. It includes surveillance, interviews, photographing, entrapment when feasible, search of premises and persons subject to constitutional and statutory safeguards, and examination of public and other available records pertaining to the persons involved (Supreme Court 2003).

By virtue of a warrant of arrest issued by a judge based on the evidence submitted by the police officers, the arrest of suspect(s) follows. There are also circumstances justifying a warrantless arrest as stipulated in Section 5, Rule 113 of the Rules of Court.

Law enforcement is jointly performed by the Philippine National Police (PNP) and the National Bureau of Investigation (NBI), with each agency performing a distinct set of functions. Law enforcement is dominated by the PNP, which falls under the jurisdiction of the Department of the Interior and Local Government (DILG). It has the largest number of personnel and performs the most important and widest scope of law enforcement functions.

The PNP's basic law enforcement powers and functions consist of enforcement of laws and ordinances; maintenance of peace and order to ensure public safety and internal security; investigation, prevention, and control of crimes; effecting the arrest and filing of charges against offenders; conduct of lawful searches, seizures, and investigations; detaining and assuming custody of offenders; and assisting in prosecution of criminal offenders.

On the other hand, the NBI, an attached agency of the Department of Justice (DOJ), is an investigative body tasked to provide public service through effective and efficient crime investigation (NBI 2001). Republic Act 157 provides the legal infrastructure for the NBI to investigate crimes and other offenses against Philippine laws; assist when officially requested in the investigation or detection of crimes and other offenses; act as a national clearing house of criminal records and other information of use to all prosecuting and law enforcement entities in the Philippines; give technical assistance to all prosecuting and law enforcement offices and agencies of the government and courts; extend its services in the investigation of cases, administrative or civil in which the government is interested; establish and maintain an up-to-date scientific crime laboratory and conduct researches to further scientific knowledge and criminal investigation; coordinate with other national and local agencies to maintain peace and order; and undertake the instruction and training of a representative number of city and municipal peace officers at the request of their respective units on methods of crime investigation and detection in order to ensure greater efficiency in the discharge of their duties.

The NBI is obligated to provide quality investigative and support services by specializing in scientific criminal investigations and in dealing with specialized forms of crime (e.g., transnational crime, narcotics, fraud, graft and corruption, smuggling and arson).

The Prosecution Pillar

The major functions of the prosecution pillar is the evaluation of cases or complaints referred to it by the police, NBI or by private persons, and the

subsequent filing and prosecution of the appropriate complaint in the lower courts in the name of the People of the Philippines (UNDP/Supreme Court 2003).

Prosecution constitutes the procedures and applicable standards for the review and assessment of charges filed, evidence obtained, and circumstances established during the initial investigation of cases by law enforcement agencies. This assessment (called the preliminary investigation) is an important substantive right of accused persons and is a basic element of due process. It generates results that establish the probability of guilt of criminal offenders and law violators, a determination necessary for further legal action.

The major institutions serving as duty bearers in the prosecution pillar are the National Prosecution Service (NPS) and the Office of the Ombudsman.

The NPS is the prosecution arm of the state under the supervision and control of the DOJ. The NPS-DOJ maintains a nationwide organization of state, regional, provincial, city, and municipal prosecutors tasked to undertake the investigation and prosecution of cases involving violations of the Revised Penal Code and special penal laws. It also resolves appeals from petitions for review of the final resolutions of state and provincial/city prosecutors in all preliminary investigations they conducted; renders opinion on queries from prosecutors regarding violations of the Revised Penal Code and special laws; and provides the court with information on the basis of which probation is either granted or denied (DOJ 2002; UNDP/Supreme Court 2003). Sharing these functions under certain conditions are judges serving in the Municipal Trial Courts, Municipal Circuit Trial Courts and Regional Trial Courts.

Meanwhile, the twin functions of the OMB are the investigation of violations of provisions of the anti-graft and corrupt practices laws committed by public officials and employees and prosecution before the *Sandiganbayan*.

The Judicial Pillar

The task of determining whether a suspect accused of a crime is innocent or guilty falls within the domain of the Judiciary where the proper trial

court decides the innocence or guilt of the accused. A defendant must be present to plead to the charge, except in certain minor cases where a lawyer can appear for him or her. If a defendant has no lawyer, the court needs to provide one. All cases areailable except when strong evidence of guilt exists or in the case of certain offenses specifically declared by law as non-ailable, like rape and murder. If the suspect is innocent, he or she is acquitted and therefore can return as a free person to society. Otherwise, the court sentences the accused to serve the corresponding penalty. Thereafter, either party may appeal.

The main duty bearers in the judicial pillar are the courts. Judicial power as stipulated in the 1987 Constitution is vested in one Supreme Court and in such lower courts as may be established by law. In the course of administering justice, there are four levels involved: (APJR 2001)

First Level	:	Metropolitan Trial Courts (MetroTCs) Municipal Trial Courts in Cities (MTCCs) Municipal Trial Courts (MTCs) Municipal Circuit Trial Courts (MCTCs) Shari'a Circuit Courts
Second Level	:	Regional Trial Courts (RTCs) Shari'a District Courts
Third Level	:	Court of Appeals
Fourth Level	:	Supreme Court

Aside from these courts, there are the so-called special courts—the *Sandiganbayan* that hears cases involving graft and corruption charges against public officials and the Court of Tax Appeals that hears those involving violations of tax, tariff, and customs laws (APJR 2001).

The Correction Pillar

If adjudged guilty by the judicial pillar, the convict may be isolated from the community by imprisonment for the period decided upon by the courts.

Depending on the gravity of the offense, the penalty can be extremely harsh, such as execution by the method prescribed by law.

There are two major agencies involved in correction depending on the number of years a convict has to serve, namely, the Bureau of Corrections (BuCor) under the DOJ and the Bureau of Jail Management and Penology, an attached agency of the DILG.

The BuCor's mandate is to carry out the institutional rehabilitation and safekeeping of national prisoners serving a minimum of three years (BuCor 2001). In addition, the Bureau is expected to provide humane treatment to prisoners by supplying their basic needs and to engage in agro-industrial projects intended to develop and employ the manpower skills of inmates and to provide them with a source of income.

To date there are seven prison facilities nationwide under the supervision of BuCor: the New Bilibid Prison located in Muntinlupa City which houses the most number of inmates, the Correctional Institution for Women in Mandaluyong City, the Iwahig Prison and Penal Farm in Palawan, the Davao Prison and Penal Farm, the San Ramon Prison and Penal Farm in Zamboanga City, the Sablayan Prison and Penal Farm in Occidental Mindoro, and the Leyte Regional Prison (BuCor 2002).

The BJMP, on the other hand, is tasked to direct, supervise and control the administration and operation of all district, city, and municipal jails nationwide for inmates serving a maximum penalty of three years (BJMP 2003). In 2002 there were around 1,233 jails in the country falling within its jurisdiction (BJMP 2002).

Aside from the institutions directly involved in the management of correction facilities, there are other duty bearers in the correction pillar that perform adjunct functions. The Parole and Probation Administration (PPA) is an attached agency of the DOJ tasked to provide a less costly alternative to imprisonment for offenders who are likely to respond well to community-based treatment programs. Specifically, the PPA conducts pre-parole investigation of all sentenced prisoners confined in prisons and jails within their jurisdiction to determine eligibility for either parole or any form of

executive clemency and to discuss with their plans after release. Parole and probation officers submit their assessment of convicts to the Board of Pardons and Parole (BPP).

In turn, the BPP grants parole to qualified prisoners; recommends the grant of commutation of sentence, conditional pardon, and absolute pardon to offenders to the President of the Philippines; and assists in the rehabilitation of parolees and pardonees. The PPA is the BPP's primary source of information in making its evaluation.

In addition, a more generalized government institution, the Department of Social Welfare and Development (DSWD), assists the correction pillar through its nationwide operation and maintenance of rehabilitation centers for youth offenders 18 years of age and under. It also offers special social services for youth offenders designed to provide interventions and opportunities for productive activities for youth offenders with suspended sentence and to assist them and their families (DSWD 2002). This is meant to rehabilitate and reintegrate them into the mainstream of society and to facilitate their access to developmental opportunities.

The Community Pillar

Convicts go back to the community after they have served their sentence or have been granted parole or pardon. Here they can then opt to lead normal lives and be law-abiding citizens or commit another offense and pass through the CJS mill again.

The community pillar may be understood in a variety of ways. Broadly defined, this component is composed of people around whom the justice system revolves (APJR 2001). Through the major institutions, public or otherwise, such as educational institutions, the family (parents and guardians), the church and religious organizations, and civic associations among others, the community creates the environment in which its members learn the acceptable value systems even as it also demands their conformity in order to enforce the rule of law (Supreme

Court 2003). Other community members with duty bearer roles are the witnesses who are expected to cooperate with law enforcement and investigation officers and attorneys who provide legal aid to the poor.

According to the Supreme Court, the community as a CJS pillar is not limited only to private institutions and civil society organizations such as those composed of lawyers in private practice who take part directly or indirectly in the CJS processes but also includes the Bureau of Posts which is responsible for the delivery of court notices; the Commission of Immigration and Deportation which is tasked to prevent the departure of suspects from the country; the Bureau of Telecommunications which is expected to transmit communications by telephone, telegram, or radio; and the government hospitals and medical centers which provide medical or health-related inputs.

Further, by virtue of the 1991 Local Government Code, the *barangays* are also compelled to be involved in the CJS through the *Lupong Tagapamayapa*, an Alternative Dispute Resolution (ADR) mechanism.

Other Duty Bearers

Finally there are government agencies performing the duty bearer role of providing assistance to all pillars of the CJS. One of them is the Commission on Human Rights (CHR), a constitutional body authorized to bring about and enforce respect for, protection, and promotion of human rights. The Commission investigates all cases of human rights violations, whether attributed to government or nongovernment parties.

The Public Attorney's Office (PAO) under the Department of Justice provides free legal assistance to those who cannot afford the services of a lawyer. PAO provides counsel for suspects or respondents of a case under the law enforcement, prosecution, and judicial pillars. It also provides other lawyers who serve as legal advisers to inmates under the correction pillar and as legal educators and

advocates under the community pillar (Supreme Court/UNDP/DOJ 2004).

Aside from state actors, there are nongovernment organizations (NGOs) extending significant assistance to disadvantaged sectors by providing free legal aid. These include the Integrated Bar of the Philippines (IBP) composed of all practicing lawyers in the country; Alternative Law Groups, private legal organizations with young lawyers and paralegals as members; and other NGOs, such as the Free Legal Assistance Group (FLAG). Church-based organizations and law schools are likewise active in rendering free legal assistance.

Justice Sector Issues and Concerns

The Asian Development Bank echoed the prevailing painful truth in the country that despite constitutional provisions and the presence of a number of national and international policies ensuring the delivery of speedy, inexpensive and fair justice and promoting equal access to justice, the rights of claim holders, especially if they belong to the economically and socially disadvantaged sectors, are constantly threatened or denied. This situation arises and persists because of the presence of politically, socially and economically powerful sectors which make the marginalized vulnerable and susceptible to abuses. Their deprived, oppressed and abused condition progressively undermine their confidence until they develop a sense of "learned helplessness," that is, because they are poor, they have no rights.

Thus, it is no surprise that insurgency prevails in economically depressed areas due to myriad political, economic, and ideological factors. The challenge therefore is to ensure that the rule of law is upheld regardless of the social or economic class of the claim holders. Militating against it, however, is the fact that the justice system itself and its pillars are beset with a variety of perennial problems that need to be addressed by its duty bearers. These issues themselves manifest the wide gap between justice in theory and justice in practice or how the claim holders actually experience judicial redress.

Limited or Lack of Access to Justice by the Poor

Access is multi-dimensional and can refer to convenience, availability, or affordability of services. In a nutshell, convenience is the degree of ease and speed with which a particular service can be availed of; availability is the physical presence and proximity of a service; and affordability is the cost of availing of a service (APJR 2001).

Access to justice refers to people's ability to use public and private justice services. There are a number of ways of determining if a particular person or group of persons has access to justice or not. These include the lack of political interference in court decisions, the absence of foul play, commensurability of punishment to the crime committed, prompt, equitable, and predictable justice and access not only to legal services but also to legal counseling (Supreme Court 2004).

However, access to justice is often impeded by many factors including the improper and careless gathering or preservation of evidence supporting a case, delayed prosecution, limited or lack of legal assistance to poor litigants, and mediocre quality of assistance extended to clients (Supreme Court/UNDP/DOJ 2004). It is also hindered by the lack of information and awareness of poor litigants of their rights or of the services they are entitled to (CPRM 2003). These obstacles glaringly undermine the right pertaining to equality and discrimination, principles which emphasize the importance of equal protection of the law regardless of race, gender, property, birth or other status (UNDP 2002).

Delay and Poor Quality of Justice Administered

This concern is accurately captured by the popular phrase "slow wheels of justice" which contradicts the provision enshrined in the 1987 Constitution on the right to speedy disposition of cases and due process. It is important to reiterate that delay in the dispensation of justice results not only from the failure of one pillar to perform its task but also from problems in coordination among the five components of the CJS.

The quality of justice, on the other hand, is also an issue as reflected by inaccurate or even "erroneous" decisions made by some lower courts. Hence, it is not uncommon for the Supreme Court upon review on appeal, to dismiss a case against a suspect, who had already served penalty meted out by the lower court (APJR 2001), as exemplified by the story of Raymund Narag, who (after being incarcerated for seven years) was declared innocent due to the insufficiency of corroborating evidence against him (World Bank 2003). His story is just one of those of countless inmates who suffered psychological pain and dehumanizing correction conditions due to an "erroneous decision." Poor quality of justice also stems from the inability of duty bearers to preserve evidence or of claim holders to get hold of a good lawyer who can provide quality service (Supreme Court/UNDP/DOJ 2004). The persistence of these problems, compounded by public perception of the pervasiveness of corruption in the system, creates a huge dent in the credibility of the justice system and increasingly erodes people's trust and confidence in the CJS in general.

Based from the diagnostic studies conducted by CPRM (2003), the dysfunctions in the justice system are due to the: 1) lack of support infrastructure, technology, and basic facilities; 2) unattractive compensation and benefits of government officers and employees; 3) inadequate training of law enforcement officers (i.e., in gathering and presenting evidence); and 4) lack of information technology expertise in the CJS institutions.

Pillar-specific Concerns and Reforms

Apart from issues that concern the CJS as a whole system there are other problems that are specific to each pillar, the solutions for which are also applicable only to that pillar. The following section examines both the issues and the reforms initiated within each pillar to address these concerns. It also includes a review of existing indicators to determine whether or not they are rights-based.

Issues in the Law Enforcement Pillar

Many problems plague the law enforcement pillar. This partly derives from the sheer number of PNP personnel which makes them very visible to the public eye. Consequently when some men in uniform abuse their authority or violate the law, they put the image of the entire PNP on the line. Upon consultation with law enforcement agencies, the following emerged as the major clusters of concern dogging the PNP:

1. On discipline

Misconduct or grave abuse by some policemen in the performance of their duties is considered a critical problem in police discipline. This is rooted essentially in the insufficient knowledge of some law enforcers of their responsibilities and of the legal bases of their responsibilities. Lack of professional training also tends to undermine the PNP's role as a law enforcement pillar.

Negligence is another concern arising from a number of interrelated factors operating within the police force. One apparent cause is the tendency of some law enforcers to circumvent the law or to resort to short-cuts, a tendency reinforced somewhat by the existing norm of command responsibility in the police force, and aggravated by the lack of institutionalized internal control or discipline mechanisms. The rules governing work processes in the police force are perceived to be so stiff as to have resulted in the reluctance of some PNP officers and officials to enforce the law. This reluctance was also fostered by such problems as insufficient legal and logistical assistance to policemen charged with some violation or malfeasance in office, lack of budget, fear of harassment and trumped-up cases, lack of community support, and political interference/solicitation.

Moreover, it is sad to note that some law enforcers are morally deficient, a problem resulting mainly from segmentalized recruitment and hiring in the PNP that led to the hiring of police who have not internalized the values expected of them as law enforcers.

2. On law enforcement

Due to the sheer size of the police force, any abuse is easily visible for public scrutiny. A major complaint against the police is its excessive use of force in enforcing laws and ordinances. During the validation workshop conducted in January 2003, the PNP participants observed that problems related to the excessive use of force are mainly due to the weak or lax implementation of the Law Enforcement Manual of Operations (LEMO), which, in turn, results from the lack of supervised practice in implementing the LEMO.

There is also an urgent need to examine the circumstances that give rise to the use of excessive force. The validation workshop participants explained that the so-called "human factor" explains why the police resort to the use of force, which frequently ensues from violence-prone situations such as demolition and mass actions/demonstrations.

3. On arrest and seizures

Other flagrant violations attributed to some law enforcers pertain to unlawful searches and seizures and arbitrary arrest and detention. One often-cited reason for these practices is the pressure on the police to carry out a specific order, accomplish an objective, or beat a deadline set by the higher authorities. All cases especially "sensational" ones have tight deadlines.

Incompetence and lack of education are the most frequently cited reasons for the unabated incidence of these unlawful acts although the tedious application procedures and lack of members of the force are also indicated as causes.

Aside from the PNP, the NBI is also an important law enforcement agency. The major capacity issue that the Bureau needs to address is filling up the significant number of vacant positions for investigation agents and special investigators. The recruitment rate is low because of the difficulty in finding applicants whose qualifications match the standards of the available investigation positions. The unattractive salaries for these positions also constrains the NBI from attracting competent applicants.

This situation is compounded by the lack of appropriate and modern facilities and equipment for the NBI to be able to carry out its investigation duties despite the specialized and technical services the Bureau is expected to perform. Moreover, the costs of the equipment and facilities it needs are prohibitive. Hence the combined effect of the lack of qualified professional investigators and modern facilities weakens the NBI's capability to establish and provide updated, comprehensive, and accurate crime information crucial to preliminary investigation and prosecution of cases in court (Supreme Court/UNDP/DOJ 2004).

Reforms Initiated in the Law Enforcement Pillar

To address the issues in the law enforcement pillar the following reforms have been initiated. The PNP developed the Organizational Reform, Neighborhood Partnerships and Education and Training program (ONE) as a springboard for its action and peace and order efforts. Incorporated in ONE is the PNP's determination to implement its campaign against ineffective, nonperforming and rascal cops, to punish erring members of the police force and prevent their numbers from growing. For this campaign to take off the PNP needs an efficient performance monitoring system.

A parallel effort designed to boost the motivation of the police to serve and perform was providing welfare services in the form of housing programs and the launching of the Retirement Information System to assist retirees and personnel (PNP 2001).

Another reform was the establishment of the CARE Program which stands for:

- Courtesy – due courtesy to all citizens
- Action – members of the police force have specific responsibilities
- Results – tangible results such as arrest of wanted persons, identification and neutralization of criminal syndicates, and solution of unsolved crimes

Example – police commanders should set examples and should be physically, mentally, and morally fit for their jobs (Access to Justice 2005)

To provide the public better access to their services, especially to the vulnerable sectors, the PNP is also implementing a number of initiatives such as the following:

- Community-Oriented Policing System (COPs) – Popularly known as *COPs on the Block*, this program initiated the setting up of police community precincts and outposts in every locality and barangay (Access to Justice 2004).
- Satellite Police Stations and the Bust Bus – Buses and container vans were converted into mobile police stations and deployed in thickly populated places such as commercial and some residential areas for easier and more accessible police protection and services (Access to Justice 2004).
- Mobile Bike and Foot Patrols – These were also deployed in a number of shopping centers (Access to Justice 2004).
- Women and Children's Complaints Desks – Recognizing that women and children are vulnerable to abuses, the PNP set up women and children's complaint desks in every police station to address their specific concerns. A manual on the investigation of women and children's cases was also launched by the PNP (Access to Justice, 2004).
- Other reforms – Capitalizing on information and communication technology, the PNP and DILG activated Patrol 117 Call Centers for emergency assistance and PNP Text 2920 for crime reporting and relaying of information using cellular phones. A parallel effort was the use of internet-based technologies such as the Crime Information System and e-blotter. Moreover, the Geographic Information System was also set up which contains a comprehensive database on the types of crimes committed, when and where, and other information necessary for the analysis of a crime situation and to make sound decisions.

The PNP also issued various letters of instruction (LOIs) to improve discipline within the police force by penalizing erring policemen, such as the LOI *Patnubay* and the TABA Cops program against Tamad, Abusado, Bastos, at Ayaw Padisiplinang Pulis (TABA).

Recognizing that the community is a major stakeholder in the fight against criminality, the PNP also holds regular dialogues, popularly called *Ugnayan* with various sectors.

Some of the decisive steps the NBI took to support other law enforcement agencies in fulfilling the rights of women and children included the establishment of the Violence Against Women and Children Division (VAWCD), which is tasked to investigate any violations of the laws protecting women and children. A one-stop-shop was also created to assist a child victim in a non-threatening and non-traumatic manner. There are moves to establish this shop in other cities all over the country to ensure wider access to this type of service.

To provide more communication windows to the public, the Bureau also developed a website for people to file complaints online, such as those who have witnessed a crime. It has a separate program for child abuse victims (Supreme Court/UNDP/DOJ 2004).

A major reform initiative is the NBI Modernization Bill which calls for the government to invest in strengthening the NBI's institutional capabilities by substantially increasing its budget and its plantilla. The Bill also aims to clarify any function overlaps between the NBI and the PNP that had oftentimes in the past resulted in conflict and resource wastage.

For good measure, all law enforcement agencies regularly update and coordinate with each other through the National Law Enforcement Coordinating Council.

Issues in the Prosecution Pillar

The prosecution pillar has been saddled foremost with the problem of a large backlog of cases for the past decade. For the National

Prosecution Service (NPS), this is due largely to the sharp increase in the volume of cases for preliminary investigation every year compared with the total number of available prosecutors. Out of the 2,141 available authorized positions for prosecutors, only 1,390 have been filled. These prosecutors are assigned to 1,781 courts nationwide (DOJ 2004). This situation is nowhere near the ideal ratio of two prosecutors per court. With the continuous "migration" of prosecutors to other pillars and to the private sector, coupled with the slow appointment of new prosecutors (usually taking 6 months), it is not surprising that the prosecution pillar confronts the challenges not only of guarding against diluting the quality of prosecution but also of not delaying justice. Clearly the right to speedy disposition of cases is affected particularly in situations where a prosecutor handles a substantial caseload, while the disposition rate remains low.

Case backlog is the result of a multitude of issues confronting the NPS. The manual data aggregation for caseload analysis tends to slow down the prosecution of criminal cases filed in courts of the first or second level (Supreme Court/UNDP/DOJ 2004). The lack of physical space (i.e., most of the prosecutors' offices are located in the Halls of Justice) and equipment likewise impedes the speedy resolution or disposition of cases. At the regional level, the NPS enjoys less autonomy and flexibility in doing its prosecutorial function partly because there are LGUs providing them support, which affects the independence of the prosecution service.

In terms of human resource development, there are several concerns that the NPS needs to address. These include the insufficient salaries of the prosecutors, the lack of orientation and training for new prosecutors, the absence of an institutionalized system for continuing legal education, the absence of clearer performance indicators, and the exodus of the members of the prosecution to the Judiciary.

The OMB, on the other hand, is encountering the same problems as the NPS, particularly the backlog of cases. The prevailing low salaries of prosecutors cannot attract new prosecutors. The OMB is also concerned

about the lack of adequate training programs, insufficient information technology, and database management.

Reforms Initiated in the Prosecution Pillar

Of the reforms initiated in the prosecution pillar, two specifically address the needs of claim holders. These are the Witness Protection, Security and Benefit Program and Victims' Compensation Program (DOJ 2004). A number of Task Forces have also been created to address the specific concerns of vulnerable sectors, especially women and children.

Moreover, having recognized that the internal concerns of the NPS needed immediate attention because they have significant impact on the delivery of justice services, some lawmakers filed several bills in Congress seeking to improve the remuneration of prosecutors in a bid to attract more competent and committed legal practitioners into the prosecution profession. The state appears to have helped the situation by trying to hire more competent and dedicated prosecutors.

A parallel move is also being made by the state to improve the physical set-up in various *salas* all over the country, that is, to make them more conducive to effective and efficient job performance, particularly of prosecutors. In so doing, the state is fulfilling its obligation to ensure public access to prosecution service.

To address the problem of an unattractive remuneration system for prosecutors, prosecutor attorneys and state counsels the Complementary Prosecutors' Compensation Act was passed. The law primarily provides special allowances to the members of the national prosecution service and the state counsels in the DOJ. This is one way for the state to recognize that through improved benefits, more members of the NPS will stay and assist the public.

Meanwhile the OMB is making a significant headway enabling its prosecutors and field personnel to do their job well. Cognizant of the need to improve its internal systems, it has embarked on a massive overhaul of its records management system.

Issues in the Judicial Pillar

Chief Justice Hilario Davide Jr. once said that public trust and confidence in the justice system had only waned, it was never lost—that people still believe in the Judiciary as the constitutionally mandated institution to settle legal disputes (Panganiban 2002)—a claim, he held, validated by the voluminous number of cases being filed everyday. Several interrelated concerns contributed to the waning of the people's trust and confidence in the Judiciary. According to Justice Artemio Panganiban, three fundamental problems beset the Judiciary, namely, corruption, incompetence, and delay. These, he claimed, resulted in a growing public perception that there are two types of laws—one for the rich and one for the poor (Panganiban 2002).

This perception was supported by the Philippine Human Rights Report (2002), indicating that legal experts within and outside the justice system criticize personal and professional relationships between some judges and individual or corporate litigants. The report claimed that there are lawyers acting as "case fixers" to gain favors from judges and other court officials and allegedly bribing witnesses. Though it is illegal to settle a criminal case out of court, the practice of reaching an amicable settlement in which the prosecution drops the charges has become routine. This settlement has often resulted in wealthy or influential defendants committing crimes with impunity.

Aside from direct bribery, corruption, according to Justice Panganiban (2002), is pervasive due to the presence of "friendship, relationship, and kinship" in public service, hence the abuse of court procedures due to the neglect, active connivance, and self-interest of various court and non-court personnel such as lawyers, judges, and even the litigants.

Panganiban pointed out that incompetence is another thorny problem of the Judiciary and is reflected in the quality of reports prepared by some judges and lawyers. The lack of knowledge of the law, compounded by a poor command of the English language, results in incomprehensible decisions and pleadings (Panganiban 2002). This problem is inextricably

linked with the difficulty of the Judiciary to attract qualified court personnel and lawyers due to its unattractive compensation package.

Delay in the delivery of justice is the most common and frustrating concern plaguing not only the courts but also the suspects awaiting judicial decisions. This despite the constitutional provision on the speedy disposition of cases.

Table 1 summarizes the laws guiding the processing of cases in the courts, namely the 1987 Constitution and the Speedy Trial Act. The latter emphasizes that failure to grant continuance would mean a miscarriage of justice (APJR 2001)

Table 1. Prescribed Time Duration in Case Processing

Legal Basis	Provision	Duration	
		Months	Days
Philippine Constitution	Duration from the time the last pleading is filed by the parties:		
	– Supreme Court	24	
	– Court of Appeals	12	
	– All lower courts	3	
Speedy Trial Act	– Filing of information-arraignment		30
	– Time of arraignment-first day of trial		30
	– First day of trial-termination of trial		180
	– Termination of trial-issuance of decision		90

Source: CPRM 2003; Panganiban 2002

The presence of these laws does not guarantee a speedy litigation however. It must be pointed out that the process of litigation as a process really takes a while time because time is necessary to enable the parties to present fully the basic facts and evidences related to the case at hand; the court to consider the proofs and to render judgment; the party negatively affected by the court decision to seek reversal through appeal; and the appellate tribunal to be informed of the positions and proofs of the parties, to study the case, and to make a decision (Supreme Court 2002).

Delays are intertwined with a multitude of factors. They are often the result of antiquated legal procedures, the continuous increase in the volume of new cases filed every year, the large number of vacant judgeships all over the country, and the abuse or misuse of even the best crafted rules by litigants and lawyers whose primary concern to win their cases (Panganiban 2002).

Table 2 shows the vacancies in the different levels of the court system in 2002. The glaring shortage of justices and judges has been repeatedly cited as a major reason for the delays in judicial administration.

Table 2. Vacancies in the Judiciary

Court	Total Incumbent Judges	Total Number of Vacancies	Total Number of Courts
1	2	3	4 (Col. 2 + Col. 3)
Supreme Court (SC)	15	0	5
Court of Appeals (CA)	41	10	51
Sandiganbayan	10	5	15
Court of Tax Appeals (CTA)	3	0	3
Sub-Total	69	15	84
Regional Trial Court (RTC)	781	169	950
Metropolitan Trial Court (MTC)	67	15	82
Municipal Trial Courts in Cities (MTCCs)	134	47	181
Municipal Trial Court (MTC)	223	168	391
Municipal Circuit Trial Court (MCTC)	208	262	470
Shari'a District Court	0	5	5
Shari'a Circuit Court	20	31	51
Sub-total	1,433	697	2,130
GRAND TOTAL	1,502	712	2,214

Source: Court Management Office, Supreme Court 2002

The table shows that as of December 2002, there was a total of 712 vacancies in the Judiciary out of the 2,214 total number of courts or 32.1% of total available positions. Based on the Supreme Court data for 2000-2002, this figure represents an increase in the number of vacancies which stood at 701 in 2000 or 31.6% of available positions.

This situation, aggravated by the continuous sharp increase in the total case inflow during the past decades had resulted in the substantial increase in the caseload of judges. For instance, in 1985 the total case inflow was pegged at 323,282 cases; 10 years later it ballooned to 523,158 (Sarmiento 2002). By the APJR count(2001), around 4.9 million new cases entered the different court levels from 1989 to 1999.

Table 3. Annual Inflow of Newly Filed Cases in all the Courts

Year	No. of Cases	Increase	Percentage
1999	626,891		
2000	582,638	-44,253	-0.0705912
2001	505,292	-77,346	-0.1327514
2002	509,906	4,614	0.00913135
Total	2,224,727		

Source: Court Management Office, Supreme Court

Between 1999 to 2002, 2.2 million new cases were filed before the different courts in the country, according to Supreme Court data.

Table 4. Average Productivity of Justices and Judges

Year	Incumbent Judges	Cases Disposed	Average Output/Judge
1999	1489	369,322	248.03358
2000	1498	364,864	
2001	1472	349,259	237.268342
2002	1487	358,000	240.753194

Source: Court Management Office, Supreme Court

Table 4 presents a picture of the average output of judges from 1999-2002.

Another factor causing delays in judicial proceedings is the tendency of some lawyers and litigants to ask for postponement of hearings for all kinds of reasons. The case of Raymund Narag who was invited during the signing ceremony of the World Bank-funded Judicial Reform Support Project

to represent the inmates, litigants, and the poor sector, was telling. He said that during his time, the hearings were scheduled once in four months, only to be postponed time and again due to the absence of witnesses or lack of material time (World Bank 2003).

It is crucial to note that such delay directly affects congestion, a "condition of a court burdened with a heavy volume of cases" (CPRM 2003). These twin problems of delay and congestion stem from a number of factors.

First is the court's jurisdictional structure. The court's jurisdiction is classified into the geographical and the functional. Courts with nationwide jurisdiction are the Court of Appeals, the *Sandiganbayan*, and the Supreme Court (APJR 2001). Other courts, on the other hand, have defined geographical jurisdiction which explains the differences among Metropolitan Trial Courts, Municipal Trial Courts in Cities, and Municipal Trial Courts.

With respect to functional jurisdiction, there are two types of courts, those with general jurisdiction (e.g., first and second level courts and RTCs) and those handling special cases, otherwise known as special courts (e.g., the Court of Tax Appeal, the *Sandiganbayan*, and some 275 Regional Trial Courts).

A study conducted by the Supreme Court indicated that this current structure has some significant implications, such as: 1) uneven caseload distribution among judges and courts and even among court levels; 2) stretching the skills requirements of judges because the courts handle cases with varying magnitude and complexity requiring complicated processing procedures; and 3) overwhelming work distribution. Uneven caseload distribution emerged as a concern because courts located in urbanized areas with a higher population concentration have a relatively higher number of cases filed before them (APJR 2001). It is also clear that the complexity of the case and the competence of judges and court personnel are major causes of congestion and delays. The complexity of a case determines the time judges and court personnel need to familiarize themselves with the details of the case. Of course, competency affects both the speed with which a judicial decision is made and its quality (Supreme Court/UNDP/DOJ 2004).

Secondly, the accountability weakness of some justices and judges, characterized by the failure to comply with time, process and quality standards, also comes into play. This deficiency according to the same CPRM study renders the system susceptible to corruption primarily because of the lack of information and monitoring systems on the performance and conduct of judges. Closely related to this are the personal inclinations of judges, court personnel, and lawyers who may fast track or delay the litigation process and who may influence the grant or denial of judicial leniency on continuances (Supreme Court/UNDP/DOJ 2004). The delaying tactics of some lawyers through requests for postponement is also one important cause of delay.

Resource inadequacy is another capacity issue in the Judiciary which explains the shabby and dilapidated courtrooms and other infrastructural deficiencies, not to mention inadequate supplies and equipment. This issue also extends to the incapacity of the courts to hire legal researchers, to access new court orders, and even to pay the transportation expense of the sheriff who deliver summonses or notices (Supreme Court/UNDP/DOJ 2004). This problem boils down to the lack of fiscal autonomy of the Judiciary which runs counter to the constitutional provision. The judicial budget does not reflect the Judiciary's workloads. Its budget shows that a large chunk of its funds (around 80% in 2000) go to Personnel Services, thereby limiting the funds allocated for MOOE and capital outlay (APJR 2001).

The inefficiency of the case management system is another obstacle to the speedy delivery of justice. It was found that even if only 30% of the cases filed went through a full blown trial, they consumed 78% of the judge's time. The trial period is considered the longest phase, approximately 41-93% and 41-95% of the total case processing time in criminal and civil cases, respectively. Judge Maceren put this down to the conduct of "piece-meal trials of cases that go to trial" in the entire country, worsened by either a lax or absent continuance policy (Supreme Court/UNDP/DOJ 2004).

On the part of claim holders, costly litigation especially for the disadvantaged sector is the major issue affecting their capability to fully claim their rights in the judicial sector.

According to law everyone is entitled to due process and free access to the courts and quasi-judicial bodies, and adequate legal assistance shall not be denied to any person by reason of poverty. This is reason for being of the Public Attorney's Office (PAO)—to provide free legal assistance to indigent litigants. But with the sheer volume of cases (totaling 1.1 million judicial cases and 3.7 million mediation cases), PAO is trying its best to be up to the task despite its limited number of lawyers.

It is important to underscore that the litigation costs are not limited only to the financial expenses incurred from the filing of a case until a judicial decision is rendered. The opportunity costs lost translated in terms of the income foregone or prolonged unemployment on the part of the litigant especially in delayed cases need to be counted also (APJR, 2001).

The magnitude of the delays in making judicial decisions is reflected in the increasing number of detained suspects in various city jails in the country. Victims of erroneous judicial decisions who were already convicted also constitute a significant number of claim holders.

Among the most common capacity issues that reinforce the inability of these claim holders to demand speedy resolution of cases at reasonable costs are their lack of information regarding their rights and how the judicial system works, particularly the judicial procedures. They may also prefer not to demand speedy and fair justice administration out of fear. In the final analysis, it is poverty that undermines the enjoyment, protection, and realization of their rights under the judicial system.

Reforms Initiated in the Judicial Pillar

The drive and momentum to address these concerns and capacity gaps in the judicial pillar are already underway through the Action Program for Judicial Reform (APJR) under the auspices of the Supreme Court of the Philippines. In sum, the APJR outlines the major reform areas that the Judiciary and the other pillars need to undertake to realize the goals stipulated in the Davide Watch which are as follows:

- delivery of speedy and fair dispensation of justice to all
- judicial autonomy and independence from political interference
- improved access to judicial and legal services
- improved quality of external inputs to the judicial process
- efficient, effective, and continuous improvement of judicial institutions
- upholding a judiciary that conducts its business with dignity, integrity, accountability, and transparency (APJR 2001)

To realize these goals, the APJR focuses on six major reform components, namely, judicial system and procedures, institutions development, human resource development, integrity infrastructure development, access of the poor to justice and reform support systems.

At the core of the APJR is the desire of the Judiciary to realize its obligations to respect, protect, and fulfill rights of claim holders.

Under the obligation to respect, the entire Judiciary is bent on improving court management systems, streamlining the rules of court, reengineering court jurisdictional structure and exploring alternative dispute resolution all of which aim to stop and prevent courts from delaying the delivery of justice services and manipulating judicial decisions in favor of some sectors. The obligation to protect is enshrined in the APJR reforms that will ensure the access of claim holders to legal remedies regardless of social and economic class, while the obligation to fulfill is manifest in the reforms that aim to remove all obstacles that impede people's access to justice, such as the high cost of litigation, information asymmetry and procedural complexity. It also fulfills its obligation by ensuring the availability of legal assistance to indigents through the PAO.

In the course of implementing the APJR, the Judicial Reform Program Management Office encountered several operational blocks, which bring to doubt the readiness of the entire Judiciary to embark on a comprehensive reform process. Nevertheless, the APJR is making significant strides toward its goals because of a number of facilitating factors, such as the 1) presence of a visionary and committed leader in the person of Chief Justice Hilario

Davide, 2) the expansion of reform partners not only here in the country but also in the international community, 3) research studies serving to identify projects, and 4) the growing openness in the Judiciary (Supreme Court Program Management Office 2003).

Nevertheless, some problems still get in the way of the smooth operationalization of the APJR. They include lack of information on judicial reform; negative work attitudes, values, and ethics; inadequate top-down communication and lack of feedback mechanisms; resource constraints; and lack of specific skills, particularly computer literacy in the Judiciary (Supreme Court Program Management Office 2003).

Addressing the primary problem of lack of competent and dedicated judges due to the unappealing remuneration package requires policy intervention. Hence the Judiciary advocated the passage of RA 9227 or the Judiciary Compensation Act which would grant special allowances to justices and judges amounting to 100% of their basic salary.

Issues in the Correction Pillar

The fourth pillar is also beset by a number of perennial difficulties. The most obvious is prison congestion and poor living conditions in jails.

The current problem of prison congestion derives from a number of factors, among which are the soaring crime rate, the intensified efforts of the law enforcement institutions and the lack of additional correctional facilities to house the increasing jail population. With this situation, the BuCor and BJMP are hard pressed to give all inmates decent accommodations.

Based on the 2003 records of the BuCor, there are 26,504 inmates distributed among seven penal facilities nationwide with an ideal collective capacity of only 20,100 (BuCor 2003). In 2004, the total inmate population was 29,000 prisoners, of them 1,051 were under the death penalty (BuCor 2004).

The BJMP, on the other hand, registered a total of 40,903 inmates housed in 147 districts, 82 city jails, 232 municipal city jails, 2 youth centers and 1 female dorm. It is important to note that out of the total number of inmates,

only 3,738 were sentenced while around 37,165 were detention prisoners (BJMP 2003).

The records also showed that the number of offenders admitted was larger than the number of inmates released (BJMP 2003). This can be partly explained by the decreasing number of inmates granted parole or pardon in the past 10 years or released after serving their time (expired sentences).

With the high congestion rate, it is very difficult to operationalize the correction standards (e.g., 3 sq. m x 3 sq. m sleeping area/inmate) to ensure that prisoners will be treated with humanity and respect. Hence even though the Philippine Constitution stipulates that "...the employment of physical, degrading punishment, or use of substandard or inadequate penal facilities will be dealt with by law," there is a wide disparity between the intent of the law and what actually obtains.

The subhuman and unhealthy living conditions of majority of the prison facilities may be gleaned not only from the lack of sleeping area to accommodate all inmates but also from the fact that respiratory diseases are highly prevalent in large and congested facilities or in those which get flooded during rainy seasons, as happened in Manila City Jail. Some reports also indicated that prison facilities have defective comfort rooms which result in unsanitary conditions, lack of potable water, and inadequate medicines. There are also stories about pregnant women having their babies delivered by fellow inmates due to the lack of proper medical care. The Philippine Human Rights Report also reflected the same problems of overcrowding in provincial jails and prisons, limited sanitary facilities, and inadequate diet.

Not surprisingly, these unflattering and near subhuman conditions can be blamed on the lack of financial resources. The BuCor claims that the daily allocation per inmate for 2003 should have been P35. However, DBM used the 2002 jail population figures in the 2203 budget allocation for BuCor. Consequently, with the increase in inmate population in 2003, BuCor has to revert to the P30 per inmate allocation.

Another major issue is the violation of basic rights within the confines of the penal institutions. The inherent unequal power relationship between

duty bearers (officers/officials) and claim holders (inmates) and even among inmates (e.g., adult and young offenders; *mayores*, and ordinary inmate), creates a fertile ground for harassment and abuse.

Sexual harassment and abuse include a wide spectrum of traumatic experiences often for women inmates, such as rape, attempted rape, groping, lewd jokes, and comments or gestures designed to degrade and humiliate. Based on reports, the usual perpetrators are the jail guards and officers. Women allow themselves to be subjected to this experience, it is said, to avail of the preferential treatment accorded to prisoners who agree to sexual advances, such as better food and protection.

Combining adult and young offenders likewise encourages harassment and abuse. The later commonly become susceptible to abuse from older and physically stronger prisoners and in time become hardened by the experience.

Moreover the *mayores* system or gang-lordships inside the jail also lead to physical and sexual abuse (CHR Report 2002; Amnesty International 2001). Some officers and officials appear to condone these practices.

All of these abuses prevail because of the presence of "undesirables" in uniform and the failure of government to take disciplinary action against their perpetrators. The lack of an effective and systematic monitoring system, especially of provincial prisons in remote areas, appears to open the way for the persistence of these abusive practices. The inadequacy of manpower, as in the case of the BJMP which has only 38.76 % of its ideal manpower requirement, also affects the realization of its mandate to ensure the safety and rehabilitation of inmates while in prison. Again this can be charged to its insufficient budgetary allocation.

Finally, in an atmosphere of violence and abuse in the penal institutions, it is difficult to conceive of incarceration as the first step in the rehabilitation of offenders into becoming law abiding citizens and that jail facilities are therapeutic institutions that would deter future attempts to commit crime.

Jail congestion and the poor conditions of prison cells largely contribute to the failure of the correction pillar to reform offenders. For instance,

combining young and adult offenders exposes the former to abuse and in time they learn the language, behavior, and attitudes of adult prisoners.

Reforms Initiated in the Correction Pillar

Cognizant of the perennial problem of jail congestion, the BuCor has implemented a number of reform initiatives. To decongest the prisons and to fulfill its obligation to provide basic prison facilities, the Bureau constructed a new dormitory in the Correctional Institution for Women (CIW). The completion of the building dramatically decreased the congestion rate at the CIW from 90% to 1% (BuCor 2003).

The transfer of inmates to penal farms is another decongestion strategy which also aims to address the lack of manpower in agro-industrial operations undertaken in penal institutions. This strategy can augment the BuCor's budget from the earnings of the operations even as it ensures that inmates are engaged in productive activities. As of June 2003, around 1,024 inmates had already been transferred.

The Bureau is likewise bent on implementing various forms of releases, such as the grant of parole and pardon, acquittal, *habeas corpus*, probation, and bond (BuCor 2003).

The BJMP, on the other hand, is implementing the Oplan Decongestion Program through the implementation of several laws aside from the usual modes of decongesting such as releasing on bail, serving sentence, case dismissal, transferring to the BuCor, transferring to other institutions, and awarding of the Good Conduct Time Allowance to shorten the inmates' period of confinement (BJMP 2003). Paralegal programs and services are also put in place to monitor and to provide assistance in the case resolution of inmates.

The BuCor and BJMP are both also trying to adequately provide for the basic needs of the inmates. The BuCor, for instance, has coordinated with the DTI and the DOH to make available essential medicines at reduced prices. The BJMP is also intent on implementing the P35 daily budget allowance per inmate and ensuring that the basic food needs are met with

due attention to food adequacy and safe food preparation. These efforts, in addition to the expected functions and responsibilities of providing educational, medical, physical, economic, and spiritual services signify a growing realization of the urgent need to bridge the gap between theory and practice in the reform and rehabilitation of inmates through the correction pillar.

Meanwhile, BuCor and the BJMP have intensified their programs against contraband goods as one of the ways of protecting inmates from sexual harassment, abuse, and torture. There is also a parallel effort to strictly enforce inmate discipline through the imposition of penalties such as the loss of Good Conduct Time Allowance, additional years in prisons, etc. Equally important is coordinating with the *mayores* or gang leaders to better understand the concerns of the inmates.

Another critical reform the BuCor is aggressively implementing is cleaning its ranks of "undesirables," through an intensive personnel discipline program (the *Oplan Pagbabago*). There is also a draft bill seeking to increase the BuCor's appropriations to be able to carry out its plans and programs.

Issues in the Community Pillar

The community pillar's foremost concern is meeting the challenge of mainstreaming ex-convicts back to the society.

Reintegration after a period of incarceration may be problematic for an inmate who has served his prison term. The social stigma attached to the correction pillar and the prevalent view that it is founded on punitive rather than restorative justice principles account for the existence of discrimination and its persistence. Consequently, the community may appear to be lukewarm to the idea of supporting and facilitating the smooth transition of inmates to freedom.

Broadening the space for mainstreaming offenders will entail massive information and advocacy campaigns to change the community members' perception that correction institutions aim to reform the ex-convicts. This

is tied to the community's acceptance of the role it shares in crime prevention and control, and facilitating the transition of inmates from institutional life to freedom, and thus helping them become law abiding citizens again.

The community likewise assists in specific ways the other pillars of justice. For example, employing the alternative dispute resolution (ADR) system as a mechanism to settle conflicts outside or in the periphery of the institutional judicial process is considered a decongestive strategy because it helps unclog court dockets. Unlike the formal judicial process, it is inexpensive and speedy. These advantages helped push the enactment of the Alternative Dispute Resolution Act of 2004.

The assessment of the ADR system nonetheless identified a number of weaknesses, including lack of training, weak enforcement mechanisms, limited and overlapping jurisdiction, lack of sufficient funding, and lack of facilities conducive to mediation and arbitration (APJR 2001).

Community involvement is also demonstrated through the Barangay Justice System (BJS), a formally organized and institutionalized system of amicable settlement of disputes at the barangay level for the purpose of promoting harmony, peace and order, and community cooperation. A major feat of this system thus far is that it was able to save over a billion pesos in terms of court litigation costs (Lim 2002). The benefits accruing from it cannot be maximized, however due to the lack of information about how the barangay system works specifically in the marginalized sectors. Internally, the inherent weakness of the *Lupon* due to educational gaps affect the creation of an environment promoting respect, integrity, and impartiality. This is compounded by the lack of awareness among the *Lupon* and *Pangkat* members of their roles, duties and responsibilities, and limited opportunities for continuing education. Another setback for the BJS is the persistence of the *compadre* culture or the partiality toward certain litigants related to BJS officials either by consanguinity or affinity.

Yet despite these setbacks, the community was able to significantly fill a gap in the CJS through these community-level programs.

Measuring the Realization of Rights

To determine the degree of compliance of the duty bearers and to gauge the degree of realization of the rights of the claim holders, a review of existing indicators based on the different issues covered was undertaken. The following table gives a summary of the results of the review using the RBA lens. The bulk of the information presented was derived from the consolidated USAID-prepared indicators.

Governance Issues	Rights Affected / Involved	Existing Indicators	Relevance / Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
Lack or limited access of disadvantaged sectors to justice	Equality and non-discrimination	Number of courts in rural and urban areas with concentration of marginalized sectors	Availability is an indicator of access. However, it is equally important for the courts to be served by competent judges and other court personnel and provided the support systems and equipment necessary to make them fully operational.	Number of courts in rural and urban areas with concentration of marginalized sectors increased and optimized Ratio of judges to population in an area
		Number of public defenders and organizations providing free legal assistance to the poor increased	A sufficient number of public defenders and NGOs providing legal aid makes it easier for the poor to get into the courts. However, it does not capture the competence level of public defenders.	Number of competent public defenders and organizations providing free legal assistance to the poor increased Ratio of public defenders to litigants
		Number of cases utilizing the Alternative Dispute Resolution (ADR)	The ADR system is a recognized mechanism for increasing access	Number of cases utilizing ADR increased 100% Barangay Justice System (BJS) fully functional

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
		The amount of user's fee spent on making a judicial decision is reduced based on the litigant's capacity to pay.	Paying fees is a major barrier to access for the poor.	The actual amount of users' fee spent is equivalent to the prescribed fees, an outcome made possible through the quick resolution of cases.
		Funds allocated and spent for legal services to the poor increased % of population with basic knowledge of how to access the legal system increased	Additional funds will entail more services for the poor. It will also ensure that the costs shouldered by the litigant are reduced. Ignorance of the law is another hindrance to people's access to justice. However, it is difficult to determine what constitutes "basic knowledge," given the complexity of the legal system and the variations in socio-demographic profile among individuals.	Amount of funds actually spent for legal services increased. Budget allotted to individual Filipinos to increase their access to justice
		Number of cases of which notices were sent and received	Access to information is also another powerful mechanism for improving "access" in general. Knowing about a lawsuit manifests access. However, it does not specify the time of receipt nor indicate the simplicity (or	Number of cases of which notices were sent and received on time increased

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
			complexity) of the contents as to be readily understood by the client.	
		Number of cases of which records were provided to requesting parties increased	Public records are needed for prosecution and defense (Section 7 of the Constitution). The speed and cost of acquiring such information is not established. As previously indicated, convenience and affordability are indicators of access.	Number of cases of which records were freely and speedily provided to requesting parties increased.
		Number of tri-media articles and IEC materials informing the public of the changes in legal procedure or court case	In terms of reach, the tri-media (TV, print & radio) are powerful vehicles informing people. For rural areas with limited access to tri-media, IEC materials can be provided. Owing to the courts' or the legal systems' procedural complexity, this does not indicate the extent of simplicity (indigenization) to ensure that people understand the content of the changes.	Number of tri-media articles and IEC materials informing the public of the changes in legal procedure or court case translated in the vernacular language.

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
		Number of qualified interpreters increased	Interpreters are required to help the poor communicate using court language	Ratio of qualified interpreters and indigents
Delay and Poor Quality of Justice Administered	Speedy disposition of cases	The average time from filing to disposition for both criminal and civil cases is reduced or within the prescribed time limit.	Timeliness in making judicial decisions is a measure of improved service	Number of suspects in jails awaiting judicial decisions reduced
Low public confidence and trust in the CJS		% of the population responding positively increased	Positive public perception can be a measure of the people's confidence in the CJS. This is usually determined through perception surveys.	% of the population responding positively to surveys increased
Law Enforcement				
Discipline <input type="checkbox"/> Misconduct or grave abuse of authority in the performance of duties <input type="checkbox"/> Negligence	Right of citizens to security Right to equal protection Right to equality	Number and types of complaints filed against police and other law enforcement personnel before various People's Law Enforcement Boards (PLEBs), the NAPOLCOM and the PNP	Number and types of complaints filed against police and other law enforcement personnel before various People's Law Enforcement Boards (PLEBs), the NAPOLCOM and the PNP	Number of enforcement personnel and officers with administrative cases decreased Number of resolved cases per year against erring law enforcement personnel increased
		Response Time (5.21 minutes average response time in the NCR)		0% disparity in response time in each region
		Police visibility		Increased working hours especially in crime-prone areas

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
		Case Resolution Efficiency (CRE) which measures the number of complaints filed, cases formalized and resolved, and actions taken against erring law enforcers on an annual basis		Case Resolution Efficiency, including measures for determining standard time by type of complaint and by demographic and socio-economic profile of complainant
				Rates of recidivism among convicted law enforcers serving terms for administrative or criminal case convictions reduced in all regions
				Number of LGUs increased with code(s) of locally customized rules, guidelines, and mechanisms supporting law enforcement using police-led and multi-stakeholder participation
Law Enforcement <input type="checkbox"/> Use of excessive force in enforcing laws/ordinances	Freedom of movement, opinion and expression Freedom to peaceful assembly and association Right to Life (demolition etc)			
Unlawful searches and seizures	Right to privacy Right of people to be secure in	Complaints emanating from conduct of illegal and improperly		Number of complaints/cases dismissed by the

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
	their houses... against unreasonable searches and seizures	conducted searches and seizures reduced Number of warrants for searches and seizures applied for, processed, issued and served		Number of complaints/cases dismissed by the prosecution owing to insufficient legal requirements
Arbitrary arrest and detention	Right to due process The Miranda rule (Section 12 of the Bill of Rights)			Length of time between actual arrest and filing of complaints or charges before prosecutor decreased or does not exceed legally prescribed requirements
Prosecution				
Low disposition rate	Speedy disposition of cases	Disposition rate (<i>% of the number of cases resolved or disposed of out of the total number of cases ever pending during the year</i>)		Disposition rate increased
Judicial Pillar				
Delays in judicial proceedings	Speedy disposition of cases		The disposition rate is a measure of the output of a judge.	Number of detainees from the D & E classes released

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
		Disposition rate (<i>ratio of pending cases to cases actually decided or resolved by the judge</i>) of judges of the previous year as against that of the ending year		Number of cases involving accused from the D & E classes resolved Ratio of judges and lawyers to population Number of judges in court management Disposition rate of judges at the ending year end increased compared to that of the previous year
		Average time from the filing of the case until a judicial decision is made	Timeliness in making a judicial decision is a measure of improved service.	The discrepancy between the average time and the time limit prescribed by the law is either reduced or within the set time limit.
Costly litigation for the disadvantaged sector	Free access to the courts & quasi-judicial bodies Right to due process	Amount of funds mobilized, allocated, and actually spent for legal services for poor litigants	The State's budgetary allocation is important in providing more access to the public, especially to those belonging to the marginalized sectors.	Amount of funds mobilized, allocated, and actually spent for legal services for the poor litigants increased
		Actual costs incurred before a judicial decision is made		The disparity between the actual costs incurred and legal fees set per court is reduced. Ratio of judges and lawyers to population

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
Some decisions rendered by some lower courts are perceived to be of poor quality.	Right to due process			Number of appealed cases from the D & E classes.
Correction Pillar				
Prison congestion in correctional facilities	Right of prisoners to be treated with humanity and respect	Congestion rate (actual against ideal number of inmates per cell)	The congestion rate illustrates the adherence or non-adherence to the ideal capacity requirement/cell. But it is silent as to the habitability of the prison cell to guarantee the physical well-being and safety of the inmates.	Adequate space allotted / inmate with adequate protection against the cold, damp, heat, and other health hazards to assure the inmate's safety UN standards of 3 sq. m x 3 sq. m sleeping area/ inmate (progressive realization)
		100% of qualified inmates released within prescribed time or granted parole or pardon	Expired sentences and the granting of parole and pardon are decongestive strategies granted to deserving inmates.	100% of qualified inmates recommended for early or timely release
		100% of insular prisoners immediately transferred to other penal institutions	Another decongestive strategy is to transfer inmates to penal farms to assist in agro-industrial projects.	
Poor prison conditions	Right to health	Number of medical personnel in a given prison facility	The Right to Health of inmates includes a multitude of	Number of medical personnel per prison facility

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
		Number and types of health and sanitation facilities available to the inmates per prison facility	determinants of health, such as food and nutrition, access to safe and potable water, and a healthy environment. In looking at these, it is necessary to determine the availability, accessibility in terms of physical proximity and availability of information, and quality of the services.	Availability of preventive, treatment, and control measures to reduce the spread of communicable diseases/prison facility Equal and timely provision of health services - Availability of basic and functioning health facilities - Quantity and quality of medicines provided to inmates given their medical requirements Safe drinking water
	Right to adequate food	Amount of minimum daily nutrients intake per person	The right to adequate food should not be equated only with the minimum package of nutrients intake	Availability and accessibility of food per inmate - Nutrient mix to meet the dietary requirements of inmates - Food safety
Sexual harassment, abuse, and torture	Right to Equality (segregating youth and adult offenders)	Number of jail disturbances or incidents reduced by 50% (BJMP)		Number of jail disturbances or incidents reduced by 50% (BJMP)
		Number of administrative charges, complaints, & other forms of grievances filed before corresponding legal division	Aside from the number of filed complaints or charges, it is also important to determine the number of cases resolved "objectively."	Number of administrative charges, complaints, & other forms of grievances filed and resolved before corresponding legal division

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
		Number of staff/officers penalized (dismissed or suspended)	The real test of the sincerity of the leadership to cleanse its rank and file is to penalize all erring officers and officials.	Number of staff/officers penalized: <ul style="list-style-type: none"> - Dismissed from the service - Demoted in rank - Forced to resign - admonished or warned - Relieved
Failure to reform and rehabilitate all offenders		Recidivism rate	According to the BuCor, recidivism is pegged at 4-5%.	Number of appropriate rehabilitative programs implemented
Community Pillar				
Difficulty of re-integrating ex-convicts	Equality and non-discrimination	Recidivism rate of the total inmate admission	This indicator does not reflect the difficulty a number of ex-convicts experience in being mainstreamed back to the community.	Availability of anti-recidivism mechanisms and measures (e.g., livelihood and other support, etc.) to prevent ex-convicts from committing another offense
	Right to work	Number of ex-convicts employed or with source of income	This does not capture the workplace, conditions, the level of remuneration, and the treatment received from their superiors or co-workers.	Number of ex-convicts with decent source of living, working in safe and healthy working conditions Number of ex-convicts receiving remuneration commensurate with the value of their work Number of establishments applying nondiscriminatory labor practices.

Governance Issues	Rights Affected/Involved	Existing Indicators	Relevance/Rationale or Limitation (from the RBA perspective)	Proposed Rights-based Indicators
				specifically for ex-convicts Number of laws passed addressing the human rights of ex-convicts Availability of anti-recidivism mechanisms and measures

Conclusion and Recommendations

The review of the justice sector employing the RBA lens and its validation focused only on the criminal justice system. It disclosed that various institutions comprising the justice sector have put a high priority on reforms that would improve its capability to respect, protect, and fulfill chiefly the civil and political rights of citizens. It also showed that justice institutions in the Philippines are still new in providing redress mechanisms to vulnerable claim holders whose social, economic, and cultural rights were violated not necessarily by the state but by non-state actors in society as shown in the following discussion of the role of the CJS vis-à-vis specific social and economic rights.

Justice and the Right to Education

Though education performance indicators such as enrolment rate, cohort survival rate, and participation rate show improvements from 1994-1999, there are still glaring disparities between rural and urban areas and across regions (Access 2000-2004). There are cases where children in a particular age group were not or could not go to school because their parents wanted

them to help augment the family income. According to UNICEF and ILO studies, some 2 million children are exposed to hazardous working environments such as mines, quarries, and docks in order to earn their living (CIDA 2001). This, despite the Constitutional provision that basic education is compulsory and the state's effort to increase access to basic education services.

To date, justice sector institutions have not yet performed its state obligation to protect children who have been prevented by their parents or guardians from availing of basic compulsory education. In other countries, parents can be sued if found to have failed to send their children to school.

Justice and the Right to Work

Due to the prevalent attitude of society based on punitive rather than restorative justice, ex-convicts are often discriminated against. A number of prospective employers, upon perusal of the records of an ex-convict applicant tend to prefer other applicants with clean records regardless of their qualifications.

It is sad to note that our justice system does not yet have a mechanism for protecting qualified ex-convicts from not being employed in a decent workplace with fair wages because of their criminal record. This is mitigated somewhat by the penalty imposed on employers who hire on the basis of the presence or absence of a criminal record without taking into account the capability of the applicant but no record exists of such penalties having been imposed.

Persons with disabilities also encounter the same predicament. Some companies are not inclined to hire qualified persons with a disability. This in the face of Republic Act 7277 otherwise known as the Magna Carta for Disabled Persons which aims to eliminate discrimination in employment. The law also provides for the role of the courts in enforcing compliance and the varying degrees of penalty for violations or abuses committed.

Justice and the Right to Health

Many were alarmed that cases of medical malpractice kept increasing over the past decade. This despite the availability of mechanisms penalizing erring members of the medical profession, such as the cancellation of their license to practice by the Professional Regulatory Commission (PRC). Charges may also be filed, but owing to the difficulties involved in getting expert medical testimony, most complainants either drop the charges or wait a long time for a verdict. To address this concern, a Medical Malpractice Bill was proposed which aims to strengthen the right of a patient to quality medical care. However, a number of thorny issues, especially the provision to punish medical malpractice as a mechanism for enhancing the quality of health care, has hampered passage of this law. The proposed Bill has also met strong resistance from the medical community.

Besides the said bill, there are enough existing laws, regulations, mechanisms, and institutions at all levels of health care regulating and monitoring the practice of medicine in the Philippines. The laws include the Revised Penal Code and the Medical Act of 1959, while the institutions include the Professional Regulation Commission, the Philippine Medical Association Ethics Committee, the specialty societies, the courts, and the ethics/audit units of hospitals. All these laws, regulations, mechanisms, and institutions only need strengthening.

Another health concern pertains to the health hazards posed by the market's failure to provide complete information. This means that information is withheld to consumers regarding the ingredients used, the process involved in manufacturing the product, or the quality of the final products per se. This is especially true for food products manufactured in the informal sector which are not properly monitored by existing regulatory bodies.

The major state actors involved in these cases are the Bureau of Food and Drugs (BFAD) and the DTI. The BFAD is a regulatory agency tasked to ensure the safety, efficacy, purity, and quality of processed foods, drugs,

diagnostic reagents, medical devices, cosmetics, and household hazardous substances through state-of-the-art technology, as well as the scientific soundness and truthfulness of product information for the protection of the public's health. Their functions need to be coordinated with the justice sector so that violators can be prosecuted.

In the same manner, the Department of Trade and Industry (DTI) is implementing the Consumer Act of the Philippines to protect the interest and general welfare of the consumer and to establish standards of conduct for business and industry (RA 7394). The law also outlines the penalty upon conviction for violations of its provisions.

Implementing the Act has proved complicated, particularly in the informal sector to which belong public market vendors who offer lower price for the goods they sell. Because of the cheap price, there is a demand for those goods despite their potential health hazards. More often than not, the demand comes from poor consumers. When complaints arise, it is difficult for the state to hold the vendors liable because of the costs involved in pursuing the charges.

Recommendations

To be able to incorporate the RBA principles into the plans and programs of the different justice sector institutions, the following recommendations were made by the participants of the validation workshop:

- Enhance coordination between and among police, complainants and the public to be able to gather sufficient evidence for the courts to ensure successful prosecution of cases
- Inform all detainees regardless of social class of their rights while awaiting trial
- Monitor the progress of cases (e.g., caseload monitoring)
- Encourage use of alternative law groups
- Encourage use of alternative dispute resolution (ADR)
- Hire more judges and give them continuing training

- Increase the level of awareness through information, education, and communication (IEC) campaigns
- Intensify programs and services for the families of inmates
- Intensify the implementation of rehabilitation programs
- Apply the principles of restorative justice in the correction system
- Conduct community-based seminars on ex-convict re-integration
- Enact laws sanctioning establishments discriminating against ex-convicts
- Provide rewards or incentives to establishments hiring ex-convicts
- Conduct regular monitoring of ex-convicts
- Set up a holistic right-based reintegration program for ex-convicts

In conjunction with the reform efforts undertaken by the various pillars, they are challenged to:

- harmonize their initiatives built on ensuring efficient and effective delivery of justice services regardless of the social and economic class of the claim holders;
- develop and improve their performance monitoring and evaluation systems to reflect the level of realization and enjoyment of the rights of claim holders clearly, and the compliance of duty bearers with respect to their obligations to respect, protect, and fulfill
- intensify efforts addressing the existing information asymmetry that make claim holders vulnerable to abuse.

References

- Bureau of Jail Management and Penology. 2002. Annual Accomplishment Report for CY 2002: Reformation through Professionalized Jail Management.
- . 2003. 1st Semester Accomplishment Report.
- Caparas, Donna Lynn A. Participation of the Public and Victims for More Fair and Effective Criminal Justice Administration in the Philippines.
- Liwag, Ramon. 2002. Community Involvement in the Rehabilitation and Treatment of Offenders.
- National Economic and Development Authority. 2004. Medium Term Philippine Development Plan 2001-2004.
- Panganiban, Artemio V. 2002. *Reforming the Judiciary*. Manila: Supreme Court Press.
- Supreme Court of the Philippines Program Management Office. 2005. Improving Access to Justice Through the Strengthening of the Five Pillars of Justice Terminal Report.
- . Report. 2005
- Supreme Court of the Philippines, United Nations Development Program and Department of Justice. 2004. *Strengthening the Other Pillars of Justice Through Reforms in the Department of Justice*.
- Supreme Court of the Philippines. 2001. Action Program for Judicial Reform 2001-2006 (with Supplement). Manila.
- . 2002. Statistical Reports. Statistical Reports Division, Court Management Office.
- . 2003. Strengthening the Other Pillars of Justice Through Reforms in the Department of Justice. Diagnostic Report.
- United Nations Development Programme. 2002. Rights-based Development Training Manual.
- World Bank, The. 2003. Speech by Mr. Raymund Narag, a stakeholder. Signing Ceremony of the Judicial reform Support Project (October 2, 2003). http://www.worldbank.org.ph/news/10_06_03.htm.

VIII. A Governance Review of the Public Corporate Sector Using the Rights-Based Approach*

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Introduction

The use of the rights-based approach (RBA) in governance review aims to enhance the accountability of the government in performing its functions. It involves looking at the performance of government not only from the perspective of the concerned government institution as the duty bearer but also from the point of view of the claim holders or those for whom the duty is owed. Duty bearers affirm rights and provide for specific entitlements related to these rights for all citizens. In general, it is the obligation of the state to provide, protect and promote the rights of the people. Moreover, it is also its duty to provide mechanisms for the claim holders' effective participation to make their voices heard in the governance process.

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This paper will review the public corporate sector using the RBA lens. This perspective not only helps assess how the public corporate sector or government owned and controlled corporations (GOCC) have promoted and protected the rights of the people but it may also help identify inadequacies in the existing tools and mechanisms for assessing the performance of public corporations vis a vis their rights-related duties. This paper aims to: a) define the duty bearers and claim holders in the public corporate sector; and b) discuss and assess institutional arrangements and reforms in the sector using the RBA approach.

Common to the economic roles of the public corporate sector are: increasing government resources in the form of financial dividends, repayments of government loans, interest payments, taxes and implicit dividends (Manasan 1987); as well as increasing investment and employment opportunities. Public enterprises also function as providers of goods and services to advance the social and human conditions of the people. Moreover, there are existing laws of the country that oblige public enterprises to promote and protect certain rights of people. The National Food Authority (NFA), for example, is tasked to provide food subsidy to needy Filipinos. Another is the Philippine Health Insurance Corporation (PhilHealth), which is duty-bound to provide access to affordable health insurance for all Filipino citizens.

The Rights-Based Approach

Development and human rights are two interdependent concepts intended to expand opportunities for human development. Article 25 of the Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and other necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstance beyond his control" (UN 1948).

Moreover, Article 8 of the Declaration on the Right to Development reiterates that

States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.... States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights. (UN 1986)

However, despite these pronouncements, poverty persists in the country. It is apparent that the basic rights of the people are far from being realized. In addition, the government has to address the issue of accessibility.

As the state is obliged to take all necessary measures to attain development, good governance plays a very important role in promoting, protecting and ensuring the basic rights of every citizen. Thus, the rights-based approach to governance is the most appropriate frame with which to assess areas of governance such as the public corporate sector performance in providing services to the people.

The Rights-Based Approach works in the following ways:

1. It links the human rights perspective in the identification and assessment of needs and problems to situation and development needs analysis.
2. It enhances the accountability of the government in performing its functions.
3. It empowers at least the development planning agencies and others agencies engaged in planning, budgeting and program development.
4. It ensures the conduct of rights-based sustainable development initiatives.

5. It equips government and nongovernment institutions with a rights-based perspective.
6. It enhances the application of human rights principles in the conduct of development and governance activities.

Methodology

The study uses primary and secondary data in reviewing the public corporate sector, reports and studies being its main sources of information. The report also relied on the knowledge, information and resources the Center for Policy and Executive Development has accumulated on the study of government corporations through the years. One major limitation of the study is the dearth of material on the claim holders' perspective. Most of the secondary materials are assessments of the public corporations based on their financial performance. They do not explicitly discuss how public corporations as a whole have made an impact on the lives of the poor and the marginalized sectors of the society.

The wide scope of services these public corporations provide also makes it more difficult to assess their collective performance using the RBA perspective, although there have been attempts to look into the performance of individual corporations and how they promote and protect the rights of the claim holders. Thus, for the purposes of this paper, the studies of the latter kind will be cited as cases in order to provide a clearer picture on how rights are being addressed by selected public corporations.

To enhance the results of this study, a consultation-workshop was conducted which aimed to identify specific programs and projects of public corporations and the factors enhancing or impeding citizen participation.

The Philippine Public Corporate Sector

The public corporate sector falls under the realm of corporate governance. Firms under this sector are often referred to as government-owned and controlled corporations (GOCCs). A corporation is a GOCC if it

is directly or indirectly owned or controlled by the government through a parent or subsidiary corporation to the extent of at least a majority of its outstanding capital or of its voting capital stock (DBM, 2003). The definition of GOCCs, the policy framework for their role in national development and the criteria for their creation and regulation are specified in Presidential Decree 2029 dated 4 February 1986. In this general policy statement it is stipulated that "the corporate form of organization be one of the valid institutional forms through which the government may participate in economic and social development." The policy also makes clear that GOCCs should not be involved in policy setting, monitoring and assessment, and promotion and advocacy which are the primary responsibilities of regular government agencies.

The following identifies and defines four types of corporations:

1. A parent corporation is one created by special law.
2. A subsidiary corporation is one created pursuant to law where at least a majority of the outstanding capital stock or outstanding voting capital stock owned by a parent government corporation and/or other GOCCs.
3. An acquired asset corporation is one organized under the general corporation law under private ownership or subsidiary corporation.
4. An affiliate corporation is one where total government ownership is less than the majority of the outstanding capital stock and its outstanding voting capital stock.

As stipulated in PD 2029, the definition of a GOCC consists of two major dimensions: a) the "public dimension" which defines the nature of an institution of national policy that should satisfy the public interest, public ownership as well as management and control and accountability to the people; and b) the "enterprise dimension" which partakes of the character of a business organization consisting of an organized decision-making entity, the production of goods and services, the marketing element return on investment, and a commercial accounting system (CPED 2002).

The enterprise dimension plays an important role in the production and distribution of goods and services and the corporation being public in nature (majority government ownership), it encourages the participation of civil society, especially the private sector, in the delivery of public services. However, this provision is limited only to the participation of their representatives as members of the governing board and managers of the GOCCs. In the case of the rest of the claim holders, there are no clear mechanisms for participation in decision making, most especially in the areas of target setting and monitoring and evaluation of programs, projects, and activities.

GOCCs are characterized in terms of the following attributes:

1. Scope of impact of the public goods and services – whether nationwide or location specific
2. Nature of benefits – private or public and whether availment is customer demand driven or voluntarily rendered
3. Pricing and cost recovery – whether given free of charge or the cost is fully or partially recovered; whether pricing is at market rates, regulated by government policy or based on an adopted social and market pricing mix
4. Main determinant of product quality and provision standard – whether decided by government or customer demand driven
5. Government objective in providing public goods– whether for financial, social or economic gain.

The creation of GOCCs is the government's response to forces of demand from its environment and to the demands for public goods and services. The government attempts to balance the varied and often conflicting demands from multiple groups by establishing certain norms and standards and adopting and reinforcing compromises among groups with conflicting interests. Given these, a GOCC may be created when the goods and services to be provided are vital to the society and the private sector is unwilling or unable to provide it or to expand its capacity to meet market demands and

when there is a need to favor a disadvantaged sector of society in a free market operation (AO 59, s. 1988).

Moreover, the Department of Budget and Management defines the nature of GOCC functions in a 1998 memo as either the production of public goods and services such as major infrastructure activities which are clearly natural monopolies (power, waterworks, irrigation, among others); exploitation of natural resources; provision of low-cost housing; operation of trade zones; and reclamation and area development projects or the delivery of public goods and services such as vital and strategic industries (public transportation and communications facilities, operation of airports and seaports, operation of facilities for raising non-conventional revenues as games of chance facilities; operation of financial institutions with a social rather than a profit orientation (financing land reform, social security, socialized housing, Medicare); and subsidy operations which are economic activities with redistributive objectives designed to benefit low-income households.

It is the mandate of public corporations as duty bearers to produce and deliver goods and services for both public and private groups. Some corporations have been tasked to provide services in favor of the disadvantaged sector of society. A number are involved not only in business enterprises but also in social and noncommercial activities, while some are tasked to perform development functions, to venture into new or pioneering enterprise, to operate strategic industries, to undertake regional or area development programs, to create employment opportunities, and to operate "missionary" routes (Briones, 1990). Generally, the GOCCs mandate is not only to generate profit but also to enable citizens to attain economic and social well-being in basic areas such as housing, health, food and employment; to provide incentives and performance measures to achieve business success; and to provide for accountability and transparency to ensure equitable distribution of resources.

Duties and Obligations: GOCCS as Duty Bearers

The public corporate sector in the Philippines is involved in mandating, promoting and supporting activities. As shown in Table 1, all sectors are

involved in mandating and promoting activities, while only the banking or the financial sector provides supporting activities. Partnering, the critical indicator of the rights-based approach, is not at all indicated among these activities.

The Commission on Audit classifies the GOCCs into the following categories with defined functions as follows:

1. The financial sector engages in banking, financing and insurance functions. Banking groups serve the country's public and private sectors as well as its domestic and international needs. Financing corporations under this sector provide financial assistance through lending activities to economic sectors targeted for development such as affordable housing, small and medium-scale business enterprises and land reform. The corporations that are engaged in the insurance business provide insurance protection to individuals and companies and protect farmers, homeowners and bank depositors from losses.
2. The sector on infrastructure and public utilities consists of corporations in energy, financing, housing, transportation, communication and water-related functions. The energy subsector provides the power needs to reduce the country's dependence on oil. The financing subsector finances countrywide provision of electricity through electric cooperatives, development of systems powered by indigenous and renewable energy resources, development of waterworks systems and providing financial and technical assistance to help water districts become independently self-reliant and financially viable public utilities.
3. The housing subsector maintains adequate housing for the greatest possible number of people. The NHA, a parent corporation is the sole corporation under this subsector. The water subsector under this category provides adequate, potable and safe water to service areas at just and equitable rates.

4. The industrial and area development sector is obliged to spearhead overall industrial development and to generate livelihood for Filipinos. The group on area development initiates and carries out pioneering livelihood, rural and community development projects in an integrated manner that promotes optimum land use and at the same time provides adequate means of processing environmental resources. The industrial group contributes to the task of promoting overall economic development by assisting in commercial, industrial and agricultural ventures.
5. The agricultural, trading and promotional sector covers GOCCs involved in the production of livestock and agricultural crops and allied products and in financing livelihood generation programs of the government. This sector is obliged to maintain a stable supply of staple food and to develop the food industry by providing marketing infrastructure support systems for the small- and medium-scale food enterprises.
6. The sector on education, social, cultural, scientific, civic and research promotes and develops scientific interdisciplinary and policy-oriented research, education, training and consultancy in the broad field of economics, public administration, and the political and social sciences. The social subsector is obliged to operate, maintain and provide services that increase work opportunities and to improve the productivity of low-income families.
7. The civic subsector is concerned with the construction, establishment, maintenance and operation of integrated medical institutions specializing in the preservation, diagnosis, treatment and care, rehabilitation and/or relief of kidney, lung, cardiovascular and children's diseases.

The Philippine Charity Sweepstakes (PCSO), although not a hospital is classified under this subsector because its objective is to raise funds for health programs, medical assistance, and to engage

in health and welfare-related projects and activities, which may be profit-oriented, for the purpose of providing permanent and continuing sources of funds for its operations.

Table 1. Classification of Public Sector Activities by subsector

Corporate Sector	Mandating	Promoting	Supporting
Banking (BSP, DBP, LBP and AIBP)	Provides banking services to the country to serve domestic and international banking needs		Banking services also given to the national and local governments, and the private sector for the development of agriculture and commerce and industry within and outside the country
Financing (HDMF, IGLF, NHMFC, and SBGFC)	Develops, promotes and assists all sectors of society financially, especially in the development of all affordable housing credit systems and small- and medium-scale business enterprises		
Insurance (ECC, SSS, GSIS and PHIC)	Provides insurance coverage and protection to employees, farmers and bank depositors		
Others (PRA and APT)		Promotes the country as a retirement haven and provides organization framework to encourage foreign investment (PRA); engages in the business of collating, developing and analyzing credit information on individuals, institutions and all types of business concerns (CIBI); and provides vital services and support to the Land Bank of the Phils. With respect to its role in the CARP on a sustaining basis.	
Infrastructure and Public Utilities Sector			
Energy (NPC)	Provides the power needs of the country and at the same time reduces the country's		

Corporate Sector	Mandating	Promoting	Supporting
Financing (LWUA and NEA)	dependence on oil by developing and generating electric power from indigenous sources	Promotes the development of waterworks systems through the transformation of water districts into independently self-reliant and financially viable public utilities.	
Housing (NHA)	Provides and maintains adequate housing for the greatest possible number of people.		
Transport (CPA, LRTA, MCIAA, MIAA, PADC, PNR AND PPA)	Endeavors to improve the public transportation system		
Water (MWSS and NIA)	Provides adequate, potable water to the service areas at just and equitable rates		
Communication (PRNI and PPC)	Serves as a state mechanism for the development of education, defense, technology, etc. designed to enhance national pride and identity		
Others (NCI)		Engages in and carries on the general business of consultancy, management and special services for the investigation, survey, study, planning, research and / or construction of projects.	
Agricultural, Trading and Promotional Sector			
Agricultural (PRRI)	Engages in the production of livestock and agricultural crops and allied products; also seeks to establish gene		

Corporate Sector	Mandating	Promoting	Supporting
Financing (KKK-PCA and QRCGC)	banks of fauna species of agri-forest products and engages in the development of technical expertise and capabilities in animal embryo transfer and artificial insemination. Provides effective support to the livelihood generating programs by providing resources to ensure the viability of enterprises and thus induce more active participation from the private sector.		
Manufacturing (NDA)		Promotes production of agriculture-based commodities	
Promotional (CITEM, CITC, NTA, NRDC, PCA, PCVC, PFDA, PTA, SRA and GTEB)		Participates actively in providing local products some exposure to foreign markets by organizing official participation in foreign trade fairs, exhibitions and expositions	
Trading (NFA and PITC)	Seeks to maintain a stable supply of staple food and develops the food industry by providing marketing infrastructure support systems for the small- and medium-scale food enterprises.		
Educational, Social, Cultural, Scientific, Civic and Research Sector			
Educational (DAP)		Promotes and develops scientific, interdisciplinary and policy-oriented research, education, training, consultancy and publication	
Social (OSHC, OWWA, PAGCOR and PAVC)	Engages in the business of operating, maintaining and providing various services involving increase in work		

Corporate Sector	Mandating	Promoting	Supporting
Cultural (CCP and NPTI)	opportunities and improved productivity of low-income families.	Preserves, promotes, enhances and develops the arts in various fields	
Scientific (TLRC)		Promotes, applies and commercializes all kinds of technology which give social and economic benefits to the people.	
Civic (LCP, NKT, PCMC, PHC)	Monitors the construction, establishment, maintenance and operation of integrated medical institutions	Raises funds for health programs (PCSO); promotes through organization and cooperation with other agencies the enhancement of young boys' propensities to do useful things (BSP)	
Research (PCED and PIDS)	Participates in the development of a comprehensive and integrated research program that provides research materials and studies required to formulate national development plans and policies		
Industrial and Area Development			
Area-Development (HSDC, LLDA, SPDA)	Initiates pioneering livelihood and other developmental projects to foster growth of rural and urban communities	Promotes appropriate land use and provides adequate means to preserve the ecological system	
Energy (PNOC and MGC)	Explores, markets and produces steam, petroleum, oil, coal, gas and other related products		
Industrial (BCDA, CEZA, NDC, PEZA, SBMA and ZCSEZA)		Promotes overall economic development by assisting in commercial, industrial and agricultural ventures	

Corporate Sector	Mandating	Promoting	Supporting
Mining (NOCOMIN and NDMC)	Undertakes the business of prospecting and exploring mining, milling, concentrating and preparing for market all kinds of ores, metals and other related products		
Real Estate (PEA)	Engages in the acquisition, management, lease, development and improvement of real estate properties for subdivisions and allied purposes.		

Source: COA Annual Financial Report, 2000

The Current Financial Status of GOCCs

As of 2000, the total number of GOCCs stood at 163 consisting of 79 parent corporations and 84 subsidiaries (See Table 2). The sector with the largest number of GOCCs was the agricultural, trading and promotion, followed closely by the industrial and area development sector. It is noteworthy that despite the wide scope of the education, social, cultural, scientific and research sector, it had only 16 parent corporations and four subsidiaries. The financial sector had the most number of parent companies relative to total corporations in the sector.

Table 2. Sectoral Classification of GOCCs, 2000

Sector	Parent	Subsidiary	Total
Financial	19	8	27
Infrastructure and Public Utilities	15	8	23
Industrial and Area Development	13	33	46
Agricultural, Trading and Promotional	16	31	47
Educational, Social, Cultural, Scientific, Civic and Research	16	4	20
Total	79	84	163

Source: COA Annual Financial Report, 2000

Based on the 2000 COA report, the combined total assets of the 100 GOCCs it audited stood at P3.849 trillion, with liabilities of P2.91 trillion and total net worth of P939 billion. The financial sector consisting of 19 GOCCs stood at the top in assets, liabilities and net worth followed by the infrastructure and public utilities sector and the industrial and area development.

Of the total liabilities of the entire corporate sector 23 per cent consisted of foreign loans of P673.4 billion incurred by 26 GOCCs. Eleven GOCCs in the infrastructure and public utilities sector posted the biggest amounts of foreign loans, followed by four GOCCs in the financial sector. The biggest single borrower was the National Power Corporation, while the corporation with the least foreign borrowing was the Philippine Fisheries Development Authority.

Table 3. Financial Profile of GOCCs, 2000 (in million pesos)

Sector	No of Corp.	Assets	Liabilities	Net Worth
Financial	19	2,198,840.26	1,702,902.23	495,938.03
Infrastructure and Public Utilities	18	1,265,761.62	997,290.56	268,471.06
Industrial and Area Development	27	316,079.35	162,907.19	153,172.16
Agricultural, Trading and Promotional	22	49,152.24	38,346.93	10,805.31
Educational, Social, Cultural, Scientific, Civic and Research	14	19,180.44	8,283.10	10,897.34
Total	100	3,849,013.91	2,909,730.01	939,283.90

Source: COA Annual Financial Report, 2000

Government assistance to duty bearers

The total contribution of the national government to the GOCCs in the form of subsidy, equity and net capital lending amounted to P6.2 billion in 2000. Of this amount, P3.8 billion was used for current operating expenditures while a total of P2.4 billion was used for the corporations' programs. (See Table 4.)

The largest share of government contribution went to two subsectors: the infrastructure and public utilities sector and the agricultural, trading and promotional sector which received a combined 73.2% of total government subsidies. On the other hand, the industrial and area development sector received the lowest share of government subsidy.

In terms of recipient corporations, the NHA received the highest subsidy in the amount of P1.34 billion for its programs. The second highest recipient was the NFA which received P1.17 billion. The National Electrification Administration obtained P534.89 million in support of its rural electrification program. In the case of NHA, those who benefited from these subsidies were individual and household beneficiaries of housing programs as well as economic agents who benefited from the tax exemption and other benefits related to housing. However an analysis of the income profile of the beneficiaries of housing programs, specifically housing finance programs disclosed that higher income households or the non-poor were the main beneficiaries of government subsidies and that poor households were less likely to benefit from the housing programs of the NHA (Ballesteros 2002).

Table 4. National Government Subsidies for GOCCs, 2000 (in million pesos)

Sector	Current Operating Expenditures	Programs	Total
Financial	560.86	-	560.86
Infrastructure and Public Utilities	159.08	2,340.60	2,499.68
Industrial and Area Development	75.61	-	75.61
Agricultural, Trading and Promotional	2,055.69	10.41	2,066.10
Educational, Social, Cultural, Scientific, Civic and Research	925.97	108.72	1,034.69
Total	3,777.21	2,459.73	6,236.94

Source: COA Annual Financial Report, 2000

Looking at the financial performance of the GOCCs, COA data shows the Social Security System as having generated the biggest net income before subsidy in 2000 followed by the PhilHealth and the Home Development

Mutual Fund, respectively. All three corporations belong to the same subsector.

In terms of the entire corporate sector, however, data for the year 2000, shows a collective net loss of P4.67 billion. Twenty corporations were reported to have incurred consecutive net losses before subsidy for the last five years preceding the report. Of these, seven came from the agricultural sector, six from the educational, four from the financial, and three from the infrastructure.

In terms of the contribution of GOCCs to the national economy, the most tangible form will be in financial terms as these corporations are expected to generate revenues and to remit dividends as required under RA 7656. In 2000 this contribution amounted to P2.5 billion, 53.7% of which came from the financial sector. The agricultural and the educational sectors neither declared nor paid dividends during that year. GOCCs also paid taxes amounting to P7.33 billion in 2000. The financial sector paid the biggest share followed by the industrial and area development sector. The educational sector, with the least number of profitable corporations, paid a total of P97.21 million in taxes.

The Management of GOCCs

Presidential Decree No. 2029 issued in 1986 defined the organization, internal management, and operations of government-owned and controlled corporations. Sections 5 and 7 specifically laid down the criteria for using the corporate form for a government entity that undertakes economic activities namely:

1. financial viability or the ability of the corporation to support its operations from its internal cash generation without operating losses at the very least, and without any special privileges or assistance from the national government
2. need for operational flexibility and autonomy

3. guaranteed government backing (i.e., debt burdens/borrowings)
4. private sector participation (CPED 2002)

The major structural, functional, and procedural principles and rules of governance of government agencies, including the GOCCs, were prescribed in the Administrative Code of 1987 and PD 2029. GOCCs are created by any of the following: original charter, presidential decree (PD), executive order (EO), or acquisition of private corporations registered under the Securities and Exchange Commission (SEC).

Regardless of the manner of its creation GOCCs operate under a charter which sets its objectives, powers, functions, and in most cases also its organizational structure. So far there is no uniform format for a corporate charter of a GOCC although all contain the following features:

1. Its mandate is meant to benefit the nation or the public in general.
2. It is economically viable and financially self-sustaining as to be able to attain the development goals and objectives.
3. It is adequately flexible enough to carry out operations comparable with the private enterprises.

Each charter usually provides for the establishment of a "governing board" which formulates policies. Usually the GOCC board is tasked to direct, control, and manage the corporation's services and activities and to reorganize the administrative structure when necessary. The size, composition, mode of selection of members, and functions vary from one GOCC to another since there are usually no explicit guidelines on them in their charters. In some instances the selection of members is politically motivated, and little regard is given to educational background and experience (CPED 2002). In reality too, the charter is a statement which may be too broad as to be subject to various interpretations or too specific as to severely limit the scope of operations. In most instances, also, the original

charter is not amended or updated as to be relevant and realistic enough to meet present needs and attain current national development goals and objectives.

In terms of locating GOCCs in the general roster of government agencies, all are either attached to regular service departments, for example the National Food Authority as attached to the Department of Agriculture or, to the Office of the President but are not directly under their control. This arrangement was meant to resolve the problem that beset the typical government agency undertaking businesslike endeavors at the national and local levels which is hampered in its operations by the rules of the bureaucracy that are not attuned to the requirements of the business environment. The organizational arrangements of GOCCs differ from that of the regular government departments in terms of operational autonomy and flexibility in that it is generally exempted from certain restrictions, laws, and rules and regulations that normally apply to a government agency.

With respect to the command responsibility of the service department to which the GOCC is attached, the mother agency is obliged to provide administrative supervision which is expected to result in better policy and operational guidelines for the GOCC such that any project or activity the GOCC undertakes is expected to be financially reasonable and its operation self-sustaining. This will lessen its dependence on government for support or budgetary assistance, privileges, and preferential treatment.

To resolve some problems in supervision and control, Administrative Order No. 59 dated 16 February 1986 specified the guidelines for departmental supervision in the following areas:

1. continuance of the attachment relationship between corporations and service departments or equivalent bodies
2. department supervision of attached government corporations
3. role of the department in corporate decision-making

4. departmental representation in corporate governing boards
5. authority/powers of the Department Secretary over attached GOCCs, including monitoring and evaluation

Other than the service departments and the Office of the President the following agencies perform supervision, coordination, and monitoring functions for the GOCCs:

- The Department of Budget and Management (DBM) provides resource allocation and counterpart funds for foreign-assisted projects and evaluation and monitoring of financial/budget proposals, financial operations, and target settings.
- The National Economic and Development Authority (NEDA) supervises and controls priority investment programs and projects. It is assisted by two interagency committees, the Investment Coordination Committee (ICC) and the Development Budget Coordinating Committee (DBCC).
- Bangko Sentral ng Pilipinas (BSP) approves foreign and domestic borrowings of GOCCs and evaluates their impact on money supply.
- Department of Finance (DOF) participates in the negotiation of foreign loans and domestic borrowings and monitoring and coordinating the GOCCs' loans and domestic borrowings and of monitoring and coordinating the GOCCs' performance, formerly the function of a separate body, i.e., the Government Corporate Monitoring and Coordinating Committee (GCMCC).
- The Commission on Audit (COA) audits the financial performance using traditional methods as well as the value for money mode of evaluation.
- The Civil Service Commission (CSC) formulates and implements rules and regulations regarding recruitment, selection and appointment, development, privileges and promotion matters for all personnel of GOCCs.

- The Privatization Council (PrC) and the Privatization and Monitoring Office (PMO) promote orderly, coordinated, and efficient privatization of remaining corporations, assets, activities, and idle properties of the government.

Strengths and Weaknesses of the GOCCs

The primary purpose of a corporate form of governance is to provide an alternative agency to promote economy, efficiency, and effectiveness in the delivery of public service. GOCCs are specifically created for this purpose. Their strength draws from their being entitled automatically to government support in the performance of their mandated functions to provide public goods and services.

The major source of weakness of GOCCs is that because of their dual character as both a government entity and an economic enterprise, they are usually obliged to fulfill conflicting objectives and perform multiple sometimes incompatible functions, i.e. commercial and noncommercial or social in nature and in some instances even regulatory functions. Given this situation it is difficult to set a standard criteria in assessing the performance of GOCCs. According to Amatong, former Executive Director of Government Corporate Monitoring and Coordinating Committee (GCMCC) and Undersecretary of the Department of Finance, there is the tendency for GOCCs "to spend more time and money doing peripheral activities and oftentimes GOCCs are engaged in undertakings for the purpose of generating more revenues to fund functions which incur more costs."

Amatong's observation in 1986 still holds true today. It is difficult to supervise and monitor the varied nature of activities of public corporations especially those under the Office of the President with no standard supervisory rules and regulations to follow. There are no guidelines on how managers are held accountable as well as on how they are chosen, a situation that is often exploited when positions are assigned for political considerations rather than on the basis of qualifications. Their multiple

objectives also create problems on how to prioritize activities and allocate resource requirements.

Furthermore, it appears that supervising and monitoring agencies for GOCCs have little to go by in assessing and measuring their performance in terms of improving, promoting, and protecting the rights of claim holders. The mechanism for social dialogue in most of the GOCCs is unclear. In terms of performance of rights-related functions of GOCCs, the mandates, orientation and requirements of some sectors make it hard for their multiple functions to be equally recognized, much less realized. The sector for banking, finance and insurance, for instance, give limited access for the poor as they operate under corporate frameworks that normally do not grant special privileges to this sector.

To strengthen the capacity of duty bearers further, it is important to adhere to a more focused mandate and to have a more focused program for clearly disadvantaged sectors. It is also necessary to make, as much as possible, a clear distinction between commercial and non-commercial objectives for these duty bearers and to have them embed rights-based goals in their statement of core values.

Public Corporate Sector Reforms

In the spirit of improving the efficiency and effectiveness of the public corporate sector various reform initiatives have been undertaken from the 1980s to the 1990s, the two most significant being privatization and restructuring of retained public corporations. The following section discusses four such major reforms: performance evaluation and audit, financial discipline, salary reforms and privatization.

Performance and Evaluation Audit

The conduct of performance evaluations is one way to make duty bearers accountable to claim holders for their actions. Among the reform efforts undertaken by government along this line was the installation of

a performance evaluation system for public corporations. The initial Performance Evaluation System was designed primarily to monitor the financial performance of 13 heavily indebted public corporations. The Government Corporate Monitoring Committee (GCMC) was created in 1984 by virtue of EO 936. This body was primarily tasked to monitor public sector spending, especially of the 13 major GOCCs which accounted for more than half of the country's external borrowings during the early 1980's, develop appropriate guidelines for monitoring the parent corporations and their subsidiaries, determine priorities in deciding various claims of GOCCs for national funding and major programs and projects and coordinate with other committees with monitoring functions over the GOCCs.

The GCMC was reconstituted as the Government Corporate Monitoring and Coordinating Committee (GCMCC) in 1986 (Memo Circular 10 dated 19 May 1986) primarily to develop appropriate guidelines and criteria for the monitoring of corporate operations for submission to and approval of the President through the cabinet. It was reconstituted to serve as a monitoring committee to study the cash budget of GOCCs to determine how they prioritize the following concerns:

1. national government funding
2. domestic and external borrowings
3. financial exposure of the national government to the various GOCCs in the form of subsidy, equity and lending, or loan guarantees
4. major projects and programs

Recently, Administrative Order No. 16 dated 21 August 2001 was issued to transfer the functions of GCMCC to the Department of Finance.

The COA, on the other hand, takes care of the internal auditing of the GOCCs. It is important to note that not all GOCCs subject themselves to COA audit. The monitoring and auditing bodies' main concern is to review the financial performance of GOCCs in order to enhance public

accountability and to ensure efficient and effective allocation and use of government resources. This is in line with the government's privatization program to determine the problems of the GOCCs. In a 1988 study, Manasan identified some of the problems in assessing the performance evaluation of GOCCs as the lack of clearly defined roles of the GOCCs in the development process, the absence of corporate plans and programs and well-defined targets conforming to the target of the development plan, the absence of a control point evaluating the actual performance of GOCCs vis-à-vis their planned targets and of a system of incentives and penalties for successes and failures in attaining such targets, bureaucratic red tape and paperwork and the dominance of political interests in corporate decision making and operations.

The evaluation of performance relative to the development efforts of the government tend to be based only on financial performance when it should focus on other equally important factors such as the laws and human development policies, the quality of operating institutions and activities, and the interrelationship of agencies concerned with the improvement of quality of life and protection of human rights. In short, the GOCCs' performance tend to be focus more on their corporate side and thus their financial performance and less on the developmental aspects of their mandates, particularly their obligations to claim holders to deliver goods and services equitably, but with a bias toward the vulnerable sector.

Financial Discipline

Financial reforms were instituted to reduce the financial dependence of GOCCs on the national government. These were aimed at exposing GOCCs to competition, making them more self-sufficient, and making them more financially responsible. The reforms implemented included increases in tariff, more stringent standards in the grant of tax subsidies, and review and approval of government guarantees on GOCC loans and tightening performance undertaking for Build-Operate-Transfer (BOT) projects.

As a result of the fiscal reform, the total budgetary support consisting of subsidies, equity, and net lending of the national government to GOCCs declined in the 1990s. The biggest GOCCs, however, continue to receive subsidies from the government. The recipients of the subsidy are public corporations that front-end expense for their goods and services, provide housing and commodities for low-income groups, and supposedly serve the most disadvantaged groups in society. These are the National Food Authority (NFA), the Land Bank of the Philippines (LBP) and the National Housing Authority (NHA). It is worth nothing that the government lends heavily to utilities and natural monopolies providing public goods at a heavily subsidized price (CPED 2002).

Although a financial criterion for assessing the performance of the public corporate sector is important, it is equally valuable to consider the social and developmental objectives of the GOCCs and assess them along these lines. Some GOCCs continue to receive large subsidies because they are supposed to provide services to disadvantaged groups. Given these, the performance evaluation should specifically measure how these developmental goals, especially those aimed at the marginalized sector are realized by the concerned GOCC.

Salary Reforms

Salary reforms were introduced to provide compensation and other incentives for personnel of GOCCs, especially management, to enable them to attract and retain the best talents in their respective sectors. On the other hand, it was also aimed at limiting the salaries and benefits of GOCC personnel so that they are not so high compared to their counterparts in the government bureaucracy.

The Salary Standardization Law (SSL) of 1989 was meant to standardize all compensation and position classifications in the bureaucracy, including the public corporations. However, there were 15 GOCCs, including the Land Bank of the Philippines and MWSS, which were able to obtain exemptions from the SSL. Others have also managed to find ways to augment the pay

and perks of their top management people as well as their officers by giving them generous allowances.

When these issues were exposed by concerned sectors of civil society, President Gloria Macapagal Arroyo issued Memorandum Order 20 on June 2001 directing all public corporations to rationalize the pay of all the GOCC senior officials and ordered that any deviation from the SSL is subject to the approval of the President.

The exemption of some GOCCs from the coverage of SSL shows how weak institutions are in strictly enforcing policies. That some big public corporations were able to seek exemption from SSL means that there was no equal implementation of the law. Moreover, although high salaries are meant to attract and maintain capable personnel, the tight fiscal position of the country should also be considered seriously.

Privatization

Privatization started as a policy in the mid-1980s and was intended to rationalize, restructure, and divest GOCCs which proliferated during the Marcos administration and to re-privatize or sell foreclosed assets and corporations acquired by government because of their inability to pay the loan extended by government financial institutions (CPED 2002).

During its initial years, privatization meant the "divestment, disposition and liquidation of nonrelevant and nonperforming assets and corporations. Later on, the scope of assets for divestment was expanded to include government-owned and/or controlled corporations, transferred assets (nonperforming assets transferred from various government financial institutions, assets and properties recovered by the Philippine Commission on Good Government (PCGG), and other idle government properties either in the Philippines or abroad. Now, it includes the various BOT schemes as well as contracting out and concession arrangements, trade and investment liberalization, deregulation, and other market enhancing measures (CPED 2002).

Of the 327 GOCCs, 122 were approved for privatization by President Corazon Aquino, 10 by President Fidel Ramos, and two by President Joseph Estrada, or a total of 134 corporations. As of 31 December 2001, 78 GOCCs have been fully privatized, 29 practically privatized, and 27 "undisposed of." In terms of proceeds from privatization, by 1998, the sale of 454 out of 575 accounts amounted to P185.2 billion. The Estrada administration further sold assets worth P7.4 billion, and the Arroyo government P594 million, for a total of P193 billion in sales since 1998. Some of the most publicized big ticket privatization deals include the Philippine Airlines and the Philippine National Bank, PETRON, the Manila Hotel, the MWSS and the NPC.

In general privatization was adopted as a strategy to improve the fiscal position of the government, not really to improve the delivery of the services provided by the GOCCs. One of the benefits of privatization is turning the government's fiscal deficit into a surplus. However, government exposure or assumed liabilities were also huge, which resulted in very minimal government revenue. The selling of profitable corporations also deprived the country of its future revenues because most of these privatized corporations were vital to the nation's economy.

The implementation of privatization has encountered several problems. For one, the process of divestiture was done through direct sale of corporations to single buyers or to consortia of buyers. Thus, workers and employees could not compete with big businesses in acquiring ownership of privatized assets (Briones 1995). Also the World Bank noted that the biggest sequestered or foreclosed companies were eventually sold to close friends of then President Aquino, like the Manila International Container Terminal (IBON, in Briones 1995). Patalinghug (1996) also noted that in the case of PETRON, the bidding procedures were not clear. As for the organizational set-up, the Asset Privatization Trust (APT) Committee on Privatization (COP) had little legal and political clout which slowed down the process. Republic Act 7661 gave COP and APT immunity from preliminary injunctions in the exercise of their functions. Thus, no court or administrative agency can issue any

restraining order or writ of preliminary injunction against the APT. Moreover, the targets were not met; the term of the APT had to be extended several times. This led to the creation of the PMO/PC on December 31, 1999. Furthermore, the method of sale through bidding gave no chance for the public to participate in the process. The most likely buyer-groups were the former owners, some foreign investors, and industry competitors. Executive Order 7661 addressed this by providing that "there should be a minimum of 10% of the assets for sale that should be offered to small local investors." Thus, in the sale of PETRON, 20% of its outstanding shares was offered to the public.

Finally, in its initial stage of implementation, there was a lack of safeguards for the rights of the labor sector. Section 27 of Proclamation 50 provides for the automatic termination of employer-employee relations upon privatization of an asset. Ofreneo and others (1989) noted that the government did not prepare for the labor relations aspect of privatization. Even the DOLE was unprepared for the consequences of foreclosure, sequestration, privatization, and re-privatization. The unions and the workers had no role in the decision to privatize or reprivatize. The response of the unions and workers was mainly reactive and many were not aware of their rights. Workers had difficulty holding on to their jobs and those who were retained were placed on a contractual basis (Briones 1995). All these were later corrected through EO 37 (1992) which provided that: "In the disposition of assets in corporate form, there shall be undue dislocation of labor unless all benefits as provided by existing laws or Collective Bargaining Agreements (CBA) shall be complied with."

Some studies on the impact of privatization point out that in general, the internal efficiency of privatized agencies are mixed (Patalinghug 1996). Patalinghug observes that in the case of Cebu Plaza Hotel, the occupancy rate improved and the salaries of the employees were highest after privatization.

As for the privatization impact on the environment, a study by David (1999) noted that a major contribution of the privatization of MWSS was

the improvement in the control of water pollution. The Regulatory Office of the MWSS was expected to strictly enforce drinking water and wastewater standards strictly and monitor its implementation. It is also expected that sewerage and sanitation services will be expanded in depressed areas.

Overall a rights-based analysis of privatization suggests that this type of reform was implemented without any consultation with the affected sectors. Although it has provided government some needed cash, the result is still mixed on how it affected the delivery of services to claim holders. The privatization of corporations has also affected the access of people to some basic services. The aim of the privatization program seems to be mainly to raise revenues rather than improve the accessibility of the services to the marginalized and vulnerable sectors of the society.

Summary of the Reforms

Table 4 summarizes how the public sector reforms were implemented according to the following factors:

Reasons for reform: Most of the reforms were instituted primarily to create a market-oriented economy and an atmosphere of competitiveness (Amatong 1995). In most cases the policies just involved the duty bearers improving the quality of services provided to the claim holders. In some instances, as in the case of privatization, the process was not very transparent and created labor problems. This was corrected to enable the people to participate.

Incentive Gaps. The reforms obtained mixed results. Some public corporations did not comply with the financial reforms. Public corporations such as National Food Authority remained highly subsidized because of its mandate to provide food security for the country. Thus, the reforms were not really strictly implemented to ensure that services were provided to a great number of claim holders.

Jurisdictional Gaps. The mechanisms required to enforce the reforms proved ineffective, a problem that is due to the difficulty of achieving a

uniform performance appraisal for all the GOCCs. Moreover, some corporations are so "creative" as to be able to find ways of giving themselves better incentives. Some GOCCs, for example, even managed to seek exemption from the SSL which was enacted supposedly to rationalize government pay.

Participation Gaps. There are very few written reports on how claim holders can participate in governance. Some public corporations require membership from the private sector, but it has to be established which of them have. In the case of the NHA, social dialogue was harnessed to involve their claim holders in the decision-making process.

Table 5. Reform Initiatives and Gaps

Reforms	Reasons for Reform	Incentive Gaps	Jurisdictional Gaps	Participation Gaps
Policy and legal frameworks / guidelines for the creation/ definition of GOCCs	Policy was issued to set guidelines for the creation of GOCCs	Provided a framework for GOCCs for clearer mandates and functions	Guidelines and criteria were ambiguous and failed to prevent the creation of new corporations.	No clear mechanism for people to participate in decision-making
Fiscal Discipline	Policy was brought about by liquidity problems, net losses, and high financial dependence of GOCCs on the national government	The biggest GOCCs continue to receive subsidies from the government. Government still lends heavily to utilities and natural monopolies providing public goods at heavily subsidized prices.	Of about 100 GOCCs, only 34 have been remitting dividends to the Bureau of Treasury. Level of remittance also erratic	Policies were issued without consultation. They were primarily intended to increase the competitiveness of the corporations.

Reforms	Reasons for Reform	Incentive Gaps	Jurisdictional Gaps	Participation Gaps
Salary Reforms	Implemented to attract and retain good personnel To maintain a level of salary not very far from that of other government bureaucracies Clamor to rationalize the pay and perks of GOCC personnel	Rationalizing compensation is a step toward rationalizing the compensation of GOCC personnel	Some GOCCs have found ways to seek exemptions from the SSL and to provide a compensation package for its top management personnel.	Clamor to rationalize the pay of GOCC personnel led to the issuance of Memorandum 20.
Performance evaluation and audit	Introduced to improve the level of accountability of the GOCCs to the public	Weak implementation, delays in data gathering, delays in the signing of performance contract, GOCCs not cooperating without incentives, weak enforcement	Performance evaluation and audit done mainly by supervisory bodies	NHA was not able to sell and dispose of completed units due to failure to ensure that its product meets or is close to what people need or want Collection performance of NHA also poor No information on who benefits from the socialized housing program and whether it is meeting the needs of the lowest 30 percent of urban income earners
Privatization including Disposition	Privatization was a measure to improve fiscal position of the country	Results are uncertain as to whether it provides benefits for the country or is more disadvantageous in the long run	The target of the privatization has not been met.	Initially, there was no consultation and correct information on the process. Unclear rules of bidding led to failure

Identifying the Claim Holders and Their Entitlements

The claim holders of the GOCCs are their clients and customers from both public and private sectors. They may include the vulnerable and the disadvantaged groups in society such as laborers, women and children and the poor. Disadvantaged groups face obstacles which include inequality of opportunity for work, food, shelter, and information on health and work opportunities as well as better products and improved services and thus require special attention from government to address their specific vulnerability. Claim holders also includes employees of GOCCs who are entitled to employee benefits. Social dialogue is one mechanism being fostered by the corporate sector to meet the rights claims of the latter group of claim holders. This is formalized through the formation of unions in some GOCCs such as the NPC, SSS and the MWSS.

Each GOCC is usually mandated to deal with the needs of a specific sector; hence claim holders may be GOCC-specific. The following cases of the National Housing Authority (NHA), the Philippine Health Insurance Corp. (PhilHealth), the National Food Authority (NFA), the National Home Mortgage and Financing Corp. (NHMFC) and the Metropolitan Waterworks and Sewerage System (MWSS) help illustrate the concept of duty holders and the programs and accomplishments that they provide to specific claim holders. The NHA shows how community participation is used to promote the rights of the claim holders. On the other hand, the case of PhilHealth illustrates the issues and problems affecting the government effort to meet the financing requirements of fulfilling the right to health. The case of the NFA highlights the struggle of the organization to provide services that will directly address the right to food specifically of the economically disadvantaged despite the threat of privatization that has been repeatedly recommended by multilateral funding institutions. The case of the MWSS shows the impact of privatization on the lives of the urban poor while the case of the NHMFC proves that it is possible to have a successful social housing project catering to the needs of the landless urban poor.

Case 1: The National Housing Authority

Mandate:

The high profile issue of "housing the poor" has led the government to recognize the need to create the National Housing Authority (NHA) as a means to acquire power for the use and distribution of society's resources. NHA was created as a government-owned and controlled corporation (PD 797) in order to carry out the constitutional mandate that the state shall "establish, maintain, and ensure adequate social services in the field of housing — to guarantee enjoyment by the people of a decent standard of living."

Specifically, NHA is authorized to develop and implement a comprehensive and integrated housing program which shall embrace housing development and resettlement, sources and schemes of financing and delineation of government and private sector participation (PD 757).

NHA Response to right to housing

The resettlement program of NHA represents its unique role in promoting the state objective of providing housing to the lowest 30 percent of the population where no other entities are willing to serve. In pursuing this program, NHA takes into account basic services and facilities and access of affected families to livelihood opportunities. Families affected by the resettlement program are involved in the process of dialogue, negotiation and participation in institutionalized mechanisms so that they are able to articulate their needs and perspectives as well as exercise their rights to share in the implementation of projects directly affecting them.

The major accomplishments of NHA include, among others, promoting community-based program, partnership with the private sector, NGOs, POs and the LGUs.

Issues and Problems:

- Issues pertaining to the relocation sites have often been raised and aired by the NGOs and POs. There is a need to review guidelines on demolition in consultation with the NGOs and POs and claim holders;
- Of the P139 B spent in 1999, only P26 B or 18.94% actually reached the bottom 30%. In terms of regional distribution, housing assistance for the poor was concentrated in the NCR followed by Region IV, X and III.
- Weaknesses in the housing delivery system such as: duplication and inconsistency in mandated functions; poor operating framework like treating housing as a dole out, not demand driven, and emphasizing quantity rather than quality.
- Lack of clear measures or indicators whether the rights of claim holders are fully realized.

Case 2: The Philippine Health Insurance Corporation (PHIC)

Mandate:

In 1995, the National Health Insurance Program (NHIP) was created with the aim of providing all citizens of the Philippines with a mechanism to gain financial access to health services, to serve as the means to help the people pay for health care services, and to prioritize and accelerate the provisions of health services to all Filipinos especially that segment of the population who cannot afford such services.

For the past years, PHIC or "PhilHealth," has been involved in two major activities: a) consolidating health insurance funds previously managed by two social security agencies and b) providing support mobilization for its indigent program pursuant to its mandate of universal coverage, focusing on the poorest 25% of the population by 2001.

The breakdown of 37.1 million NHIP members since the assumption of the collection functions in 1998 is as follows: GSIS-6M; SSS- 28M; indigent- 1.2M; and OWWA- 1.9M.

The major accomplishments of PhilHealth includes a) improvement in claims processing; b) decentralization of claims processing; c) accreditation; and d) good financial standing.

Issues and Problems:

A number of problems concerning the implementation of the National Health Insurance Program have been noted by Niñal (2002) as follows:

- inadequate information campaign especially about the benefit packages.
- limited PhilHealth benefits, usually only about 20% of hospital bills with no outpatient benefits thus putting to question whether the insurance program does indeed adequately address the health financing problems that currently beset beneficiaries .
- insufficient information drive among LGU officials which creates negative perceptions among them on the sustainability of the Indigent Program, especially its structural and operational mechanisms which are regarded as unaffordable and unresponsive to the basic needs of their indigent members. Hence, more LGU executives may refuse to continue making contributions to the Indigent Program.
- tendency of some health providers to make fraudulent claims

Case 3: The National Food Authority

Mandate:

The right to food is a basic human right and one that the National Food Authority aims to address directly . The NFA is tasked to implement policies aimed at stabilizing the supply and price of grain and other staple products for the farmers, consumers and other stakeholders. The government, through the NFA has participated in the market in order to ensure food security and price stability for the benefit of consumers and producers.

The NFA secures the supply of the country's staple food and stabilizes prices both at the farm-gate and consumer levels. It also assures food security in staple cereals in times of calamity and emergency, both natural and man-made, wherever they occur. Staple food requirements are made available within 48 hours in calamity- or emergency-stricken areas.

The NFA is engaged in actual grains trading using subsidy-dependent and release price structures and mechanisms. It also facilitates and develops stakeholder access to post harvest and marketing facilities and services provided by the agency.

Issues and Problems:

The nature and mandate of NFA predisposes it to lose because it has to provide a service to consumers and the producers (farmers) that will cushion the impact of pure market forces and ensure that there that will be access to basic food items for all. Privatization has been repeatedly recommended by multilateral institutions as a way to improve the financial condition of the NFA. Any loans availed of by the government always require policy and structural reforms.

Despite all the pressures, the government has resisted the call for privatization of its functions especially rice importation. Privatizations has drawn strong reactions from the concerned claim holders most especially farmers, traders and even the NFA employees' association.

Since the right to food is a basic right government as main duty bearer should ensure that everyone is provided reasonable access to realizing it. Privatizing the NFA will only jeopardize the fulfillment of this right especially of vulnerable groups. The NFA is directly involved in the anti-poverty programs of the administration such as the rolling stores project which sells basic food items at subsidized rates to the poor, a clear manifestation of how government as duty bearer is carrying out its responsibility. What the NFA needs is, in addition to the rolling stores project, a more focused and comprehensive program to address the right to food of the nation in general and of vulnerable groups in particular. The appropriate rights-based indicators will also be of help to properly monitor how NFA is responding to its mandate.

Case 4: The Metropolitan Waterworks and Sewerage System (MWSS)

Piped drinking water remains elusive to 3.6 million of the 12.4 million population within the Metropolitan Waterworks and Sewerage System (MWSS) service areas.

Enabling the poor to have equal access to life-sustaining potable water has long been a primordial goal. However, efficient water provision has long eluded the MWSS, one of the world's biggest water utilities company. The MWSS service areas cover thirty-seven (37) cities and municipalities.

Mandate:

The MWSS-Regulatory Office (RO) was created pursuant to the Concession Agreement (CA). Its main function is to monitor compliance with the service obligation targets of the two private concessionaires, to identify and to determine and recommend water tariffs in accordance with the provisions of the CA.

The CA is basically neutral in dealing with the socio-economic status of the customers of MWSS. It contains no direct provisions requiring the concessionaires to provide water services to the poor. Instead, provisions on service obligations are interpreted loosely to include all customers, rich and poor, squatter and non-squatter, low-income and high-income. Clearly, pro-poor service obligations of the concessionaires can only be inferred and defined by the concessionaires in the implementation of their service targets.

Issues and Problems:

Access to Water The installation of individual connections, group taps, community-shared taps and privately-managed water distribution systems proved effective in enhancing and hastening the access of the urban poor to potable drinking water. The urban poor proved willing to shoulder connection charges as long as they have formal access to piped water.

Water Tariffs and Affordability The increasing block tariff fails to ensure that low-income consumers pay less per cubic meter since the schemes used in poor areas were group taps and bulk water selling, which are charged the highest rate for residential and semi-business customers. Of the low-income households, only 20-25% have individual water connections. Majority are connected through group taps or buy vended water from bulk buyers of water or public faucets. The rate adjustments implemented in the last two years were mainly concerned with raising the tariff levels without changing the whole tariff structure. The existing tariff structure was found to be weak in efficiency, equity and affordability.

Benefits at the Household Level On the scheme of group taps and its long-term sustainability, it has been found that public faucets proved problematic in terms of higher tariffs, poor collection and nonremittance of payments to the concessionaire. Sustainability depends on the households' religious payments of bills and the treasurer's honest management of collections and payment.

Access to water of blighted communities within the service areas has definitely resulted in improved living conditions, more time to earn a living, less payment and increased water consumption and other tales of benefits from an improved water system. However, the pro-poor programs could still be improved by canceling the connection charges or lengthening the payment period.

As for consumers, it is important to give them a voice, where feasible, with regard to service expansion, quality investment, and complaints about failure to meet standards. Consumers should be represented in the regulatory body. Prior to the next rate rebasing, consumers should be systematically consulted regarding service standards.

Improving Regulation The bottomline in water regulation is that policy setting must remain with the government. It must not be left to the whims and caprices of the market. Moreover, regulation must be undertaken by an independent and trusted institution. Then, too, civil society can regulate the performance of the regulator and the regulated companies.

The privatization of water services in Metro Manila six years ago has resulted in minimal gains for and disadvantages to the poor. The Concession Agreement contains no legal provision for water and sewerage sources for the poor and thus no clear commitments that would directly promote the welfare of poor and low-income constituents living in the MWSS service areas.

While water from public faucets is better than having no water at all, still water from this source tends to be more expensive than water from individual water connections. When water has to be rationed, the public faucets are the first to be subjected to reduced water supply. Households using water for purely residential purposes tend to be charged higher tariffs in cases where they share a group tap, buy water from the subdivision association or a private service provider.

To the credit of the concessionaires, their pro-poor water programs have resulted in new household connections in blighted and poor communities. Informal settlers or squatters were able to apply and get either an individual or group water connection, since the land title requirement for a water connection had been waived. However, households had to shell out almost P6,000 (as of October 2003) to cover the costs of pipes to connect to the water main, water meter and related installation services.

Case 5. The National Home Mortgage and Financing Corporation (NHMFC)

Mandate:

The right to housing is recognized by all countries and the Philippine policy reflects this universal concern. In response to the challenge of providing adequate housing to all Filipinos, government corporations on housing were among the earliest to be created which include the National Home Mortgage Financing Corporation (NHMFC).

Republic Act No. 7279 provides for a continuing urban development and housing program. It specifically identifies the Community Mortgage Program (CMP) as a program for the underprivileged and homeless. Republic Act No. 7835 also provides that financing at very low interest rates should be granted to beneficiaries.

The Community Mortgage Program (CMP)

The NHMFC launched the CMP in August 1988 with the aim of increasing home ownership among the lowest-income sector of society and to ensure that the landless urban poor have land tenure security. There are two kinds of projects under the CMP: a) the on-site projects which allow illegal settlers to formalize their claim to the land they occupy by buying it from the owner through community mortgage, and b) the off-site projects entail the relocation of the tenants to another area.

The CMP has been hailed as one of the more successful housing programs of the government in terms of the following: a) Beneficiary reach effectiveness - it has assisted the greatest number of families in the shortest period with the smallest loan fund utilization; b) Cost effectiveness - the average monthly amortization makes it the most cost-effective government program to allow land access for the poor; c) Government Housing Loans and Collection Efficiency - it has consistently shown higher collection efficiency rates compared to other social housing programs; and d) Pipeline projects - most of the projects are limited to on-site projects and an express lane has been set up where new on-site projects are processed.

Issues and Problems:

Although the CMP is considered successful, some problems need to be addressed. These include the lack of necessary funds from the government, slow processing of the projects and release of payments to landowners, and deteriorating collection efficiency rate.

Integrating the Standards and Norms of Human Rights in the Public Corporate Sector

GOCCs were created primarily to deliver services that the private sector could not provide as well as to cater to the needs of the disadvantaged groups of society. The reforms instituted in the sector were aimed at making the delivery of services more efficient and effective. It seems, however, that there has been limited information on the decisions, policies, and initiatives affecting the corporate sector which has rendered the outcome of the instituted reforms dubious.

The lack of a clear performance evaluation also reveals that the mechanism on citizen participation in governance is rather limited. Further, the magnitude of the services the GOCCs offer also makes it difficult to assess how the sector has empowered the citizenry. One has to look at the individual agencies to ensure that they promote and protect the rights of claim holders. One way by which to gauge the performance of GOCCs with regard their rights-based accountabilities to the citizenry is by using indicators of performance that themselves are based on human rights goals.

This section looks at 8 GOCCs and 3 former GOCCs, recently privatized to investigate how they adhere to their obligations to the people to meet some basic rights. A review of the data on eight (8) retained GOCCs and three (3) privatized corporations shows that their charters are all slanted towards the realization of a certain right. Table 6 shows the specific rights, sectors, and international and national standards involved.

Table 6. Review of Eleven Corporations' Mandates/Charters

Mandates	Rights Involved	Sectors Involved	International Standards	National Standards
Social Security System (SSS)				
"It is the policy of the State to establish, develop, promote, and perfect a sound and viable tax-exempt social security system suitable to the needs of the people	Right to social security and insurance	Wage earners, low-salaried employees of the private sector,	Right to security in the event of unemployment, sickness, disability,	"The State shall afford full protection to labor, local and

Mandates	Rights Involved	Sectors Involved	International Standards	National Standards
throughout the Philippines which shall promote social justice and provide meaningful protection to members and their families against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden." (Section 2, Republic Act 8282).		household helpers, self-employed workers, such as farmers and fisherfolks.	widowhood, old age, or lack of livelihood. (UDHR, ICESCR, right to Development; CEDAW, CRC)	overseas...." (1987 Philippine Constitution, Article XIII on Social Justice and Human Rights)
The Philippine Charity Sweepstakes Office (PCSO)				
...to raise and to provide funds and to constitute a charity program for health services, medical assistance, and charities of national character through the conduct of charity sweepstakes races, lotteries, and other similar activities	Right to health	Disadvantaged sectors of society, hospitals, national programs of the Office of the President.	Right to access and enjoy health services and facilities and to enjoy certain social conditions favorable to the highest attainable standard of health. (UDHR, ICESCR, CEDAW, CRC)	"The state shall make health and other social services available to people at affordable cost." (Article VIII of the 1987 Philippine Constitution on Health)
The Land Bank of the Philippines (LBP)				
An implementing agency of CARP involved in land valuation, compensation to owners of private agricultural lands, and collection of amortizations from CARP farmer-beneficiaries Provision of credit assistance to small farmers and fisherfolks and ARBs An official depository of government funds A government bank with a social mandate to spur countryside development	Right to Development	Owners of agricultural lands, small farmers and fisherfolks, government, depositors	The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and	"The goals of the national economy are a more equitable distribution of opportunities, income, and wealth...." "The state shall undertake an agrarian reform program founded on the rights of farmers and farm-workers...." (Article XII of the 1987

Mandates	Rights Involved	Sectors Involved	International Standards	National Standards
			fundamental freedoms can be fully realized. (Right to Development)	<i>Philippine Constitution on the National Economy and Patrimony)</i>
The Philippine National Bank (before privatization)				
PNB performs commercial banking functions in order to provide the necessary financing for the country's economic development. It offers several loan packages meant to stimulate the development of the different sectors of the economy.	Right to Development	The general population and depositors	access to basic resources, education, health services, food, housing, employment and the fair distribution of income (Right to Development) (Where found?)	"The goals of the national economy are a more equitable distribution of opportunities, income, and wealth...." (Article XII of the 1987 Philippine Constitution on the National Economy and Patrimony)
The Metropolitan Waterworks and Sewerage System (before privatization)				
Functions and objectives directed to the operation, maintenance, regulation, and supervision of the waterworks and sewerage systems to ensure adequate supply and distribution of water and proper maintenance of the sewerage system.	Right to basic services such as water	The population of the cities of Manila, Pasay, Quezon, Cavite, and Caloocan, and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal Province, the	Access to basic resources, education, health services, food, housing, employment, and the fair distribution of income (Right to Development)	"...The state, through policies, should provide adequate social services...." (Article II of the 1987 Philippine Constitution on the Declaration of Principles and State Policies)

Mandates	Rights Involved	Sectors Involved	International Standards	National Standards
		municipalities of Bacoor, Imus, Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan.		
The National Power Corporation (before privatization)				
NPC undertakes the development of hydroelectric generation of power and the production of electricity as well as the transmission of electric power nationwide	Right to electricity as part of the right to access basic services	The National Power Corporation (before privatization) The general public, independent power producers, distribution utilities (MERALCO), electric cooperatives.	Access to basic resources, education, health services, food, housing, employment, and the fair distribution of income (Right to Development)	"...The state, through policies, should provide adequate social services..." (Article II of the 1987 Philippine Constitution on the Declaration of Principles and State Policies)
The National Irrigation Administration				
NIA's objectives include: to investigate, study, improve, construct, and administer all national irrigation systems in the country. To finance its operation continuously, NIA is authorized to collect fees from users of the irrigation system.	Right to food, basic services, economic development	Farmers, especially in the rural areas, irrigators, the general population	Access to basic resources, education, health services, food, housing, employment, and the fair distribution of income (Right to Development)	"The State shall promote comprehensive rural development..." (Article II of the 1987 Philippine Constitution on the Declaration of Principles and State Policies)
The Light Rail Transit Authority				
LRTA's objectives are geared toward the construction, operation, maintenance, and/or lease of light rail transit systems in the country.	Right to mass transportation, access to basic services	The riding public	Access to basic resources, education, health services, food, housing, employment, and the fair	"...The state, through policies, should provide adequate social services..." (Article II of the 1987

Mandates	Rights Involved	Sectors Involved	International Standards	National Standards
			distribution of income (Right to Development)	<i>Philippine Constitution on the Declaration of Principles and State Policies)</i>
The National Food Authority				
NFA's mandate and functions include engaging in the production, manufacturing, processing, and to packaging of food products / commodities; to import / export food products and commodities and / or raw materials / equipment and facilities needed; and register, license, and supervise persons engaged in wholesale and retail, processing, manufacturing, etc; and to prescribe, impose, and collect fees / charges.	Right to food, basic services;	Farmers, marginalized sectors of society, food manufacturers and importers, the general public	Access to basic resources, education, health services, food, housing, employment, and the fair distribution of income (Right to Development)	"The State shall recognize the right of the farmers, farmworkers, etc. and to provide support to agriculture..." (Article XIII of the 1987 Philippine Constitution on Social Justice and Human Rights)
The Philippine Economic Zone Authority				
PEZA is tasked to promote the flow of investors to generate employment; to stimulate capital by providing attractive climate and incentives for business activities; to transform selected areas into highly developed agro-industrial, commercial, investment, and financial centers.	Right to employment, right to development	Unemployed people in the countryside, the general public	Access to basic resources, education, health services, food, housing, employment, and the fair distribution of income (Right to Development)	"The state shall promote full employment and equality of employment opportunities for all..." (Article XIII of the 1987 Philippine Constitution on Social Justice and Human Rights)
The Home Guaranty Corporation				
HGC ensures the continuous funding support of the government's housing program, encourages the flow of private funds through a viable system of mortgage and	Right to housing	Developers, citizens who want to avail of government housing program	Access to basic resources, education, health services,	"The state shall undertake a program on land reform and housing

Mandates	Rights Involved	Sectors Involved	International Standards	National Standards
credit guarantee, enjoins active participation of local government units in the housing program, and institutionalizes and promotes the self-help approach.			food, housing, employment, and the fair distribution of income (Right to Development)	at available cost." (Article XIII of the 1987 Philippine Constitution on the National Economy and Patrimony)

Mandates. Based on the charters and mandates of the 11 corporations reviewed it is apparent that they perform multiple tasks which are not only profit oriented but also directed towards social development. Some have been specifically created to generate revenues that will directly finance programs for the disadvantaged sectors. One specific example is the PCSO which generates profit by sponsoring national lotteries, racing and other games of chance to finance charity programs, health services, and medical assistance for the poor.

Rights Involved. The rights addressed by the 11 GOCCs are social and economic rights which aim to guarantee a decent level of living for the citizenry. These include the right to food, to health, to housing. While most target the population in general such as when NFA seeks to ensure food security with a stable rice supply they are also expected to run programs specifically targeting the rights claims of vulnerable sectors as exemplified by the Rolling Stores Project of the NFA which sells basic consumer goods to the poor at subsidized prices.

Adherence to standards. The mandates and functions of the eleven corporations adhere to certain international standards. It is the obligation of the state to respect, protect, and fulfill its obligations as a member of the international bodies concerned. Hence, these corporations are obliged to perform their functions to enable the country to fulfill part of its obligations.

Aside from the international standard, the country has also made explicit its obligations to human rights through the 1987 Philippine Constitution. All the corporations' mandates and programs are geared towards addressing and fulfilling the state obligations as stated in the Constitution.

Results of Consultation Workshop with Selected GOCCs to Validate the Rights-Based Approach

In order to determine how the public corporate sector as duty bearers fulfill and promote the rights of claim holders the study conducted a consultation workshop with representative GOCCs. Among those represented in the workshop were the National Dairy Authority, People's Television Network, Inc., Philippine Institute of Traditional and Alternative Health Care, Philippine Fisheries Development Authority, International Trade Expositions and Missions, Inc., Garments and Textile Export Board. (See Annex A.) The workshop yielded the following observations.

Human Rights Principles Promoted/Fulfilled. All the public corporations represented in the workshop recognized that they promote/ fulfill certain rights such as the right to work, free expression, health services, education, access to other social and economic services, based on their mandates as GOCC.

State and Non-State Actors. The state actors are usually the departments the public corporations are attached to. They also mentioned NGOs as partners.

Capacity Issues. The participants raised different kinds of capacity issues depending on their mandate and the rights they promote. Some of the capacity issues cited were lack of funds or capital, lack of social preparation for their projects, lack of participation in policy formulation and political interventions affecting their overall performance.

Areas of Cooperation/Convergence. The public corporations identified areas of cooperation/ convergence based on their specific mandates. What is apparent, however, is that they all want the private sector to get involved in their activities and projects through partnership and consultation.

Enhancing Participation. The participants were asked to name efforts that could enhance participation. Among the suggestions were:

- consultative meetings
- committee participation; skills programs
- active feedback mechanism on “live” programs; satellite technology to bring broadcast to remote areas
- announcements of policies
- membership of client in the Board of Directors
- acceptability of projects among users
- conduct of public hearing

Factors Impeding Participation. On the other hand, the participants thought that participation is hindered by

- indifference
- funding and manpower
- lack of capital and inability to attend seminars
- lack of continuity due to changes in leadership
- political interventions
- failure to identify representatives to the Board of Directors

Recommendations To improve participation in their activities, the participants recommended

- follow up of projects and periodic review
- source for funding education
- additional capital
- attending seminars
- amending charter
- competitive salary package
- preparing a master plan

Conclusions and Recommendations

From this study we conclude that the public corporate sector is huge sector, which provides a variety of goods and services, and creates a bias for the disadvantaged sector. It is important to review the sector because it is not only required to earn profits but also to address the economic and social well-being of the people- two goals that may be inherently incompatible. Moreover although the sector has the mandate, its dual functions also create problems of performance evaluation. The cases of the NHA, PHIC, NFA, MWSS and NHMFC illustrate how some of the GOCCs respond to the basic needs of their clients. It also shows how the NHA, for one, fosters social dialogue with its claim holders in order to provide them better services.

As regards institutional arrangements, the study shows how public corporations are internally and externally managed. Patronage politics is one of the problems besetting the sector internally. On the other hand, several agencies monitor the sector. Nonetheless, there is still no clear performance evaluation that could measure the effectiveness of the developmental efforts of the GOCCS.

While reforms have been instituted to improve the performance of the sector, no clear consultation took place during the implementation of the reforms. Privatization may have brought in needed cash for the government, but more studies need to be done to determine whether or not the delivery of services has improved as a result of these reforms. With regard to the restructuring of the budget for other social development efforts, some GOCCs have adopted programs addressing gender and environment concerns. However, one cannot ascertain the quality of the programs they are implementing.

Assessing the performance of the public corporate sector using a common set of indicators based on the rights-based approach may involve some difficulty since GOCCs provide such a wide range of services to different groups of clientele. However, they have one characteristic in common: as defined in their respective charters they all have mandate to deliver goods and services, with special attention to the marginalized and

vulnerable groups of society. So far no studies have been made on the sector using the rights-based approach that would have addressed the question of whether or not such mandates have been adequately fulfilled. Using the RBA as an analytical frame clearly raises several issues that need to be addressed to enable evaluators of duty bearers measure whether indeed they promote and protect the basic rights of claim holders.

Major Issues Affecting the Public Corporate Sector

Multiple Mandates and Objectives. Each GOCC in the public corporate sector has multiple mandates and objectives. In some instances, these conflicting objectives make them difficult to achieve. This problem ultimately affects their performance. Hence, there is a need to determine the specific human rights they should address and respond to. There should be a standard enabling law for corporations for each sector so that the corporations will not have the same functions.

Weak performance indicators. Most of the indicators being used to assess the performance of public corporations are based on financial data rather than on their ability to meet their development objectives. They do not consider the impact they have made or the services they provided to their clients. There is no direct correlation between the perks/salaries and the performance of the corporations (e.g., the NPC). Human rights indicators should be developed and strengthened in order to determine if the public corporate sector has addressed the needs of the citizens, most especially the marginalized sectors of society.

Weak implementing and monitoring mechanisms. The mechanisms applied to ensure that the reforms are carried out are weak. Some public corporations were able to exclude themselves from the salary standardization law which means that the laws are not strongly implemented. A strong monitoring mechanism to look into the implementation of reforms is thus recommended.

Need for Focused Programs. Is the public corporate sector really serving the poor and the marginalized sectors of society? The sector's mechanism ensuring that the rights of target clients are promoted and protected is also ineffective. A review of their programs and projects will enable them to determine if their programs are really having an impact on their target clientele.

Problem of Access. The poor accessibility of their programs is one major problem public corporations should pay attention to. For instance, the Land Bank of the Philippines caters mostly to depositors and borrowers but not to those who are marginalized. It is obliged to reach out to its clients and provide them their basic rights.

Thus, while the laws are made to protect the poor, most of the services offered by the government sector, which includes the GOCCs, entail charging more from those who can afford in order to have funds to allocate for its operations and to provide services to the poor. Access to these services has a price, however, whether it comes from the pockets of the people/citizens or collective contributions and taxes given to the public corporations in the form of subsidy.

Inadequate Funding. Government funding is inadequate to provide services to the majority of the population who are considered poor or living in poverty. Likewise, the private sector may not have enough resources to take care of the poor at minimal cost. What needs to be done, therefore, is to address the root cause of poverty rather than the signs and symptoms of poverty. In many cases, the knowledge of services offered by the government only conditions the poor to believe in what it can offer which in the end only leaves them more frustrated because the services are not accessible to them due to the price they have to pay for such services. Hence, the accessibility of services remains a problem even with the private sector participating in the endeavor of GOCCs (as in the case of NKTl with its dialysis program) to attain development.

Thus, there is a need to develop a mechanism for funding social development programs of the corporations of the National Government the Official Development Assistance (ODA) and other sources. The Development Bank of the Philippines, for example, has a so-called "third window" which is designed to promote social development and funded from its own earnings.

Moreover, the evaluation and audit of GOCCs should not only concentrate on the assessment of financial capacity but also on the public policies relative to endeavors to strengthen the social capital both of the duty bearers and claim holders. The government should also ensure the free flow of information for participation and social dialogue in order to increase transparency and promote equity and human dignity.

Annex A: Results of the Consultative Workshop with Selected GOCCs

Table 1a. GOCCs Claim holder's Map

Sectors/Groups Affected	Entitlements	Responsibilities	Capacity Issues	Underlying Causes	Areas of Cooperation
National Dairy Authority					
Dairy farmers and small entrepreneurs	Rights to food, non-discrimination, work opportunities and formation of cooperatives	Dialogue with the duty bearers and submit reports/ feedback	Lack of funds and social preparation	Diversification of economic activity to support dairy development	Membership in cooperatives
People's Television Network, Inc.					
All sectors	Right to expression and information		Extent of Coverage	No network coverage in far-flung areas; no television sets for the poor, especially those areas with no electricity	Involvement of private sector in providing electric power and provide public access to television network
Philippine Institute of Traditional and Alternative Health Care					
All sectors	Right to health, right to life, work, and education	Provide feedback to duty bearer regarding program performance; active participation of individuals in the private sector to advance the study on alternative health care	Limited areas covered	Lack of funding support	Intensive advocacy and activities

Sectors / Groups Affected	Entitlements	Responsibilities	Capacity Issues	Underlying Causes	Areas of Cooperation
Philippine Fisheries Development Authority					
Fisher folk and small entrepreneurs; Ordinary food consumers	Right to food Isability and availability; right to participate in governance	Help increase fish production by not indulging in destructive and illegal fishing methods	Inadequate fish landing and processing facilities	Political intervention; lack of participation in policy formulation	Encourage active participation of fish boats, aquaculture operators; devise effective fish regulation and policy enforcement
Center for International Trade Expositions and Missions					
Those engaged in cottage industries	Right to participate, equality and non-discrimination in trade fairs	Provide good products that are sellable and marketable	Program design is focused on urban areas		Effective consultation mechanism and dialogue
Garments and Textile Export Board					
Garment Exporters	Rights to equality and non-discrimination	Formation of organized groups, provide suggestions/ comments on GTEB performance services	Organization and development of garment exporters	Lacks support funds	Partnership with private sector and NGOs

Table 2a. Duty Bearer's Map

Key Governance Issue	Rights Affected/Involved	Human Rights Principles Involved	State and Non-State Actors	Mandate/ program relevant to rights	Responsibilities	Capacity Issues	Areas of convergence Opportunities for Reforms
National Dairy Authority							
Increase income of farmers	Right to work/ employment	Attention to vulnerable groups, equity, equality, and people's participation	NGOs and private groups involved in similar functions; Department of Agriculture	Supportive of poverty reduction through build-up of dairy industry	Programs and services are market oriented, with capability building component; encourage cooperation	Diversification of economic activity to support dairy development; capitalization of inputs for efficient/ quality production	Members of cooperatives to avail of livestock dispersal; dairy primaries to converge into secondary federation for procuring and marketing functions
People's Television Network, Inc.							
A balanced mix of television broadcasting not addressed	Right to free expression of views; HR principles promoted; advocacy on good governance		All sectors	Information dissemination on livelihood, employment; political and economic rights through television programming		Continuity of programs; No support to upgrade quality programs	Need satellite coverage for access by other government agencies

Key Governance Issue	Rights Affected/Involved	Human Rights Principles Involved	State and Non-State Actors	Mandate/program relevant to rights	Responsibilities	Capacity Issues	Areas of convergence Opportunities for Reforms
Philippine Institute of Traditional and Alternative Health Care							
Lack of access to alternative health care	Rights to health services and human and dignified life; right to information education on available alternative health care		Department of Health; NGOs and private sector involved in similar functions	Conduct of community-based training on herbal medicines and alternative health care practices such as acupuncture	Training in alternative modalities complementing modern medicines; integration of traditional and complementary alternative medicines in the school curriculum; development of herbal product as alternative; promotion/ advocacy of environment friendly and affordable health care modalities	Lack of alternative health care services to the poor	
Philippine Fisheries Development Authority							
Dwindling food supply	Right to food stability; right to participate in	Good governance/ accountability;	Department of Agriculture; NGOS and	Improve efficiency in handling		Inadequate fish landing and processing	Partnership with private and NGOs

Key Governance Issue	Rights Affected/Involved	Human Rights Principles Involved	State and Non-State Actors	Mandate / program relevant to rights	Responsibilities	Capacity Issues	Areas of convergence Opportunities for Reforms
Center for International Trade Expositions and Missions, Inc.							
Increase corporate income; promote export	governance	service delivery to fisher folks; empowerment and peoples participation	private organizations involved in similar functions	marketing and distribution of fishery products		facilities	
Garments and Textile Export Board							
Garment export regulation	Right to equality and non-discrimination	Right to participate in government on decision making regarding trade organization both local/ international; right to equal access to services	Department of Trade and Industry; NGOs and organized entrepreneurs engaged in import-export business	Encourage and promote establishment of trade fairs	Engaged in planning and conduct of trade fairs, exhibits; promote local industry	Unable to hold regular trade fairs	Private sector participation
Garment export regulation	Right to equality and non-discrimination	Right to equality and non-discrimination	Department of Trade and Industry; garment exporters	Regulate export of garments and textiles; maximize forex through exports	Provision of guidelines	Evolve role of GTEB in anticipation of quota phase out in 2005	Consultation with export garment industry

Annex B: List of Government-Owned or Controlled Corporations (GOCCs)

I. FINANCIAL SECTOR

- A. Parent Corporations (with Resident Auditor)
1. Asset Privatization Trust APT
 2. Al-Amanah Islamic Investment Bank of the Philippines AIIBP
 3. Bangko Sentral ng Pilipinas BSP
 4. Development Bank of the Philippines DBP
 5. Employees Compensation Commission ECC
 6. Government Service Insurance System GSIS
 7. Home Development Mutual Fund HDMF
 8. Home Guaranty Corporation HGC
 9. Land Bank of the Philippines LBP
 10. National Home Mortgage Finance Corporation NHMFC
 11. Philippine Crop Insurance Corporation PCIC
 12. Philippine Deposit Insurance Corporation PDIC
 13. Philippine Health Insurance Corporation PHIC
 14. Social Security System SSS
 15. Trade and Investment Development Corporation TIDCORP
- B. Parent Corporations (under Team Approach)
16. CB-Board of Liquidators CB-BOL*
 17. Industrial Guarantee Loan Fund IGLF*
 18. Philippine Retirement Authority PRA*
 19. Small Business Guarantee and Finance Corporation SBGFC*
- C. Subsidiary Corporations (under Team Approach)
20. ComSavings Bank ComSavings*
 21. Credit Information Bureau, Inc. CIBI*
 22. LBP Insurance Brokerage, Inc. LIBI
 23. LBP Leasing Corporation LBPLC*

24. Masaganang Sakahan, Inc. MSI
25. People's Credit and Finance Corporation PCFC
26. Philippine Postal Savings Bank, Inc. PPSBI*
27. Philpost Leasing and Financing Corporation PLFC**

II. INFRASTRUCTURE AND PUBLIC UTILITIES SECTOR

- A. Parent Corporations (with Resident Auditor)
1. Cebu Ports Authority CPA
 2. Light Rail Transit Authority LRTA
 3. Local Water Utilities Administration LWUA
 4. Mactan Cebu International Airport Authority MCLAA
 5. Manila International Airport Authority MIAA
 6. Metropolitan Waterworks and Sewerage System MWSS
 7. National Electrification Administration NEA
 8. National Housing Authority NHA
 9. National Irrigation Administration NIA
 10. National Power Corporation NPC
 11. Philippine Aerospace Development Corporation PADC
 12. Philippine National Railways PNR
 13. Philippine Ports Authority PPA
 14. Philippine Postal Corporation PPC
 15. People's Television Network, Inc. PTNI
- B. Subsidiary Corporations (under Team Approach)
16. Clark International Airport Corporation CIAC
 17. Metro Transit Organization, Inc. MTOI
 18. National Stevedoring and Lighterage Corporation NSLC*
 19. National Trucking and Forwarding Corporation NTFC*
 20. NIA Consult, Inc. NCI*
 21. North Luzon Railways Corporation NLRC*
 22. Philippine National Lines PNL*
 23. PNOCC Shipping and Transport Corporation PSTC

III. INDUSTRIAL AND AREA DEVELOPMENT SECTOR

A. Parent Corporations (with Resident Auditor)	
1. Bases Conversion Authority	BCDA
2. Cagayan Economic Zone Authority	CEZA
3. Human Settlements Development Authority	HSDC
4. Laguna Lake Development Authority	LLDA
5. Manila Gas Corporation	MGC
6. Philippine Economic Zone Authority	PEZA
7. National Development Company	NDC
8. Philippine National Oil Company	PNOC
9. Public Estates Authority	PEA
10. Southern Philippine Development Authority	SPDA*
11. Zamboanga City Special Economic Zone Authority	ZSEZA
B. Parent Corporations (under Team Approach)	
12. Philippine Veterans Investment Development Corporation	PHIVIDEC**
13. Subic Metropolitan Authority	SBMA
C. Subsidiary Corporations (under Team Approach)	
14. ASEAN Copper Products, Inc.	ACPI***
15. Batangas Land Company, Inc.	BLCI
16. Bancom Realty Corporation	BRC
17. Bataan Technology Park, Inc.	BTPI*
18. BCDA Management Holdings Incorporated	BMHI**
19. Clark Development Corporation	CDC
20. Dasmariñas Industrial and Steelworks Corporation	DISC**
21. DBP Data Center, Inc.	DDCI
22. DBP Management Corporation	DMC*
23. Filoil Development and Management Corporation	FDMC
24. First Cavite Industrial Estate, Inc.	FCIEI

25. First Centennial Clark Corporation	FCCC**
26. Freeport Service Corporation	FSC
27. GY Real Estate, Inc.	GYREI
28. Inter-Island Gas Service, Inc.	IIGSI**
29. Kamayan Realty Development Corporation	KRC
30. Land Bank Realty Development Corporation	LBRDC
31. Liquid Gas Philippines, Inc.	LGPI***
32. Malangas Coal Corporation	MCC
33. Negros Occidental Copperfield Mines, Inc.	NOCOMIN***
34. North Davao Mining Corporation	NDMC***
35. Pagkakaisa Gas Storage Corporation	PAGASCOR***
36. PEA Tollway Corporation	PEA-TC**
37. Phil-Import-Export Corporation	PIEC***
38. Philippine National Construction Corporation	PNCC*
39. Phividec Industrial Authority	PIA**
40. Pinagkaisa Realty Corporation	PRC
41. PNOC Coal Corporation	PCC
42. PNOC Energy Development Corporation	PNOC-EDC
43. PNOC Exploration Corporation	PNOC-EC
44. PNOC Petrochemical Development Corporation	PPDC*
45. Traffic Control Products Corporation	TCPD**

IV. AGRICULTURAL, TRADING AND PROMOTIONAL SECTOR

A. Parent Corporations (with Resident Auditor)	
1. Center for International Trade Expositions and Mission, Inc.	CITEM
2. Cottage Industry Technology Center	CITC
3. KKK-Processing Center Authority (LIVECOR)	KKK-PCA
4. National Dairy Authority (formerly Philippine Dairy Corporation)	NDA
5. National Food Authority	NFA
6. National Tobacco Administration	NTA

7. Natural Resources Development Corporation	NRDC
8. Philippine Coconut Authority	PCA
9. Philippine Fisheries Development Authority	PFDA
10. Philippine International Trading Corporation	PITC
11. Philippine Tourism Authority	PTA
12. Philippine Convention and Visitors Corporation	PCVC
13. Quedan Rural and Credit Guarantee Corporation	QRCCG
14. Sugar Regulatory Administration	SRA
15. Philippine Rice Research Institute	PRRI
16. Garments and Textiles Export Board	GTEB
B. Subsidiary Corporation (with Resident Auditor)	
17. Food Terminal, Inc.	FTI
C. Subsidiary Corporations (under Team Approach)	
18. Agro-Livestock Commercial Development Corporation	ALCDC ^{***}
19. Apo Production Unit, Inc.	APUI ^{**}
20. Bukidnon Forests, Inc.	BFI
21. Club Intramuros Golf Course	CIGC ^b
22. CDCP Farms	CDCPF ^{***}
23. Corregidor Foundation, Inc.	CFI [*]
24. Duty Free Philippines	DFP ^c
25. Hotel Development Corporation	HDC ^{**}
26. Inca Coffee Estate Corporation	ICEC ^{***}
27. Integrated Feed Mills Corporation	IFMC [*]
28. Kaunlaran Foods Corporation	KFC ^{***}
29. Leyte Park Hotel, Inc.	LPHI ^{**}
30. Marawi Resort Hotel, Inc.	MRHI ^a
31. McArthur Park Beach Resort	MPBR ^b
32. Meat Packing Corporation of the Philippines	MPCP [*]
33. National Agri-Business Corporation	NABCOR [*]
34. National Sugar Development Corporation	NASUDECO ^{***}
35. National Sugar Refineries Corporation	NASUREFCO ^{***}
36. National Sugar Trading Corporation	NASUTRA

37. NDC Plantations, Inc.	NDC-PI ^{***}
38. Northern Foods Corporation	NFC ^d
39. Philippine Centennial Expo '98 Corporation	PCEC ^{**}
40. Philippine Commission on the Promotion and Development of Sports Scuba Diving	PCPDSSD ^{**}
41. Philippine Fruits and Vegetable Industries, Inc.	PFVII ^{***}
42. Philippine Genetics, Inc.	PGI ^{**}
43. Philippine Sugar Corporation	PHILSUCOR
44. San Carlos Fruits Corporation	SCFC ^{**}

V. EDUCATIONAL, SOCIAL, CULTURAL, SCIENTIFIC, CIVIC AND RESEARCH SECTOR

A. Parent Corporations (with Resident Auditor)	
1. Cultural Center of the Philippines	CCP
2. Development Academy of the Philippines	DAP
3. Lung Center of the Philippines	LCP
4. National Kidney and Transplant Institute	NKTI
5. Overseas Workers Welfare Administration	OWWA
6. Philippine Amusement and Gaming Corporation	PAGCOR
7. Philippine Charity Sweepstakes Office	PCSO
8. Philippine Children's Medical Center	PCMC
9. Philippine Heart Center	PHC
10. Technology and Livelihood Resource Center	TLRC
B. Parent Corporations (under Team Approach)	
11. Boy Scouts of the Philippines	BSP [*]
12. Nayong Pilipino Foundation, Inc.	NPFI ^{**}
13. Occupational Safety and Health Center	OSHC ^{**}
14. Philippine Center for Economic Development	PCED
15. Philippine Institute for Development Studies	PIDS
16. Philippine Veterans Assistance Commission	PVAC ^{**}
C. Subsidiary Corporations (under Team Approach)	
17. Luzon Integrated Services, Inc.	LINSI ^{**}

18. Land Bank Countryside Development Foundations, Inc. LCDFI
19. Philippine Postal Institute Foundation, Inc. PPIFI**
- D. Subsidiary Corporation (with Resident Auditor)
20. Philippine International Convention Center, Inc. PICCI

LEGEND:

- * – Ongoing
- ** – Not audited
- *** – Non-operational (still subject to audit)
- * – Audit is deferred pending resolution as to whether it is subject to COA audit
- ^a – Report not yet received
- ^b – Report is consolidated with Philippine Tourism Authority
- ^c – Report is under review
- ^d – Report is consolidated with LIVECOR

References

- Amatong, Juanita. "Organizational Arrangements for Monitoring, Coordinating and Supervising GOCCs: A Preliminary Report" unpublished paper, n.d.
- Briones, Leonor M. 1995. "The Impacts of Privatization on Distributional Equity in the Philippines," *Privatization and Equity* in V.V. Ramanadham (ed.) London: Routledge.
- . "The Role of GOCCs in Development" *PJPA*, Vol. XXIX No. 4
- Briones, Leonor M., Dalisay C. Sevilla and Arlene B. Inocencio. 1995 "Government Owned and /or Controlled Corporations: Issues, problems and Policy Dilemmas, in Bautista et. Al. (eds.) Introduction to Public Administration in the Philippines: A Reader, Quezon City: College of Public Administration, UP.
- Center for Policy and Executive Development. 2003 Public Enterprise Reforms and Privatisation in the Philippines: An Assessment of Performance and a Proposed Framework for Improved Performance Evaluation. July 2002.
- . 2003. Strategic Alliance on Social Dialogue in the Public Sector, (unpublished report).
- Commission on Audit. 2002 Annual Financial Report on GOCC
- David, Cristina. "Post MWSS Privatization: Water Supply situation in MetroManila: Is there an Improvement? Development Research News. May-June.
- Department of Budget and Management. 2002. Budget of Expenditures and Sources of Financing
- . Budgetary Support to Government Corporations by Recipient Corporation, 2002-2004
- . 2002. Fiscal Accountability of Government Owned and Controlled Corporations (Briefing Material)
- Manasan, Rosario and Corazon Buenaventura. 1985. "Macroeconomic Overview of Public Enterprises in the Philippines," *PJPA*, Vol. XXIX No. 4. Also published as "The Public Enterprise Sector in the Philippines: Economic Contribution and Performance," *Public Enterprise*, Vo. 8, 1988.
- National Housing Authority. 2001. NHA Yearend Report.

Patalinghug, Epictetus. 1995. "Philippine Privatization: Experience, Issues and Lessons," Quezon City: The University of the Philippines Press.

The Successful Public-Private Partnership: the National Kidney and Transplant 2003 Institute's Story, Philippine Panorama, 26 October 2003. Also available at http://www.philhealth.gov.ph/about_us.htm

United Nations. 1986. Declaration on the Right to Development, Adopted by the United Nations General Assembly Resolution No. 41/128 of 4 December. Also available at: www.lawphil.net.

———. 1948. Universal Declaration of Human Rights, Adopted and proclaimed by the United Nations General Assembly Resolution 217 A (III) 10 December. of 4 December. Also available at: www.lawphil.net.

IX. Political and Electoral Reforms: A Rights-Based Approach to Legislation*

Francisco A. Magno

Introduction

Rights-based governance is anchored on a strategy to improve the capacity of governance institutions to promote, protect, and fulfill the rights of citizens especially the poor and disadvantaged. The implementation of key political, electoral and legislative reforms is crucial in enhancing participation and policy responsiveness to human rights and citizen needs.

The conduct of free and responsible suffrage serves as the springboard for democratic governance and accountability. Credible and transparent elections foster political legitimacy and stability. An examination of electoral and political processes is essential in strengthening democracy.

The legislature plays a critical role in a democracy. It is the venue where citizen preferences are expressed and transformed into bills for legislative action. Legislators represent people and groups, reflecting and bringing their needs, aspirations, problems, concerns, and priorities to the policy table. Aside from generating new laws, the legislative system exercises oversight functions to ensure that laws are effectively enforced in accordance with legislative intent.

The objective of this study is to evaluate the capacity, incentives and initiatives for electoral and political reforms. The rights-based approach

(RBA) will be used as the conceptual lens for evaluating the extent and pace of reform efforts. The review will incorporate the following features: 1) bring into the picture stakeholders who would otherwise be without protection, 2) provide a multi-sector focus, and 3) provide a framework for dealing with issues of empowerment and equity, as well as entitlements of beneficiaries and obligations of service providers. It will assess through the RBA lens the quality of governing institutions, the engagement of civil society, and the established enabling policies.

Rights and Citizenship

The RBA focuses on raising levels of accountability in the development process by identifying claim holders (with their entitlements) and duty holders (with their obligations). Modern citizenship entails a bundle of predictable and enforceable rights and obligations for every member of the political community. The checklist for political rights include the following: 1) chief executive and legislative leaders elected through a meaningful process; 2) fair election laws, campaigning opportunity, polling and tabulation; 3) fair reflection of voter preference in distribution of power (e.g., parliament has effective power); 4) multiple political parties; 5) freedom from military or foreign control; 6) media free of political censorship; and 7) freedom of assembly and organization (Gastil 1991).

The variables for political participation include: 1) freedom of speech and of the press, 2) freedom of association, 3) freedom of organization, and 4) number and character of political parties (Gasioroski 1991). Democracy provides opportunities for effective participation, equality in voting, gaining enlightened understanding, exercising final control over the agenda, and inclusion of adults. Prior to policy adoption, all the members must have equal and effective opportunities to make their views known to the other members as to what the policy should be. When the moment of decision arrives, every member must have an equal and effective opportunity to vote, and all votes must be counted as equal. Within reasonable time limits, each member must have equal and effective opportunity to learn about the relevant

alternative policies and their likely consequences. The members must have the opportunity to decide how, and if they choose, what matters are to be placed on the agenda. Adult permanent residents should have the full rights of citizens (Dahl 1998).

Democracy and citizenship were coextensive in several nineteenth century European countries. Participation in the political community was restricted to those with the capacity to exercise their political rights and obligations. Only those who fulfilled some social and economic prerequisites for the effective exercise of citizenship—property, income or education—were entitled to these rights. With the advent of universal suffrage, democracy required that all individuals be empowered to exercise the same rights and obligations as citizens. Yet the difficulty faced by contemporary democratic regimes is that while democracy is a system of positive rights, it does not automatically generate the conditions required for the effective exercise of these rights as well as obligations (Przeworski 1995).

Three conditions must be fulfilled by the state for citizenship effective in a democracy. First, if the exercise of citizenship is to be predictable, governments and officials must themselves act in accordance with their constitutions and laws. Second, a universalist legal system is a constitutive dimension of the order that the state guarantees for a given territory: it includes the rights and obligations of public law as well as the regulation of private or common-law relations. Only a state that predictably enforces its laws can enable peaceful private relations. Hence, the extent to which citizenship rights are respected and are enforceable depends on the quality and the quantity of state presence in private relations. If justice and police systems are to be used both as a means of exercising rights and as a system for regulating conflicts, citizens must be assured that they are universally and predictably applied. Third, if everyone is to exercise his/her citizenship rights effectively, its enabling social conditions must be present. While democracy offers to all the right to be free from arbitrary violence, as well as to form and exchange opinions, the exercise of citizenship is feasible only for those individuals who enjoy some modicum of material security, education, and access to information (Przeworski 1995).

Electoral System

The opportunity to vote in periodic competitive elections is the minimum condition a governmental system must satisfy to qualify as democratic. However, further opportunities and forms of political participation are highly desirable. Democracy would be enhanced in quality and perhaps improved in efficiency if the level of participation were increased, either through existing channels or by creating additional ones that ought to be established. Those who wield political power, either at the local or national level, will be likely to do so more effectively if they are well informed about the problems, needs and attitudes of the citizens and communities they govern. The existence of channels for public participation is likely to encourage citizens to comply voluntarily with governmental rules. If people have the opportunity to play some part in the selection of public officials, to communicate their views on public issues, and to exert pressure on decision makers, they are more likely to regard governmental decisions as legitimate (Birch 2001).

All democracies use elections to simplify dealing with the problem of political equality. Elections constitute a scheduled opportunity to register citizen preferences. They provide citizens, who have many different concerns on their minds, with a limited number of choices of leaders and thereby produce a decisive outcome from a diversity of voices. In addition, because each voter casts a single ballot and because each vote has equal weight when the results are tallied, elections are an equalizing device. They are, however, not problem free. Procedural conflicts over enfranchisement, districting, and the rules governing the electoral system make clear that even in the simplified world of voting, the equal power of each voter cannot be taken for granted (Verba, Schlozman, and Brady 1995).

Good leaders share the voter's issue preferences. They have integrity and are hard to bribe or otherwise induce to work against the voter's interests. They are competent or skilled in discerning voters' needs and concerns and in implementing optimal policies to address them. Voters

have devised a variety of signals and measures. These include general measures of the voter's welfare.

The health of the economy or society (e.g., misery index, crime rate) should be reviewed. This analytical exercise might allow inferences about the types of leaders the incumbent politicians are. A study of specific measures of "pork" delivered, policies chosen, or votes cast by incumbent representatives in prior terms in office, party affiliation and location within the party would also disclose their individual interests and priorities as leaders. Information about the personal character of candidates must be sought from all types of sources, including their life histories as reported by the media or the candidates themselves. The assessment would also involve understanding the policies advocated by the candidate or incumbent during the campaign (Fearon 1999).

Governments are accountable if voters can discern whether they are acting in their interest and respond appropriately; that is, incumbents perceived to be acting in the best interest of citizens get reelected and do not lose. Accountability operates when voters choose to retain incumbents only when they act in their best interest, thus inducing them to choose policies necessary to get reelected.

Politicians can shirk doing what citizens would want them to do in different ways. They do so when they conspire with their rivals or when they enrich themselves in office. They shirk if they act to increase their own wealth. They shirk their responsibilities when they extend special favors to their families and friends. But the most flagrant way by which they work against the best interests of their constituents is by choosing policies that advance their own interests or those of some special entities to which they are beholden. The problem facing citizens is how to set up ways of making them choose between behaving as they are expected like good government officials and staying in office or pursuing their own self-interests and losing their office. The standard view of how the accountability mechanism works relies on retrospective voting. In this view, the citizens themselves set standards by which to evaluate performance.

We need electoral institutions that clarify responsibility and make it easy for citizens to reward and punish culpable officials. We need a moral and economic climate in which public service enjoys respect as well as commensurate material rewards. In addition, we need institutions that would provide citizens with independent information about the government. Such accountability institutions may include: 1) an independent board to assure transparency of campaign contributions with its own investigative powers; 2) an independent auditing branch of the state, an auditor-general; 3) an independent source of statistical information about the state of the economy; and 4) a privileged place for the opposition in overseeing the publicly owned media (Manin, Przeworski and Stokes 1999).

Political violence and rent seeking seem most prominent in the history of many political families. Reflecting basic differences in landscape and livelihood, the strategy of each operates largely within a distinct domain. Political violence is prevalent in the provinces while the competition for rents is concentrated in the capital. Unlike the Manila elites who operate within a culture of metropolitan civility, provincial families are forced to engage in systematic political violence either as agents or opponents. Provincial politics involves a zero-sum struggle for hegemony over an electoral or commercial territory that encourages organized violence, competing over public lands, precincts and transportation routes. By contrast, any aspirant for a major rent, whether financier or warlord, must compete within Manila's courtier society with its complex of palace intrigues, legislative coalitions, ideological debate, and bureaucratic regulations (McCoy 1994).

Many politicians try to transform their electoral offices into lasting family assets, building a political dynasty. Once entrenched, influential politicians often work to bequeath power and position to their children, in effect seeking to transform the public office that they have won into a private legacy for their family. The most successful politicians are those who can invest their heirs with wealth and the good name needed to campaign effectively for office—a strategy that blends the individual with

the familial, the provincial with the national, and warlordism with rent seeking (McCoy 1994).

The role of money in electoral politics is widely acknowledged but rarely studied. There is a lack of systematic research on the links between deficiency levels in transparency and accountability in the political finance regime and the spaces vulnerable to corruption in the Philippine electoral system. Political finance refers to the mechanisms tracking how funds are received and used by candidates and parties inside and outside the formal electoral campaign period.

The concept of political finance should be regarded in its broad sense. Mobilizing funds for political purposes cannot be reduced to electoral campaign spending. It involves looking at the bigger picture which requires a study of political organizations legally distinct from parties but are allied with them, as well as looking into the costs of political lobbying and the expenses associated with media firms created and paid to promote partisan interests. Campaign finances must also be reviewed inasmuch as the high cost of mounting a campaign would compel the eventual election winner to recoup his/her investment through illegal means. It is also important to consider the costs of litigation in political cases (Pinto-Duschinsky 2002).

Democratic institutions have been restored and attention should now focus on the development of institutions necessary for the attainment of a strong and functioning democracy. The challenge is to build and sustain a democratic culture in the country, particularly nurturing a politically mature electorate. More than political advertisements, the electorate must be empowered with information to help them vote intelligently. It is no less a challenge is to develop people's appreciation of their vote as a means to government reform that they may receive better services from it. Part of this challenge is the need to raise electorate's awareness of the relevant issues and the candidate's corresponding platforms responsive to them (NEDA 2001).

It is important to consider the adequacy, appropriateness, and effectiveness of disclosure, monitoring, and auditing procedures in regulating political finance in the country. It can be argued that weak

disclosure and enforcement mechanisms encourage the use of political finance as a means to collect contributions from private entrepreneurs and to engage in political and electoral corruption.

There are disclosure rules in the Philippines concerning political finance. However, these rules apply only to expenses incurred during the electoral season. Under the Omnibus Election Code, the reporting system is confined to the filing of accurate statements of election contributions and expenditures. The statements are received by the Commission on Elections (COMELEC) which is the constitutional body tasked to oversee electoral activities in the country. Under the Code, the candidate and the treasurer of the political party or their authorized representatives shall, not later than thirty days after election day, file a report stating the amount of each contribution, the name of the recipient candidate or political party, and the date the contribution was made (Section 99, Article 11).

The Election Code sets a ceiling for campaign spending. Candidates and parties can spend only three (3) pesos and five (5) pesos, respectively, for every voter registered in the electoral district. The use of media and propaganda materials is likewise subject to the restrictions imposed by law on authorized expenses of candidates and parties under the Fair Elections Act. There is no direct public financial support to political parties. The closest thing to a public subsidy is the free use by candidates of government media through the COMELEC Hour for a limited time.

While there is a disclosure requirement for campaign contributions and expenditures, there is no strict monitoring to check the veracity of the reports submitted by the candidates. Local candidates file their sworn statements of election contributions and expenditures before the field officers of the COMELEC. The papers are then forwarded to the Election Records Division of the agency. The Law Department requires its local officers to notify candidates who failed to comply with the rule. Administrative fines are imposed on erring candidates. Nonetheless, the disclosure provision on campaign finance is reduced into a filing requirement instead of being used as an effective tool to improve transparency in the use of money for political purposes.

While many of the campaign financial statements submitted to the COMELEC are believed to be inaccurate, generally no one is held liable for turning in false reports. The penalty is imposed for nonsubmission of statements. However, the slow enforcement of low penalties cannot be an effective deterrent against violators. During the 1992 elections, for instance, a candidate for a local post in Zamboanga del Sur was assessed a fine of four thousand (4,000) pesos for failure to submit a sworn statement of contributions and expenditures. The fine was not paid until six years later.

The absence of credible and effective sanctions as well the problem of a weak electoral administration explains the dismal outcomes of efforts to regulate political finance spending. This may be attributed to the reclassification of election-related violations from criminal offenses to administrative cases. Hence, no one has been jailed for manipulating campaign expenditure reports.

The pursuit of violators can be done if the COMELEC itself overhauls its own system. It is important to streamline its operations and reduce unnecessary personnel while strengthening weak units. For instance, it needs to beef up its contingent of only nine lawyers in the Law Department to improve its performance in case management. There are of course budget constraints to be reckoned with in addressing the performance deficit in the agency.

In a system where political finance is generated mainly by the candidates and their private contributors, voting becomes a market-driven exercise in the absence of strong political parties and a good voter education program. When political and campaign spending cannot be sufficiently regulated to create a level playing field, elections become the vehicle for privileging wealthy partisan interests in policy making. In exchange for financial support, contributors to successful candidates can demand payoffs in the form of state-conferred rents and contracts.

The trading and buying of rules resulting from a heavily market-driven voting process will have negative consequences on the long-term

development of the country. A key challenge is to reform the political finance regime in ways that will prevent it from being a gateway to political corruption.

The lack of transparency in political finance processes shows not only in the inability of the public to monitor what candidates and parties do with campaign contributions but also in the absence of disclosure requirements for contributors. There is also no limit on the amount of private and corporate contributions candidates may accept. The COMELEC has difficulty in performing its function since it is challenging and expensive for law enforcement bodies to keep track of all the money spent by parties and candidates across the country. Both the will to enforce and the dedication to independent monitoring are missing.

Weak political parties also contribute to the weakness of the political finance regime in the Philippines. No other rule governing political parties aside from the Omnibus Election Code exist. There are no laws regulating political finance outside the campaign period either. And there are no required declarations of assets and liabilities and disclosure of financial records to the public to boot.

Election finance requirements in the Philippines have increased immensely. Violations of reporting rules are rampant and election officials doubt whether they can implement the rules. Running election campaigns have become so expensive only the rich or those supported by big business groups are in a position to win. Qualified candidates without money and without financial backers are in a decidedly weaker position.

In the Philippines the legislature has proposed legislation on political finance reform. In the House of Representatives Committee on Suffrage, the Political Party Strengthening Bill and the Campaign Finance Reform Bill are pending. A series of meetings of the Technical Working Group composed of both members of the House and the Senate has produced a working draft. In the Senate the Committee on Constitutional Amendments, Revision of Codes and Laws has already released a committee report recommending the passage of a Political Party Development Act.

The proposed policy aims to institute reforms in campaign financing through effective and transparent mechanisms designed to level the playing field among all candidates and political parties during elections and to reduce opportunities for graft and corruption. The legislation intends to eliminate illegal practices and strengthen the party system. There is a provision on financial subsidies to political parties to augment their expenditures for campaign purposes and for party development. The policy seeks to institutionalize public prevent the candidates' dependence on wealthy rent-seekers. It strives to reform the political finance regime particularly in the areas of full disclosure, monitoring, and reporting.

The participation of civil society in pushing for reforms in the political and campaign finance system is a prominent feature of the advocacy effort. Civil society organizations engaged in political and governance change have banded together to form the Consortium on Electoral Reforms (CER). Together with watchdog organizations like the National Movement for Free Elections (NAMFREL), the CER has been active in moves to mobilize public support to improve transparency and accountability in the political finance system and the modernization of the electoral process. Citizen demand to battle corruption in the political finance and electoral systems is critical in convincing legislators to support initiatives for reform.

A key focus of reform should be the election commission. The election commission is the legally constituted body that oversees whether contestants play by the rules. In the Philippines, the COMELEC must strengthen its enforcement capacity. Proper monitoring is important. Fines should be collected and violators pursued. The agency's operations should be streamlined to ensure that personnel are efficiently mobilized to perform their functions. A good information and management system should be instituted to track down noncompliance with election rules. In view of the impending application of an automated counting system, human resource development activities have to be conducted within the agency. The institutional capacity of the COMELEC to perform a leading role in the reform process is critical to the success of proposed changes.

Efforts to improve the political finance system in the Philippines would require the concerted efforts of reformers inside and outside the government. The institutional weaknesses of the system have been identified: where there are rules, they are not enforced; where sanctions exist, penalties are so light as to prevent violators from re-engaging in illegal actions.

The current policies are insufficient. There is a policy vacuum concerning rules on donor campaign contribution limits, public subsidy for parties, donor identity disclosure, and stringent monitoring and auditing systems. Policies to improve transparency and accountability in the political finance system are intrinsic to the fight for reform. However, it is just as important to ensure that institutional mechanisms are in place to implement existing and future reform efforts.

Rights-Based Legislation

Societal organizations have de facto been able to influence Congress through several changes: bill or motion drafting or sponsorship; membership or participation in consultative or technical bodies in Congress; participation in public hearings and committee meetings; lobbying through petitions, signature campaigns, and submission of position papers; participation in fora, dialogues, and consultations with legislators or candidates present; and dialogues with individual legislators (Wui and Lopez 1997).

The ratio of sectoral representatives to government representatives should be determined according to type of participation or venue, like the People's Economic Summit, National Employment Summit, Legislative-Executive Development Advisory Council (LEDAC), etc. Another indicator is the number of joint policy agenda adopted by federated civil society formations and government (e.g., the 1993 Social Pact for Empowered Economic Development, 1994 Social Reform Agenda, 1995 Social Covenant to Promote Employment, and Agenda 21: National Agenda for Sustainable Development). Change of perceptions should be measured through periodic surveys. The agreements between government and civil society are not merely

the results of co-optation but of a serious commitment to genuine participation and representation.

In terms of consensus building, the proportion of vital socioeconomic concerns deliberated, by LEDAC and approved by the Senate and House of Representatives to the total number of priority bills lined up by LEDAC, is an indication of the level of effective consensual mechanisms. The speedy deliberation and approval of priority bills and the increase in the number of vital socioeconomic issues resolved by LEDAC indicate a concurrence between and among government agencies and civil society in policy-making. (Gaffud and Termulo 2000).

This section focuses on two key legislations where the claim-making rights of vulnerable sectors were expressed through civil society engagement in the legislative process. These are Republic Act 8371 or the Indigenous Peoples' Rights Act (IPRA) and Republic Act 7610 or the Special Protection of Children Act. These laws are considered significant because they have been passed by the Philippine Congress with the strong and active participation of civil society groups and government agencies. Both laws are landmark legislations in their respective areas of concern.

Indigenous Peoples' Rights Act (IPRA)

Signed into law on 29 October 1997, the IPRA is a good example of a rights-based legislation. It was passed by the 10th Congress of the Philippines and was one of the priority bills under the Social Reform Agenda of the Ramos presidency. The law is considered an important piece of legislation not only because of its recognition of the rights of indigenous peoples (IPs) to self-governance and to their ancestral domain but also because it is a product the collaboration between government, nongovernment organizations (NGOs), and IPs. Comprehensive consultations, dialogues, integrative workshops, and inter-agency / cabinet clustering were undertaken before the law was finally approved.

The Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act was passed by the Philippine

Congress on February 7, 1992 and was signed into law on June 17, 1992. It is considered a landmark legislation as it defines new crimes or offenses that may be committed against children (Caalim 1998). The law also redefines other offenses or crimes contained in existing statutes. Special categories of children are also provided with special protection. Furthermore, this law is one of the first to be passed in the Asia-Pacific region after its adoption by the United Nations General Assembly and the ratification of the State Parties of the Convention of the Rights of the Child (CRC) in 1986. The Philippines ratified the CRC through Senate Resolution No. 109 approved on 26 July 1990. It is the 31st country in the world and the 5th in Asia to ratify the said international agreement. As signatory to the CRC, the country is committed to ensuring that the provisions of the Convention are adopted by means of legislative measures as well as programs and services. The Special Protection of Children Act manifests this commitment.

Republic Act 8371 entitled "An Act to Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and For Other Purposes" is a comprehensive law recognizing what indigenous peoples in the Philippines have long been fighting for—official recognition of their right to their ancestral domain, self-governance, social justice and human rights, and cultural integrity (CIPRAD 1999).¹ The law took ten years and three Congresses to pass. It has been hailed by the IPs and advocates of IP rights as a landmark legislation that will give the indigenous peoples what has long been due them (Bennagen 1999).

Prior to the IPRA, there were previous attempts by government to recognize the rights of IPs to their ancestral domain. An example is an administrative order issued by the Department of Environment and Natural Resources (DENR) providing for the issuance of Certificates of Ancestral Domain Claims (CADC) or Certificates of Ancestral Land Claims (CALC) to indigenous cultural communities that have petitioned the government to recognize their right over lands under their care since time immemorial (Bennagen 1999).

From a rights-based perspective, the IPRA provides an avenue for the empowerment of vulnerable groups especially the indigenous communities. In Table 1, the rights-based approach is applied in considering the state's obligation to respect, protect, and fulfill human rights. The obligation to respect requires the state to abstain from carrying out, sponsoring or tolerating any practice or policy that violates the integrity of individuals and from impinging on their freedom to access resources to satisfy their needs. The obligation to protect urges the state to prevent the violation of rights by other individuals or nonstate actors. Where violations do occur, the state must guarantee access to legal remedies. The obligation to fulfill involves issues of advocacy, public expenditure, government regulation of the economy, the provision of basic services and related infrastructure and redistributive measures. The duty of fulfillment covers those active measures necessary to ensure access to entitlements (Craven 1995).

Table 1: Duties and Rights under the Indigenous Peoples' Rights Act of 1997

Type of State Obligations	Obligations of Duty Bearers	Right of Claim Holders (UN Standards)
Obligation to Respect	<ul style="list-style-type: none"> • Refrain from desecrating places sacred to the indigenous people. • Cease from depraving the indigenous peoples of their employment and educational rights • Refrain from prohibiting the practice of the spiritual and religious traditions of indigenous peoples • Respect the role of independent indigenous people's organizations in pursuing the collective interests and aspirations of indigenous peoples • Show consideration for the values, practices and institutions of indigenous peoples • Refrain from interfering with customary laws in case of conflicts within and among indigenous communities 	<ul style="list-style-type: none"> • "Indigenous and tribal peoples shall enjoy full the measure of human rights and fundamental freedoms without hindrance or discrimination." (Art.3, Part I, Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169)) • "The social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals." (Art. 4, Ibid.) • "... Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers..." (Art.20, Ibid)

Type of State Obligations	Obligations of Duty Bearers	Right of Claim Holders (UN Standards)
		<ul style="list-style-type: none"> • "Measures shall be taken to ensure that every member of the peoples concerned shall have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community." (Art.26, Ibid)
Obligation to Protect	<ul style="list-style-type: none"> • Ensure that the indigenous peoples are safe in their ancestral lands • Protect them from illegal displacement or relocation from their territories. • Guarantee their fundamental human rights • Preserve the artifacts of great importance to indigenous communities which reflect their culture, traditions, and institutions • Ensure their safety during crossfire in armed conflicts • Ensure equality even between men and women within the indigenous communities 	<ul style="list-style-type: none"> • "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Art. 2, Universal Declaration of Human Rights [UDHR]) • "Adequate penalties shall be established by law for unauthorized intrusion upon or use of the lands of the peoples concerned, and governments shall take measures to prevent such offences." (Art.18, ILO No.169)
Obligation to Fulfill	<ul style="list-style-type: none"> • Recognize indigenous peoples' right to acquire titles to their ancestral domain • Provide for the establishment of an office with clearly defined functions (National Commission on Indigenous Peoples) • Provide adequate funding for the delivery of basic services to indigenous communities • Ensure the representation of indigenous communities in decision-making bodies in the local as well as national government • Guarantee the right to pursue their economic, social, and cultural development 	<ul style="list-style-type: none"> • "Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity." (Art.2 Part I, Convention concerning Indigenous and Tribal Peoples in Independent Countries [ILO No. 169]) • "Governments shall establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision making in elective institutions and administrative and other bodies responsible for

Type of State Obligations	Obligations of Duty Bearers	Right of Claim Holders (UN Standards)
	<ul style="list-style-type: none"> • Endeavor to reflect the dignity and diversity of the cultures, histories, and aspirations of indigenous peoples in all forms of education, public information and cultural-educational exchange. • Resettle displaced indigenous communities in times of natural catastrophes • Ensure that using force or any form of coercion against indigenous peoples shall be dealt with by law. 	<p>policies and programmes which concern them" (Art. 6, Ibid.)</p> <ul style="list-style-type: none"> • "The right of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized." (Art.14, Ibid)

Furthermore, the IPRA mandated the creation of the National Commission on Indigenous Peoples (NCIP) to formulate and implement the provisions of the law. The key concern of the NCIP is to protect and promote indigenous peoples' rights and welfare. The NCIP is composed of seven commissioners who should each be a member of an indigenous cultural community. The commissioners are appointed by the President and chosen from a list of nominees recommended by indigenous peoples. Furthermore, the commissioners are chosen from the different ethnographic areas in the Philippines where indigenous peoples reside. To carry out its mandate, NCIP it has been granted various powers and given several responsibilities, including the following:

1. To serve as the primary government agency through which indigenous peoples can seek government assistance;
2. To review and assess the conditions of indigenous peoples, including existing laws and policies relative to their situation, and to propose relevant laws and policies to address their role in national development;
3. To formulate and implement policies, plans, programs, and projects for the economic, social, and cultural development of indigenous peoples, and monitor their implementation;

4. To issue certificates of ancestral land and ancestral domain title;
5. To enter into contracts, agreements, or arrangements with government or private agencies or entities as may be necessary to attain the objectives of RA 8371;
6. To coordinate development programs and projects for the advancement of indigenous peoples and oversee their proper implementation;
7. To call for periodic conventions or assemblies of indigenous peoples to review, assess, and propose policies or plans; and
8. To issue appropriate certification as a precondition to the grant of a permit, lease, grant, or any other similar authority for the disposition, use, management, and appropriation by any private individual, corporate entity, or any government agency, corporation, and subdivision of any part of the ancestral domain, taking into consideration the consensual approval of the indigenous peoples concerned. (CIPRAD 1999)

The Implementing Rules and Regulations (IRR) for the IPRA were promulgated by the NCIP on 9 June 1998 and was published in accordance with the law on 14 June 1998. According to former President Ramos: "It took courage to have this law passed in the midst of opposition from many influential groups whose interests would be diminished by returning ancestral rights to the indigenous communities. Although it took many years to have it passed, given its complexity, it is done. RA 8371 is a triumph of the executive's and the legislature's political will. For only a law of such breadth, depth, and scope as RA 8371 can provide the indigenous peoples with the seeds of their empowerment and social equity" (Ramos 1999).

The Special Protection of Children Act

Republic Act 7610 or the Special Protection of Children Act of 1992 effectively replaced Presidential Decree 603, the Child and Youth Welfare Code, promulgated in 1974 during the period of martial rule in the

Philippines. The new law aimed to provide stronger deterrence and special protection of children against child abuse, exploitation, and discrimination. The scope of the new law on children's rights was more comprehensive compared to the laws previously implemented.

Table 2: Duties and Rights under the Special Protection of Children Act of 1992

Type of State Obligations	Obligations of Duty Bearers	Right of Claim Holders (UN Standards)
Obligation to Respect	<ul style="list-style-type: none"> • To refrain from denying the child his or her survival and normal development • To refrain from limiting children specially those from indigenous communities and ridden areas armed conflict access to quality education and other services 	<ul style="list-style-type: none"> • Respect and assurance that there will be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (Article 2, UN Convention on the Rights of the Child) • Special care and assistance in childhood • State recognition that every child has an inherent right to life and guarantee of the survival and development of the child • Respect for the right of the child to freedom of expression, association, thought, conscience, and religion
Obligation to Protect	<ul style="list-style-type: none"> • To provide special protection of children from all forms of abuse, neglect, cruelty, exploitation, and discrimination. • To ensure that the best interests of children are upheld as the paramount consideration in all actions concerning them • To prevent the operation of establishments or enterprises which promote, facilitate, or conduct activities constituting child prostitution and other forms of sexual abuse, child trafficking, obscene publications and indecent shows, and other forms of abuse 	<ul style="list-style-type: none"> • That the best interest of the child shall be the primary consideration in all decisions and actions concerning children (Article 3) • That the illicit transfer and nonreturn of children abroad are resisted and stopped • That the child "grow up in a family environment, in an atmosphere of happiness, love and understanding."

Type of State Obligations	Obligations of Duty Bearers	Right of Claim Holders (UN Standards)
	<ul style="list-style-type: none"> To prevent the employment of children in all commercials or advertisements promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts and violence To ensure that cases falling under the this law are heard in a Regional Trial court duly designated as Juvenile and Domestic Court, and given preference in terms of hearings and disposition 	
Obligation to Fulfill	<ul style="list-style-type: none"> To provide sanctions against child abuse, exploitation, and discrimination To require the DOJ and DSWD to formulate a comprehensive program on child abuse, exploitation, and discrimination for their prevention and deterrence and for crisis intervention. To intervene on behalf of the child when the parent, guardian, teacher, or person who has charge or custody of the child fails or is unable to protect the child To provide special attention to children in areas torn by armed conflict, to those who belong to indigenous communities, and to working children To urge the Department of Education (DepEd) to develop courses under non-formal education for working children. To uphold the concept of "Children as Zones of Peace" through the resolution of armed conflicts. To separate detained children from adults, provide free legal assistance, notify parents or guardians, and release them to DSWD within 24 hours of arrest 	<ul style="list-style-type: none"> State assurance ensure that all institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities (Art. 3 no. 3, UN CRC) That appropriate legislative, administrative, and other measures be taken for the implementation of the rights of children (Art. 4) That every child's right to education, rest and leisure, among others, is upheld Enactment of legislation against unlawful sexual activity, child prostitution and other unlawful sexual practices, and against exploitation through their appearance in pornographic materials and indecent shows

Furthermore, the law provides the Department of Justice (DOJ) and the Department of Social Welfare and Development (DSWD) in coordination with other government agencies concerned and the private sector shall formulate a comprehensive program on child abuse, exploitation, and discrimination. The program is to be implemented a year after the effectivity of the law. Its main objective is to protect children against child prostitution and other forms of sexual abuse, child trafficking, obscene publications and indecent shows, other acts of abuse and circumstances which endanger child survival and normal development. RA 7610 also provides sanctions for establishments or enterprises which promote, facilitate, or conduct activities constituting child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse. Specific articles of the Act also focus on the conditions of working children (Article VIII), children of indigenous cultural communities (Article IX), and children in the midst of armed conflict (Article X).

Civil Society Participation

Civil society engagement in the passage of the laws on indigenous peoples' rights and children's rights began even before the bills were introduced in Congress. In fact, the role and participation of civil society groups was significant in the formulation of the policies. Various groups actively participated in the technical working groups organized by legislators and legislative committees. They also actively lobbied and campaigned for the passage of the laws. The participation of these groups was also evident in the formulation of the implementing rules and regulations as well as in the implementation of the policies.

One of the most interesting features of the IPRA is that it is a product of many years of collaboration among civil society groups, i.e., indigenous peoples and NGOs working for the recognition of IP rights and various offices of the executive and legislative branches of government. The strong advocacy for a comprehensive law recognizing the rights of indigenous

peoples in the Philippines had been going on for quite some time. In fact, according to Commissioner Evelyn Dulnuan of the NCIP, the struggle for the recognition of IP rights and ancestral domains dates back to the 1960s. The development aggression in the Cordilleras and in other parts of the Philippines where IPs reside precipitated the struggle for IP rights. It was during these years when the Cordillera People's Alliance first advocated IP rights and their ancestral domain although the alliance did not engage the government at that time. It was recognized that the struggle for the recognition of IP rights had not been waged only through lobbying and in debates and discussions but also through an armed struggle (Ramos 1999), hence the view that the IPRA was the product of a social movement. The initiatives and actions of IP leaders and communities and their support groups contributed to a social movement that won some constitutional recognition for the rights of indigenous peoples in 1987 (LRC 2000). This subsequently generated support for a law implementing this constitutional mandate. Moreover, aside from the 1987 Philippine Constitution (Section 22, Article II; Section 5, Article XII; Section 6, Article XIII; and Section 17, Article XIV), the IPRA was based on international treaties and conventions, notably the International Labor Organization (ILO) Convention 169² and the United Nations Draft Declaration on the Rights of Indigenous Peoples (CIPRAD 1999).

The initiative to enact a new law recognizing and protecting the rights of IPs to their ancestral lands and domains started with the 8th Congress. In the 1980s, consultations and discussions with IP communities in the Cordillera region were held in the 1980s and it was during these consultations that the need for a new law was articulated (Bennagen 1999). The advocacy, particularly of the group UGAT, for the passage of an Ancestral Domain Bill in Congress was the offshoot of Constitutional Commission member Ponciano Bennagen's initiatives to include provisions on IP rights in the 1987 Constitution (Damaso 2003). At this time, Representatives Andolana and Claver pushed for the passage of the Ancestral Domain Bill in the House of Representatives. In the Senate, Senators Santanina Rasul and Joseph Ejercito Estrada took the initiative to pass an Ancestral Domain Bill

during the Aquino administration as did Senators Orlando Mercado, Gloria Macapagal Arroyo, and Francisco Tatad during the Ramos administration (Tayawa 2003; Damaso 2003). However, the measures proposed by these legislators focused only on the creation of a national commission on indigenous peoples (Tayawa 2003). It was during the 10th Congress when Senator Juan M. Flavier's proposed Senate Bill 1728 was eventually passed as RA 8371 or the IPRA. In the House of Representatives, Representative Gregorio Andolana pushed for the passage of the bill.

The Coalition for Indigenous Peoples' Rights and Ancestral Domains (CIPRAD) played a significant part in the enactment of the IPRA, especially its formulation and development. The CIPRAD is a broad coalition of groups and individuals advocating the recognition and protection of IP rights and ancestral domains. According to Commissioner Dulnuan, at the time, all initiatives from all types of groups should be recognized when it came to the advocacy for IP rights and the passage of the IPRA. This is because the advocacy for the recognition of IP rights was not really a concerted effort among IP groups and NGOs. Nevertheless, among the groups that figured prominently in the advocacy for the IPRA were the Episcopal Commission on Indigenous Peoples of the Catholic Bishops' Conference of the Philippines (ECIP-CBCP), PANLIPI Legal Assistance Center for Indigenous Peoples, Inc. (PANLIPI), Gaston Z. Ortigas Peace Institute (GZOPI), and the National Peace Conference. These groups played a significant part in the nationwide consultations held to identify a legislative agenda for the IP communities.

Another significant input to the advocacy for the passage of the IPRA was the role played by Commissioner Dulnuan when she was appointed sectoral representative for IPs in the House of Representatives during that time. Although Commissioner Dulnuan's appointment as sectoral representative was not approved by the Commission on Appointments, she consulted with IP communities all over the country to determine and discuss the legislative agenda for the IPs. The major groups that collaborated in this effort were the Office of the Presidential Adviser on the Peace Process (OPAPP) which provided the funds for the

consultations, the ECIP-CBCP, the National Peace Conference, and PANLIPI. The consultations resulted in a draft bill that was submitted for sponsorship to the offices of Senators Flavier and Tatad. Various groups were also involved in the hearings conducted by the Senate Committee on Cultural Communities and in the meetings of the Senate Technical Working Group. Among these groups were: the Office of the Southern Cultural Communities (OSCC), the Office of the Northern Cultural Communities (ONCC), DENR, the Department of Agrarian Reform (DAR), the Commission on Human Rights (CHR), OPAPP, the Presidential Legislative Liaison Office (PLLO), ECIP-CBCP, PANLIPI, GZOPI, Cordillera Peoples' Forum, the Federation of Matigsalug Manobo Tribal Councils, the Tribal Communities Association of the Philippines, and CIPRAD. The transcripts of the meetings indicated indigenous peoples' leaders also attended these activities on behalf of their respective communities.

According to Elena Damaso, a volunteer member of the Senate Technical Working Group from GZOPI, the strategy formulated and used by CIPRAD in pushing for the passage of the IPRA was to target the Senate first, look for a sponsor of the bill (a "champion") in that chamber, and then proceed to lobbying in the House of Representatives. The crucial point was the IP Sunday held in 1995 where Senator Flavier and Representative Andolana pledged their commitment to the enactment of the IPRA.

Another critical factor in the passage of the IPRA was the support of the Ramos administration for the proposed law. Upon his assumption to the presidency, President Fidel V. Ramos formed the National Unification Commission (NUC) to identify and address the root causes of the problems of the country. One of the principal findings of the NUC was that the problems of the country were rooted in the nonrecognition of IPs' rights and their ancestral domains and poverty. Hence, the passage of an Ancestral Domain Law was one of the principal recommendations of the NUC. The passage of the IPRA eventually became part of the Social Reform Agenda of the Ramos administration.

The success of the enactment of the IPRA could also be attributed to the collaboration of various groups, both from the government and civil society, with the office of Senator Flavier. These groups participated mainly in the Technical Working Group formed to work on the draft of the proposed bill and to provide technical assistance to the office of the Senator. These groups were: PANLIPI, GZOPI, ECIP-CBCP, OSCC, and ONCC. The individuals who volunteered as members of the Technical Working Group were: Tony Abuso (ECIP-CBCP), Juliet Bersales (ONCC), Grace Chavez (OSCC), Elena Damaso (GZOPI), Girlie De Guzman (PANLIPI), Evelyn Dulnuan (PANLIPI), Domingo Nayahanga (OSCC), Didith Tayawa (Office of Senator Flavier), and Florence Umaming (GZOPI) (Damaso 2003). These individuals worked daily in the Senate without compensation to ensure the enactment of the IPRA.

However, although the IPRA rests on solid constitutional mandates which it seeks to operationalize, the lobby for its enactment provided to be a very long and difficult process (De Guzman 1999), the whole course of its passage taking a decade. Its difficult passage was attributed to the following circumstances: (De Guzman 1999)

1. The IPRA tried to reflect a reasonable interface between two very different world views—that of the indigenous peoples which was legally tenable but unpopular because it is different from the more popularly accepted and the dominant legal view of land, natural resources, cultural integrity, and governance.
2. The IPRA sought to eliminate deep-seated prejudices and biases of the broader society against the indigenous peoples.
3. Indigenous peoples themselves had to articulate their concerns. Given 110 known Indigenous Peoples Communities with different cultures and practices, a great number of consultations had to be held which proved not only costly but time consuming as well. The NGOs had to go where they were, oftentimes in the hinterlands, where, more often than not, no government representative had ever been seen.
4. The IPRA had to be pursued by a united force of NGOs-POs.

In spite of the above difficulties, the IPRA was passed because its significance and urgency were recognized. Aside from being part of the Ramos administration's Social Reform Agenda, the recognition of the rights of indigenous peoples was an internationally acclaimed norm among free nations. The enactment of the law was also part of the Philippine government's effort to fulfill its commitments to international conventions.

The long time it took to enact the IPRA could be attributed more to the fact that the process of consultation took a long time than to the opposition it faced in Congress. As indicated above, the process of uniting the IP communities and the NGO-PO sector and getting them to rally behind the proposed bill was also an important concern.

Opposition from other interest groups came a bit late. The fact that the mining sector had very little information about what was happening to the bill on indigenous peoples rights contributed to the success of enacting the bill in Congress (Tayawa 2003). However, after the bill was signed into law, some individuals and groups opposed the IPRA. For one, a case was filed in the Supreme Court regarding its constitutionality. Another set of issues was also raised with regard to its implementation. This in spite of the participation of various groups in the drafting of the IPRA's Implementing Rules and Regulations. Despite the participatory nature of the process involved in crafting the IPRA, it became subject to some objections concerning certain provisions of law from some groups from the NGO sector such as the Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK).

The proposed bill which eventually became the Special Protection of Children Act (RA 7610) was introduced in the House of Representatives in 1991. Representative Jose Luis Martin Gascon, the sectoral representative for youth and children in the Eighth Congress, delivered a sponsorship speech for a bill on the protection of children against child abuse in late 1990. Two factors were considered critical in terms of influencing the introduction of the bill in the House of Representatives (Gascon 2003): 1) the ratification of the CRC; and 2) the number of high profile cases on child abuse which were exposed by the Philippine media at that time. These two

determinants highlighted that the need for a new law to protect the rights of Filipino children which was eventually recognized.

After Gascon's sponsorship speech, he was given full authority by the House Committee on Social Services to head the Technical Working Group (TWG) that would consolidate all the pending measures on children's rights referred to the Committee as well as to draft the proposed bill. The TWG convened by Gascon conducted a total of seven meetings where several government agencies and NGOs participated. Among the government agencies that attended the meetings were: the DSWD, the DOJ, the Council for the Welfare of Children (CWC), the Bureau of Women and Youth Welfare of the Department of Labor and Employment (BWYW-DOLE), the Department of Education, Culture, and Sports (DECS), the National Nutrition Center (NNC), the Commission on Human Rights (CHR), the Armed Forces of the Philippines (AFP), the University of the Philippines College of Social Work and Community Development (UP-CSWCD), the Office of the Peace Commissioner, and the University of the Philippines Law Center. The NGO attendees included the United Nations Children's Educational Fund (UNICEF); the Alliance for Children's Concerns or Salinlahi Foundation, the Congressional Research Training Service (CRTS), the Defense for Children International (DCI); the National Council for Social Development (NCSD), the Coalition for Peace, End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT), the National Council of Churches in the Philippines (NCCP), Adhikain para sa Karapatang Pambata, Structural Alternative Legal Assistance for Grassroots, Forward Looking Women, Kalipunan ng mga Katutubong Mamamayan ng Pilipinas, the Ecumenical Commission for Displaced Family and Community, the Children's Rehabilitation Center and LUNSAD-DLSU (Committee on Social Services 1991).

Three subcommittees were also formed to work on three specific areas covered by the bill. These areas were: 1) General Provisions, 2) Sexually Abused and Exploited Children, and 3) Children in Cultural Communities and Children in Situations of Armed Conflict. The subcommittees had a total of nine meetings also participated in by government agencies and

NGOs. After the work of the TWG and the sub-committees, Rep. Gascon presented to the Committee on Social Services a draft substitute bill entitled "An Act Instituting the Protection and Rehabilitation of Children in Especially Difficult Circumstances, Prescribing Penalties for Violation Thereof and Appropriating Funds Therefore." This was approved by the Committee on 10 December 1991 and became House Bill 6946. Dante Tinga was named author of the bill, with Renato Dragon, Eric Singson, Luis Singson, Hortensia Starke, and Miguel Romero as co-authors (House of Representatives 1991).

According to Gascon, after the proposed bill was approved at the committee level, it sailed through the floor deliberations (Gascon 2003) without a hitch and was considered one of the fastest to make it through Congress. After its approval in the House of Representatives, the bill went through discussions in the Bicameral Conference Committee since the Senate also had a proposed bill (Senate Bill 1209) authored by then Senator Jose Lina, Jr. Even there the discussions went smoothly and swiftly. Eventually, the provisions of the House version were adopted and a consolidated bill approved (FGD 21 August 2003).

After the approval of the bill in Congress, an attempt was made to have then President Fidel V. Ramos veto the bill. The Department of Labor and Employment (DOLE) opposed certain provisions of the bill about child labor (Gascon 2003; FGD 21 August 2003). But the final decision was to approve the law and introduce amendments to it later to accommodate the concerns of the DOLE. Eventually, RA 7658 which amended Section 12, Article VIII of RA 7610 was enacted by the 9th Congress.³ RA 7658 prohibited the employment of children less than 15 years of age, to comply with the International Labor Organization (ILO) Convention 138.⁴

The enactment of RA 7610 might be considered as the result of a fruitful partnership between the government and civil society. Various groups were involved throughout the policy process—from the formulation up to the drafting of the law's implementing rules and regulations.

Examining the process of how RA 7610 came about disclosed several important factors which contributed to the development of the policy. The

strong advocacy for expressing the provisions of the UN Convention on the Rights of the Child (UN-CRC) by individuals and civil society organizations could well have been the first important factor in the development of the policy. Advocacy for children's rights both on the national and international levels were strong. Furthermore, the Summit of the Heads of States on the Rights of the Child held in December 1990 prodded the introduction of the bill in the House of Representatives. According to Violeta Corral, a former member of the legislative staff of Rep. Gascon, a strong advocate of children's rights from the NGO sector went to the office of Rep. Gascon and suggested the idea of a proposed bill on children's rights (FGD 21 August 2003).⁵ While strong advocacy from civil society was important, it was equally important to have a strong ally in Congress. In this case, the legislative "champion" for children's rights in Congress was Gascon.

Another enabling factor was the nature of the proposed bill itself. As it happened there was already pressure from the international community to come up with a law on children's rights because of the ratification of the CRC. The Philippine government had committed to formulate legislative measures and programs based on the Convention. In fact, the influence of CRC became fairly obvious in terms of the provisions of the law. Moreover, the issue of children's rights was not considered contentious nor controversial, being regarded as part of "low politics." Hence, hindrances in the passage of the law in Congress were minor.

The strong support for the proposed bill on children's rights was also attributed to the fact that Gascon used a "hands-on" approach in getting the bill approved in the House of Representatives. He made sure that proper consultations were made with the sectors concerned with the issues related to children's rights. When he was given full authority to organize and head the Technical Working Group (TWG) to consolidate all proposed bills on children's rights and draft a substitute bill, he further tapped the existing network of NGOs and government agencies to work on the provisions of the proposed legislation. There was little difficulty in getting the cooperation of various groups since the network

had existed even prior to the introduction of the bill in Congress (FGD 21 August 2003). The collaboration of different groups, both from the government and civil society, ensured that only one version of the bill would be introduced in the House of Representatives. According to Eva Maria Cayana of Save the Children UK-Philippines, this move guaranteed the swift approval of a proposed bill in Congress (FGD 21 August 2003). The help of the staff members of the Committee on Rules also facilitated the approval of the bill in no small way.

Finally, the timing of the bill's final approval in Congress was just as crucial because it came when the legislature was about to close its sessions and national elections were going to be held in a few months. As the subject of the proposed legislation was not contentious, none of the legislators found reason to oppose its approval.

The following factors played a vital role in formulating and enacting the policies in the legislative branch of government:

1. the support and commitment of sectoral representatives in the passage of landmark legislations in the areas of indigenous peoples' rights and children's rights
2. the existence of a strong network of NGOs and people's organizations that existed even prior to the introduction of the bills which pushed for the enactment of the laws in Congress
3. the participation and cooperation of other government agencies, particularly from the executive branch of government, in the various discussions and consultations for the formulation and development of the proposed legislations
4. international agreements, conventions, and laws which the Philippine government had ratified and acceded to
5. the nature of the issue covered by the policy (in the case of the Special Protection of Children Act, children's rights was considered "nonpolitical") and the support of the administration for the passage of the law (The IPRA was a priority bill of the Ramos administration and part of its Social Reform Agenda).

The study of the enactment of the Indigenous Peoples' Rights Act and the Special Protection of Children Act showed that both laws were products of the efforts of a multi-stakeholder community that included NGOs, people's organizations, government officials, legislators, indigenous peoples and individuals.

Several factors conduced to the successful passage of these laws in Congress. First was the political support for the proposed bill. In both cases, there was political support for the approval of the bills in Congress. The IPRA was passed during the 10th Congress when the bill was certified an administration bill, being part of the Ramos administration's Social Reform Agenda. It is worth noting that in the two previous Congresses, there were attempts to pass an ancestral domain bill but these failed because of the lack of political support. In the case of the Special Protection of Children Act, political support was tied to the fact that the proposed bill was part of the Philippine government's commitment to comply with the provisions of the UN-CRC. At the same time, the issue of children's rights was considered less contentious vis-à-vis the various interests represented in Congress.

The presence of a strong supporter and champion to push for the proposed bills in the legislature was equally momentous. The experience of the coalition of indigenous peoples and NGOs in the process of enacting the IPRA brought out the need for a strong champion and partner within Congress. Senator Flavier and Representative Andolana were fully committed to working for the IPRA's passage in the Senate and House of Representatives, respectively. In the case of RA 7610, the role of Representative Gascon was not only to provide political support but also to bring the various groups and advocates of children's rights together. The Technical Working Group and subcommittees he convened to formulate the proposed legislation created an opportunity for government agencies and civil society groups to put various perspectives together. Although a network of organizations had existed prior to the TWG, the work in Congress gave the groups a chance to discuss the issues concerning children's rights further. The participants of the focus group discussion organized for this study

believed that the success of the partnership in passing the Special Protection of Children Act also depended on the personalities involved (FGD 21 August 2003). Those who participated in the TWG found a way to put their perspectives together and to make sure that the law would be passed. Perhaps it helped that the provisions of the proposed bill were stated in general terms and was thus acceptable to the participating groups.

The availability of resources also positively affected the partnership between government and civil society groups in the policy-making process. In the formulation phase of the IPRA, the OPAPP provided funds and extended support to sectoral representative Dulnuan and the NGOs that conducted consultations in the IP communities. Moreover, NGOs such as PANLIPI and ECIP-CBCP invested their resources in the consultations as well as in the Senate TWG. The coalition of groups behind the formulation, development, and passage of the IPRA used its resources without any support from international development agencies. In the case of the children's rights advocates, the UNICEF played a significant part as facilitator and broker of the partnerships among the major players, including the CWC, DSWD, DOLE, and the NGO network under the umbrella of the NCSD (Moselina 2003). UNICEF convened and provided financial support for the meetings of these groups as well as provided venues for dialogues and consultations. In addition, the international agency provided funding for researches about the situations of street children.

Building a consensus among the groups was also very significant in getting the bills successfully passed into law. CIPRAD and the office of Dulnuan worked with the OPAPP in helping the indigenous peoples formulate the law they intended to lobby for. It was during the consultations with the IP communities that the decision to pursue the lobby for the enactment of the IPRA was made. However, getting a consensus did not come swift and easy. Unlike the issue of children's rights, those concerning IPs were highly contentious and political. In addition, the perspectives of the various groups were difficult to consolidate precisely because of their ideological differences. The experience with getting the IPRA passed was instructive. Some groups which took part in the early stages of the process

later decided to leave the coalition when the law was about to be approved by Congress. LRC-KSK, for example, submitted to the Senate a position paper stating its arguments against the proposed IPRA. The group cited four reasons for opposing the IPRA: 1) it subsumes all rights established for indigenous cultural communities and/or indigenous peoples to the "national interest"; 2) it exempts strategic minerals from the coverage of the law and therefore implies the national government's control of one of the most important commercial resources that could uplift the conditions of indigenous cultural communities; 3) it unqualifiedly subjects the recognition of ancestral lands to the recognition of property rights that have already been acquired even by outsiders within their area; and 4) it reduces indigenous peoples to mere managers of their domains for the purpose of ecological sustainability rather than to empower them as owners (LRC-KSK 1997). Despite the differences in the positions of various groups, however, the coalition managed to get a consensus among the IP groups and communities and NGOs to lobby and support the passage of the IPRA in Congress.

Meanwhile, when the bill on the protection of children's rights was introduced in the House of Representatives, it was welcomed by both government and civil society groups. This because of the active participation and involvement of groups from both sectors in formulating the provisions of the proposed legislation. The different groups provided inputs for the proposed bill depending on their areas of concern or interests. For instance, the AFP and the DND participated in the drafting of the provisions concerning children in situations of armed conflict. This particular case was expected by some to be contentious and difficult because of the differences in the perspectives of the groups. However, because the provisions were stated in a general way, the process of formulating the bill became less difficult. As both cases also showed, consensus-building among civil society groups was imperative so that they could present a united stand to the legislators and other decision-makers, thereby convincing them of the relevance and significance of the proposed law.

Social negotiations and bargaining proved vital to the passage of the laws as well, particularly in the case of the IPRA. With their experiences in the 8th and 9th Congresses, the IP leaders were by then prepared to negotiate and bargain in order to pass the bill. At a National Congress held in December 1995, the IP representatives and various NGO representatives agreed on a bill and identified seven nonnegotiable points in it, namely: 1) recognition of native title and their rights to ancestral domains; 2) respect for the right to cultural integrity; 3) recognition of IPs' political structures and governance; 4) delivery of basic services to the IPs; 5) respect for human rights; 6) elimination of discrimination; and 7) creation of an office to cater to the needs of the IPs (De Guzman 1999). To facilitate decision making during the negotiations, an open forum among NGOs and POs on the proposed bill was held. This was called the Consortium for the IPRA. The IPs themselves chose to rename the bill from the Ancestral Domain Bill to the Indigenous Peoples' Rights Act to emphasize the law's holistic approach and character.

Working with the staff of legislators as well as the staff of the legislative committees also helped to push along the bills successfully in Congress. The same was true with the work on the IPRA. The rapport among the members of Senator Flavio's legislative staff and the advocates of IPRA proved meaningful to the success of their collaboration, especially in organizing the Technical Working Group.

Another valuable lesson learned from the successful passage of the Indigenous Peoples' Rights Act and the Special Protection of Children Act was the need for civil society groups to learn the ropes of the formal legislative process. Evidently, it was important to establish contacts and to network with members of the legislators' staff as well as the staff of legislative committees. To succeed in their advocacies, civil society groups must know how to engage government and other partners more effectively.

The case studies on the IPRA and the Special Protection of Children Act likewise revealed that civil society involvement in policy development had resulted in more sustainable, responsive, and equitable policies. In both cases, the policy developed proved to be sustainable and had never

been reversed despite some challenges. In fact, in the case of the IPRA, when its constitutionality was questioned, the law was successfully defended in the Supreme Court.

However, the success of the legislation is challenged by the lack of political support for the implementation of its provisions of the laws. The lack of financial support for program implementation affects the effectiveness of the policies. Even with the active participation of civil society groups in policy development, there is no guarantee that the policy would be effective, especially because it is up to government to allocate resources to implement its programs. Unless civil society groups actively engage the government in the budget process, the effectiveness of the policy would remain uncertain. Civil society actors need to follow the implementation phase of the policy process closely to make sure that the policy provisions would be implemented. The implementation of the IPRA and the Special Protection of Children Act met with challenges and problems because of lack of funds to support programs. Both the NCIP and the DSWD, the government agencies tasked to implement the provisions of the IPRA and the Special Protection of Children Act, proved ineffective in meeting the objectives of the policies because of budget constraints.

Although the experience with the passage of the IPRA serves as a good model of the participatory policy-making process, its implementation remains problematic. Hence, the IPRA has been consigned to the company of good laws that have never been implemented. That the IPRA's implementation remains unsettled has been attributed to several causes. Among these are: 1) the lack of commitment to implement the provisions of the law, particularly with regard to the issue of ancestral lands and domains; 2) the perception that the issue of ancestral domains is a highly contentious issue involving the interests of a number of sectors, including the mining sector; and 3) the task of implementing the law's provisions being perceived as enormous in itself.

After the IPRA was successfully enacted, civil society and IP groups continued to be actively involved in the drafting of the law's implementing rules and regulations. The NCIP was mandated by law to be the government

agency responsible for its implementation. However, the Commission was hamstrung by a number of problems. It was constituted in February 1998, a few months away from the change in administration. When the Commission finally became operational in 1999, Joseph E. Estrada was already in the saddle. According to Ambassador Howard Q. Dee, President Gloria Macapagal Arroyo's adviser on indigenous peoples' affairs, the Estrada administration did not support the implementation of the IPRA because it was more inclined to implement the 1995 Mining Act (Dee 2003). In fact, over a hundred permits for mining exploration were issued, which covered two-thirds of the ancestral lands of Mindanao (OPAIPA 2002). The OPAPP and the National Peace Forum opposed this move and sent a resolution to President Estrada. The appeal was referred by the President to a cabinet committee that overruled the resolution. The NCIP could not make any move as it had been completely co-opted. Political patronage had corrupted the Commission, especially its mission to implement the IPRA, which rendered the agency ineffective and its staff demoralized (OPAIPA 2002).

When President Gloria Macapagal Arroyo assumed the presidency in 2001, one of her commitments was to implement the IPRA to show that her administration is serious in fulfilling its promise of good governance. Because the NCIP at that time was beset with so many problems, it was described as a "politically and financially abused agency that required a thorough overhaul and moral regeneration" (OPAIPA 2002). In response to the need to reorganize and strengthen the NCIP, President Arroyo issued Executive Order Number 1 creating the Office of the Presidential Adviser for Indigenous Peoples Affairs (OPAIPA) which was tasked with the reconstitution and the renewal of the NCIP (OPAIPA 2002). At present, the Commission has been reconstituted although its reorganization is a more intricate and complex process that would take time. To help in the renewal of the NCIP, the OPAIPA gathered the support of the NGO community, the Asian Institute of Management (AIM), and international funding agencies, namely, the UNDP, the World Bank, Asian Development Bank, and the Ford Foundation. The OPAIPA involved NGOs, missionary organizations, and the Catholic Church in

implementing programs for the indigenous peoples. Indeed, the collaboration of various groups in assisting the OPAIPA fulfill its mandate was important to the renewal of the NCIP and in implementing the IPRA. The partnership between government and civil society needs to be sustained through the implementation phase of the policy process.

At present, implementing the IPRA remains one of the major challenges to the Arroyo administration. Its implementation is an enormous task considering that major interests are at stake. However, a good and honest bureaucracy plus the political commitment of the administration can help implement the IPRA successfully. The expertise and dedication of NGOs are also necessary. At the moment, the work of the groups involved represent only 5% of what needs to be done (Dee 2003). Furthermore, there is a need to sustain the active involvement of the NGO sector in the NCIP.

The presence of NGOs may also increase transparency in the Commission as well as promote good governance practices. This is very important because the NCIP had become an instrument of political patronage in the past. In addition, the process of selecting the Commissioners of the NCIP has been made more participatory and democratic. The Commissioners are no longer simply handpicked and appointed by the President. Instead, a democratic selection process is undertaken by consulting IP tribal leaders from seven ethnographic regions whose nominees are screened by a cluster of indigenous people's organizations (IPOs/NGOs) then interviewed and shortlisted by a Cabinet/ Academe Selection Committee.

The Selection Committee then recommends its choice to the President who will appoint the Commissioner (OPAIPA 2002). This selection process was applied to the appointment of the new Commissioners of the reconstituted NCIP. According to the OPAIPA, over 700 IP tribal leaders took part from the seven regional consultations. The tribal leaders nominated 77 candidates who were screened by a Technical Working Group composed of IPOs and NGOs invited by the OPAIPA to assist in the selection process. A Selection Committee consisting of 3 cabinet secretaries and two academic IP experts interviewed the candidates and submitted a shortlist to the President who will make the final choice and appointment. The OPAIPA

believes that this process corrects the previous practice of appointing Commissioners on the basis of political patronage without consultations with IP leaders as required by the IPRA.

The groups that actively participated in formulating and developing the IPRA were also actively involved in designing the process systems and procedures for the NCIP. Since the Commission is completely bereft of formal systems, procedures, and controls, there are no manuals or formal guidelines for cultural mapping, survey and delineation, processing titles or issuance of certificates for free and prior informed consent, and for other vital functions. Atty. Vicenta De Guzman of PANLIPI together with other NGOs (ECIP, Anthrowatch, KASAPI, LRC-KSK, PAFID, IPC) completed two processes that served as prototypes for the processing of domain titles (CADTs) and issuance of CFPICs (OPAIPA 2002). OPAIPA believes this task needs to be completed for other functions which constitutes an important part of the reorganization process of the NCIP (OPAIPA 2002).

The above discussion highlights the important role of NGOs and other civil society groups in the implementation phase of the policy process. It must be understood that civil society is not a homogenous entity. Many groups with different perspectives constitute it, a fact which made it susceptible to differences or conflicts among them. Hence, in general, the involvement of civil society actors in governance does not automatically and necessarily bring about good results. In the IPRA and the NCIP, the active participation of civil society actors formulating and developing the policy proved to be advantageous because they brought their perspectives to bear on the formal processes of government. But the implementation phase was an entirely different story. One key informant for this study said that the NGO people who brought their perspectives to the NCIP were not altogether helpful since they also brought with them their own "baggage," i.e., the issues and differences they had with other individuals and NGOs. In fact, in many ways, this hindered the NCIP's functioning effectively and even aggravated its problems. This unavoidable problem has to be reckoned with because it definitely affects the partnership between government and civil society, especially in implementing the policy.

Finally, government support is required to empower the IPs as well as to protect and develop their ancestral domains. Poverty and the lack of resources and means to take care of their lands lead some IPs to sell their land rights and titles, a practice that must be seriously considered by government and NGOs working together to implement the IPRA.

Similarly based on the data gathered for this study, it appears that the main issue affecting the implementation of RA 7610 is the lack of funds to meet the financial requirements of implementing the programs stipulated in the law. In 1997, a Special Committee was formed to conduct community training to ensure that the programs for children's rights and welfare would be implemented (Carballo 2003). The President's Social Fund through the Department of Justice (DOJ) provided funding in the amount of P10 million. The Council for the Welfare of Children (CWC) was appointed Secretariat of the Committee. This effort continued while the funds were available. At present, the operating budget of the Special Committee is provided by the DOJ, but the financial support for the implementation of the programs is inadequate. The participants of the FGD noted that one of the shortcomings of the law as well as of the IRR is that they do not identify the funding sources or budget allocations for the various programs for children.

Another issue that surfaced during the implementation phase was the distinction between child victims and child offenders or children who are in conflict with the law. According to the FGD participants, this is clearly one of the gaps in RA 7610. The law provides high standards for child victims while it sets very low standards for child offenders (e.g. provisions on their detention centers). A related issue concerns the lack of orientation on how to sanction children in conflict with the law. On the one hand, one is made fully aware of the criminal justice system; on the other, there is the children's human rights approach to consider. These and other issues concerning definitions and use of terms (such as child prostitution) could very well be attributed to different and sometimes opposing perspectives of government agencies and NGOs.

Community participation in implementing the programs for the welfare and protection of children is another important concern. Communities must

be involved and be made to recognize their responsibility to children. However, there is no agreement on what the community consists of. There are those who believe that the families should be included; others highlight the role of the barangay. Related to this issue is the lack of enabling policies to implement the law at the municipal and barangay levels. The FGD participants claim this is vital to the effective implementation of RA 7610. To do this, however, the provisions of the 1991 Local Government Code must be studied vis-à-vis the provisions of the law.

Lessons in Partnership Development

On the whole, it may be said that the strong partnership between government agencies and civil society organizations which began at the formulation phase of the policy process was a very important factor in developing RA 7610. Important determinants facilitated the successful passage of law in Congress, that is, swiftly and with little difficulty. However, certain issues have to be worked out in the implementation phase. Hence, several recommendations can be made to strengthen the partnership between government and civil society in the area of rights-based legislation.

Since existing laws, including RA 7610, do not specify where the funds for the projects and programs for children's welfare and development would come from, it is important for civil society groups to focus their advocacy on this. This area seems to be overlooked by many NGOs. Hence, they should target this particular aspect of the policy process, both on the national level and local levels. Furthermore, civil society groups should also try to monitor the implementation of programs and projects by determining how the funds allocated for such purposes are utilized. Cited during the FGD was the case of the gender development allocation. It was noted that in many instances the funds allotted were used for activities other than gender development.

The key role of the community in the implementation of programs for children has been acknowledged. Hence, it is important for civil society

groups to bring their advocacy to the level of the barangay. Aside from undertaking strong budget advocacy, they should also monitor as well as provide support for the various programs at the community level.

The advocacy of various groups should focus not only on the creation of new laws. It is critical to look into the enforcement or implementation of the provisions of existing laws. Furthermore, it is also essential to find out how existing laws can be amended to keep up with the times. Other agencies of the government should be involved in the implementation process. For example, the Department of Education (DepEd) may be involved by training teachers to incorporate children's rights in the school curriculum.

Stakeholders, other than the ones who usually participate, should be identified and involved. The intent is to broaden participation, especially on the part of the private sector.

Sharing of information and experiences especially of those from the various regions of the country should also be a must. This will enrich the inputs of government agencies and civil society in the policy process.

The media should be harnessed especially in monitoring programs. This could help get the attention of politicians and government officials and move them to take the appropriate actions responding to children's concerns. Forums and mechanisms to identify policy agenda for children's rights should be regularized. This will further strengthen the partnership between government and civil society in the development and implementation of policies.

Civil society groups should get the support of legislators, particularly when they want certain measures to be passed in Congress. They should also know and understand the legislative process better to ensure the passage of what they are advocating. Networking with staffs of legislators as well as legislative committees matters much.

The processes that resulted in the Indigenous Peoples' Rights Act and the Special Protection of Children Act certainly contributed to the strengthening of the legislative process, particularly its multi-stakeholder consultation aspect. The broad consultation process undertaken for the legislation of the IPRA educated not only the legislators but also the IP

communities and even the general public. The experience with IPRA also shows how the process of consultation was sustained until the time the law was approved by Congress. The participatory process convinced the legislators that the focus of the proposed legislation was the rights of the IP and not solely the issue of ancestral domain.

Aside from strengthening the participatory and consultative nature of the formal legislative process, the cases of the IPRA and the Special Protection of Children Act also showed how civil society groups, particularly NGOs, could step in and participate in the process. They also serve as good examples to civil society groups of how they can arrive at a common position or a consensus to push their agenda in the legislative process. Despite the differences in principles and ideologies of certain groups, it is possible to work in partnership with government to realize certain goals, which the enactment of the Special Protection of Children Act clearly demonstrated.

With respect to policy development, it was observed that civil society groups exerted more influence on the policies that were developed in the early stages of the policy process. As a matter of fact, the involvement of some civil society groups began even before a proposed bill was introduced in the legislature. The network of NGOs and POs (including some government agencies) had been established prior to the introduction of the bills in Congress. Civil society groups were also instrumental in the formulation of the proposed bills.

The experiences with the enactment of the IPRA and the Special Protection of Children Act also indicate that social policy supported by both civil society and the government is more likely, given both time and opportunity, to develop a shared understanding of each party's goals and perspective. The success in developing a policy on indigenous peoples' and children's rights did not depend on civil society alone but on the participation of various groups including the government as well as other significant factors. Although it took a long time before it was passed, the IPRA grew out of a consultative and participatory process. The proposed bill also had the support of the administration, having been certified as a priority bill of the Ramos administration. The legislators who supported

the bill as well as the members of their legislative staff also took active part in the consultation process. On the other hand the advocates of children's rights also found their allies in the legislature in the person of Representative Gascon and the members of his legislative staff as well as in the Legislative Committee and the Technical Working Group.

The success of civil society groups in influencing the formulation and enactment of the IPRA were nevertheless confronted by challenges related to consensus building and collaboration. The groups advocating a law that recognizes the rights of indigenous peoples may be classified into two: those with maximum demands and those with moderate ones. Those belonging to the first category remain critical of the law. However, those groups that remained in the coalition were able to work together and identify a strategy for advocacy in the Senate. They also agreed to focus on the rights of indigenous peoples rather than on the ancestral domain. The former was considered more holistic and not as divisive as the latter (Damaso 2003).

In contrast, although the groups working for children's rights also had differing ideologies, values, and operating styles, they managed to work more closely together because children's rights was deemed less contentious. In a sense, the children's rights advocates may be considered more united owing to this factor.

Advocacy for the recognition of indigenous peoples' rights and children's rights go back a long way. As previously indicated, strong advocacy for IP rights began in the 1960s, when development aggression began in the areas inhabited by indigenous peoples. However, the advocacy for IP rights reached its peak during the drafting of the 1987 Philippine Constitution. It proved successful because the provisions on ancestral domains and indigenous peoples' rights were part of the new constitution. Lobbying in the Senate was the final push of the advocacy for IP rights (Damaso 2003). It was the advocacy strategy agreed upon by the coalition of NGOs and IP groups as well as legislators (Senator Flavier and Representative Andolana) because they were apprehensive that the proposed legislation might encounter rough sailing in the House of Representatives.

The political climate during the development of both policies was conducive to effective partnerships between government and civil society. At the time of the introduction of the bill on children's rights, the 1987 Constitution had just been ratified and democratic institutions were being restored in the country. The appointment of the sectoral representatives for youth and indigenous peoples also proved significant because these representatives had been instrumental in developing the policies. The democratic ambiance helped foster effective partnerships between government and civil society.

Another important aspect of the partnership and collaboration among groups from government and civil society was the support of other actors such as international organizations and funding institutions. In the experience of the advocates for children's rights, the Philippine office of the UNICEF played a very important role in bringing the groups together as it provided both financial and logistical support for meetings, dialogues, and consultations. The UNICEF thus considers itself a facilitator of the partnership between government and NGOs. The involvement of the international agency in the advocacy for children's rights began even before the proposed bill was presented in Congress. In the case of the IPRA, the role of international development agencies and funding institutions became prominent during the implementation phase, particularly when the OPAIPA began its work to reconstitute and revitalize the NCIP. Their involvement, particularly the UNDP, continues up to this day by providing technical assistance and funding for the various programs of the NCIP implementing the provisions of the IPRA.

The commitment of the Philippine government to international conventions and instruments, particularly the UN Convention on the Rights of the Child and ILO 169 (Convention Concerning Indigenous and Tribal Peoples in Independent Countries) also facilitated the partnership, especially in the passage of the laws. International pressure and lobby for the implementation of these measures in the country was very strong during the time of the enactment of the two laws. It could even account for the availability of financial support for IP and children's rights advocates. In

addition, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people conducted a mission in the Philippines in December 2002 and submitted a report to the UN General Assembly and the Philippine government. The report contained several recommendations for the effective implementation of the IPRA intended for both the government and other agencies (Stavenhagen 2003).

Important lessons can be learned from this study on how civil society can effectively intervene in policy formulation and governance processes. The history of the cases analyzed show the positive effects of engaging government. Moreover, the importance of collaboration among civil society groups despite their differences is highlighted in the passage of key rights-based legislation. This study has shown that while the partnership had been a critical factor in having a more participatory policy process that resulted in the enactment of laws that are considered landmark legislations, this did not necessarily guarantee the effective implementation of the laws. Thus, it had been suggested that the active participation of civil society groups be sustained in the implementation phase of the policy process. The partnership between government and NGOs should be continued and strengthened to ensure that the policies that have been formulated through participatory and consultative processes would be ineffective. NGOs and international development agencies can play an important part in implementing change within government agencies.

Acronyms Used

AFP	Armed Forces of the Philippines
BWYW	Bureau of Women and Youth Welfare
CADC	Certificate of ancestral domain claim
CER	Consortium on Electoral Reforms
CALC	Certificates of Ancestral Land Claims
CHR	Commission on Human Rights
CIPRAD	Coalition for People's Rights and Ancestral Domains
COMELEC	Commission on Elections
CRC	Convention on the Rights of the Child
CRTS	Congressional Research Training Service
CWC	Council for the Welfare of Children
DAR	Department of Agrarian Reform
DECS	Department of Education, Culture and Sports
DENR	Department of Environment and Natural Resources
DFE	Defense for Children International
DOJ	Department of Justice
DOLE	Department of Labor and Employment
DSWD	Department of Social Welfare and Development
ECIP-CBCP	Episcopal Commission on Indigenous Peoples of the Catholic Bishops' Conference of the Philippines
ECPAT	The Coalition for Peace, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
GZOPI	Gaston Z. Ortigas Peace Institute
ILO	International Labor Organization
IPRA	Indigenous People's Rights Act
IPRA	Indigenous People'
LRC	Legal Rights and Natural Resource Center
LRC-KSK	Legal Rights and Natural Resource Center-Kasama sa Kalikasan/Friends of the Earth Philippines
NAMFREL	National Movement for Free Elections

NCCP	National Council of Churches of the Philippines
NCIP	National Commission on Indigenous Peoples
NCSD	National Council for Social Development
NGO	Non government organizations
NNC	National Nutrition Center
NUC	National Unification Commission
ONCC	Office of the Northern Cultural Communities
OPAIPA	Office of the Presidential Adviser for Indigenous Peoples Affairs
OPAPP	Office of the Presidential Adviser on the Peace Process
OSCC	Office of the Southern Cultural Communities
PANLIPI	Legal Assistance Center for Indigenous Filipinos
PLLO	Presidential Legislative Liaison Office
PO	People's Organizations
UP-CSWCD	University of the Philippines College of Social Work and Community Development

Notes

* The case studies on the Indigenous People's Rights Act and the Special Protection of Children Act were taken from Francisco A. Magno and Ruth Lusterio-Rico, "Children's Protection and indigenous Peoples' Rights in the Philippines," in Laura Edgar and Jennifer Chandler (eds.), *Strengthening Social Policy: Lessons on Forging Government-Civil Society Partnerships*, Ottawa: Institute on Governance, 2004. Mary Joy Rosales, Ma. Ela Calaor, Lemuel Cacho, Lord Byron Abadeza, and Crsmar Yparraguirre provided research assistance for this chapter. Eduardo Gonzalez, Magdalena Mendoza, and Rosette Librea gave helpful comments on earlier versions of this paper.

1. The IPRA applies to all indigenous peoples of the Philippines. According to available data in 1997, IPs accounted for about 12 million, comprising roughly 16% of the country's 73 million population at that time. They were scattered in over 7 major ethnographic regions and comprised about 110 ethnic groups.

2. ILO 169 is entitled Convention concerning Indigenous and Tribal Peoples in Independent Countries.

3. Section 12 Article VIII of RA 7610 states that children below fifteen years of age may be employed provided that: 1) the employer shall secure for the child a work permit from the DOLE; 2) the employer shall ensure the protection, health, safety, and morale of the child; 3) the employer shall institute measures to prevent exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and 4) the employer shall formulate and implement a continuous program for training and skill acquisition of the child.

4. ILO Convention 138 calls for the strengthening of enforcement of existing Philippine laws on child labor particularly with regard to the minimum age of employment which is 15 years old. The Philippine government concurred on 7 October 1997. See Caalim, p. 203.

5. The person referred to was Ms. Annette Balaoing.

References

- Bennagen, Pia. 1999. "The Indigenous People's Rights Act." Paper prepared for the Civil Society and Governance Project, Social Development Research Center, De La Salle University, Manila.
- Birch, Anthony. 2001. *Concepts and Theories of Modern Democracy*, 2nd ed. London and New York: Routledge.
- Caalim, Divina. 1998. "The Status and Rights of Children in the Philippines." In *Proceedings of the Regional Symposium on the Rights of Women and Children in Asia: Initiatives and Prospects*. Quezon City: University of the Philippines and Osaka University School of Economics and Law.
- CIPRAD. 1999. *Guide to Republic Act 8371*. Quezon City: Coalition for Indigenous Peoples' Rights and Ancestral Domains.
- Committee on Social Services. 1991. Minutes of the Meeting, House of Representatives, Congress of the Philippines, Quezon City, November 24.
- Craven, Matthew. 1995. *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*. Oxford: Clarendon Press.
- Dahl, Robert. 1998. *On Democracy*. New Haven: Yale University Press.
- Damaso, Elena. 2003. Personal communication. Consultant, National Commission on Indigenous People, Quezon City, November 24.
- De Guzman, Ma. Vicenta. 1999. "Working with Congress for the Enactment of IPRA: The NGO-PO Experience." In CIPRAD, *Guide to Republic Act 8371*.
- Dee, Howard. 2003. Personal communication. Assissi Development Foundation, Pasig City, December 2.
- Fearon, James. 1999. "Electoral Accountability and the Control of Politicians: Selecting Good Types versus Sanctioning Poor Performance." In

- Adam Przeworski, Susan Stokes and Bernard Manin, eds., *Democracy, Accountability, and Representation*, 55-97. Cambridge: Cambridge University Press.
- FGD, 2003. Focus Group Discussion on Children's Rights. Balay Kalinaw, University of the Philippines, Quezon City, August 21.
- Gascon, Jose Luis Martin. 2003. Personal communication. Undersecretary for Legal Affairs, Department of Education, Pasig City, August 4.
- Gasiorowski, Mark. 1991. "The Political Regimes Project." In Alex Inkeles, ed., *On Measuring Democracy: Its Consequences and Concomitants*, 105-121. New Jersey: Transaction Publishers.
- Gaffud, Romualdo and Rowena Termulo. 2000. "Indicators for Civil Society Participation in Governance." In Magdalena Mendoza, ed., *Measuring Good Governance in the Philippines*, 217-257. Pasig City: Development Academy of the Philippines.
- Gastil, Raymond Duncan. 1991. "The Comparative Survey of Freedom: Experiences and Suggestions." In Alex Inkeles, ed., *On Measuring Democracy: Its Consequences and Concomitants*, 21-46. New Jersey: Transaction Publishers.
- House of Representatives. 1991. *House Bill No. 6496*. Congress of the Philippines, Quezon City.
- LRC-KSK. 1997. "Creating the Illusion of an Indigenous Peoples' Rights Act." Position Paper on Senate Bill No. 1728. Quezon City: Legal Rights and Natural Resources Center.
- Manin, Bernard, Adam Przeworski, and Susan Stokes. 1999. "Elections and Representation." In Adam Przeworski, Susan Stokes, and Bernard Manin, eds., *Democracy, Accountability, and Representation*, 29-54. Cambridge: Cambridge University Press.
- McCoy, Alfred. 1994. "An Anarchy of Families: The Historiography of State and Family in the Philippines." In Alfred McCoy, ed., *An Anarchy of Families: State and Family in the Philippines*, 1-32. Quezon City: Ateneo de Manila University Press.

- Moselina, Leopoldo. 2003. Personal communication. Makati City: United Nations International Children's Education Fund, October 15.
- National Economic Development Authority. 2001. *The Medium-Term Philippine Development Plan 2001-2004*. Manila: NEDA.
- OPAIPA. 2002. "Beginning a New Covenant with the Indigenous Peoples of the Philippines: Challenges, threats and Opportunities." Office of the Presidential Adviser on Indigenous Peoples' Affairs.
- Pinto-Duschinsky, Michael. 2002. "Financing Politics: A Global View." *Journal of Democracy* 13:4 (October): 69-86.
- Przeworski, Adam, et al. 1995. *Sustainable Democracy*. Cambridge: Cambridge University Press.
- Ramos, Fidel. 1999. *Developing as a Democracy: Reform and Recovery in the Philippines, 1992-1998*. New York: St. Martin's Press.
- Stavenhagen, Rodolfo. 2003. *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*. Geneva: Office of the United Nations High Commissioner for Human Rights.
- Tayawa, Didith. 2003. Personal communication. Office of Senator Juan Flavio Velasco, August 15.
- Verba, Sidney, Kay Lehman Schlozman, and Henry Brady. 1995. *Voice and Equality: Civic Voluntarism in American Politics*. Cambridge, Massachusetts: Harvard University Press.
- Wui, Marlon, and Ma. Glenda Lopez. 1997. "State-Civil Society Relations in Policy-Making." In Marlon Wui and Ma. Glenda Lopez, eds., *State-Civil Society Relations in Policy-Making*, 1-20. Quezon City: UP Third World Studies Center.

X. Next Steps

Josefina N. Natividad

The rights-based framework is a recent addition to the current set of perspectives that guide the assessment of the state of governance. As indicated broadly in the sectoral reports and specifically elucidated in the Diokno paper, a rights-based framework introduces a client-centered, demand driven point of view to the review of government performance. By framing governance review within the discourse of human development and human rights it shifts the focus from assessing governance in the familiar metric of efficiency and effectiveness relative to goals and objectives set forth by the agency under review into the less familiar but perhaps more meaningful language of rights and duties, of claim holders and duty bearers. It brings new meaning to the concept of accountability.

This Report marks the first time a rights-based perspective has been adopted as a framework for a governance review. The framework itself and the sectoral reports were presented in the conference on Rights-based Philippine Governance Review on December 1, 2004. Judging from the reactions of the stakeholders the rights-based framework is a welcome development especially among civil society groups and some local government representatives who see the potential in an approach that gives as much if not more attention to the claim holders as to the duty bearers. Building on these initial reactions and on the merits of the framework itself the following next steps are envisioned.

Institutionalization of the rights-based framework

While the framework shows promise, the final proof of its utility is still in its application. Diokno's paper is an important reference in this regard. By outlining specific steps for conducting budget analysis guided by the rights-based approach Diokno gives this conceptual framework clear empirical referents; it translates theory to practice. The RBA requires an unambiguous articulation of duties and corresponding claims. Thus one of the major challenges in the use of this approach lies in teasing out the underlying rights-related relationships between the state and its citizens at each level of governance. The review may be conducted by starting from a given right and its entitlements. It may also start at the level of a sector, such as the public corporate sector and work down to the level of the fundamental rights that a specific GOCC is supposed to address. Or the review may be conducted at the national level such as in assessment of the Millennium Development Goals to evaluate the overall progress of the country relative to the internationally accepted indicators of fulfillment of basic social and economic rights.

Among these levels, that of the local government is ideal for a trial run on the use of the RBA in operational terms because it is at this level where duty bearers, i. e, the LGUs have fairly circumscribed responsibilities to physically bounded sets of claim holders, the local government constituents. The review may be initiated by claim holders and the findings used to exact accountability from elected leaders. Conversely, it may also be initiated by the local government to measure its own performance. But the real power of the RBA lies in its potential for harnessing participatory and collaborative efforts between duty bearers and claim holders to come together and agree on indicators of performance and in the process clarify accountability, on both sides- for claim holders are also duty bearers themselves relative to the state, in their duty to respect the public good. Part of the institutionalization of the rights-based framework is the process of arriving at such an institutionalization. And because the rights-based process is consultative and participatory there is much room for custom fitting all aspects of a

rights-based governance review to the needs and circumstance of specific claim holders and the capabilities of corresponding duty bearers, from the process itself to the actual output indicators. Lessons can be learned from countries as diverse as Bosnia-Herzegovina and Tanzania where RBA guided approaches to governance have been tried. As illustrated in those cases cultural specificities may result in different ways of operationalizing the conduct of rights-based governance but the same fundamental principles of accountability, transparency, participation, nondiscrimination and attention to vulnerable groups are observed. Locally, the challenge is for LGUs to translate these principles into tangible programs and measurable outcomes.

Generation of "rights-friendly" data

Currently among the major drawbacks in the effective use of the rights-based approach in governance review is the lack of the appropriate data for assessing how rights are respected, protected and fulfilled observing the principles of accountability, transparency, nondiscrimination and attention to vulnerable groups. The most basic requirement of the RBA is data on the dependent variable- i.e. various measures and indicators of how rights are respected, protected and fulfilled- disaggregated or broken down into categories of attributes that are possible sources of discrimination and vulnerability, the independent variables. Among these characteristics are age, gender, socioeconomic status, geographic location (by a population density-based categorization like urban-rural and geographic aggregation like barangay, municipality, province, region), ethnicity, education, occupation, disability status. For example, in assessing how the National Housing Authority has fulfilled its mandate to address the right to housing the appropriate data will be about the types of beneficiaries of NHA housing programs. Does it indeed address the needs of the vulnerable sectors such as the poor or does it in fact cater exclusively to the middle class market? Other disaggregations may be devised in recognition of sources of vulnerability that are location-, agency- or rights- specific. It must be

emphasized that such data should be reliable and free from political influence and vested interests.

Capacity building for generation of rights friendly data

If the appropriate rights-friendly data is to be generated, who will produce them? Are there gaps in the capacity of the appropriate data gathering bodies to compile the requisite information for the effective application of the rights-based framework? These are some of the fundamental questions that must be addressed next should the idea of the RBA framework catch on. The data building capacity may be developed at the level of national bodies like the National Statistics Office which has the machinery to produce national level data. Other levels of government may require other data gathering capacities. Rights activists and civil society groups may also need to build their own capacity to produce, access and analyze relevant data.

This capacity to gather and make sense of rights-related data is certainly needed at the local government level. This may be done by the LGUs themselves, with the assistance from the Department of Interior and Local Government (DILG) or by academic institutions which can train LGUs for this needed skill.

The use of ICT in rights-based governance review

The growth and development in information and communication technologies (ICT) has created the ideal conditions for data gathering and data sharing, conditions that help empower claim holders and duty bearers through the power of information. Through these technologies it is now easier for interested stakeholders such as civil society groups or rights activists to gain access to information that they need in monitoring how rights are protected, respected and fulfilled. The DILG can make available data from its Local Productivity and Performance Measurement System (LPPMS) data base to interested parties that are conducting governance

review. The public sharing of information and best practice may also be facilitated through the creation of a website devoted to rights-based governance preferably maintained by an impartial institution like the Development Academy of the Philippines.

Providing data for public use

Statistics that are valid, reliable and representative of the population and its subsets are among the fundamental requisites for doing a valid review of government performance, rights-based or otherwise. The conduct of censuses and surveys is generally expensive and national agencies that conduct them like the National Statistics Office may have neither time nor inclination to conduct the analysis that is needed for such undertakings. There are also periodic surveys undertaken by agencies like the Department of Health, the Food and Nutrition Research Institute that are rich sources of information on some of the indicators of human development. The current practice of limited release of data and the charging of user fees deters interested stakeholders from fully utilizing these existing data sets thus resulting in low utilization of the available information.

Making available these data sets to users for free, under reasonable limits on use will therefore be one important step to facilitating a rigorous and credible analysis of the state of the country relative to human rights concerns and human development goals.

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ABOUT THIS BOOK

“Governance can only get better with the rights-based approach.... Essentially, a rights-based approach integrates the norms, standards and principles of the international human rights system those contained in international treaties and declarations into governance policies and processes. These principles include equality and equity, accountability, empowerment and participation, according to the UN’s Human Rights Commission. Now, consider the ‘articles of faith’ in governance – accountability, transparency, voice and democratic practice. It is easy to see that one folds over the other quite neatly. Few in the governance arena could have bargained for what they got. On this basis, it should take only minimal effort to coax institutions into reconciling themselves to the demand for economic, social and cultural entitlements. The way the country manages its scarce resources need not be hostile to social and economic justice.”

Eduardo Gonzalez
President, DAP

The essays in this book test the foregoing proposition in this first attempt to adopt the right approach in the review of various sectors of government: the public corporate sector, the justice sector, legislative and electoral reform, local government and macro governance, specifically progress in the Millennium Development Goals. The Report was produced as part of the UNDP-AusAID assisted Philippine Governance Review Program. The essays were prepared by the leading Philippine academic institutions engaged in teaching and research on governance: the Ateneo School of Government (local government sector), the La Salle Institute of Governance (legislative and electoral reform), the UP National College of Public Administration and Governance (public corporate sector) and the Development Academy of the Philippines (macro governance and justice sector).

