

Empowering the Nation's Working Poor*

RENE E. OFRENEO

Introduction: "Those with Less in Life Should Have More in Law"

In 1953 the President of the common "*tao*," Ramon Magsaysay, declared in his much-quoted *credo* that those who have less in life should have more in law. It was an electrifying call on legislators and policy makers to craft laws and programs to extend to the poor equal rights, and create for them more opportunities in life so that, like the rest of society, the poor shall have the dignity to stand shoulder to shoulder with their richer Filipino brothers and sisters. As President Magsaysay put it, governance should start at the bottom, "for government exists for the welfare of the masses of the nation."

The 1987 Constitution has enshrined the Magsaysay *credo*. Section 1, Article XIII of the Constitution ("Social Justice and Human Rights") commands Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."

And yet today, six decades after President Magsaysay wrote those stirring words, and nearly three decades after the adoption of the 1987 Constitution, the numberless who have less in life still have less in law. In an unequal society with an elite-dominated political system, the haves get not only a bigger share of the economic

* This article is based on a longer research paper entitled, "Social Protection for the Informals: Transformation Challenges in the Philippines, 2014." The research paper is a contribution to the multi-national study on the situation of informal workers in Southeast Asia, organized by the International Labour Organization office in Jakarta.

pie but also the final say on how the pie shall be divided and distributed. Those who have more in life also have more in law.

This truth is most amply illustrated in the situation of the country's working poor, the workers who derive marginal incomes out of marginal jobs. Under the Constitution all workers are supposed to enjoy all the rights being enjoyed by the better-paid regular workers. The working poor do not because the enabling laws and programs for the enjoyment of such rights by these workers are weak, underdeveloped, or even missing.

This paper outlines the challenges facing policy makers seeking to bridge the gap between what the Constitution says are workers' rights, and what obtains in the real world of work. The paper summarizes the rights enjoyed by the regular workers in the formal sector, and discusses why the working poor are unable to enjoy these rights. The paper then concludes with an analysis of what policy reform measures the government can adopt to correct the policy and legal imbalances that prevent the working poor from enjoying the basic rights that all workers, without exception, are supposed to enjoy, based on the Constitutional mandate.

Conflict of Mandates: The Constitution and the Labor Code

The 1987 Constitution, in Section 3, Article XIII, expounds on the duty of the State to protect all workers as follows:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with the law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

Note that the charter does not make any exception to the duty of the State to protect workers. The emphasis is on "the rights of all workers," meaning these rights are universal and should be enjoyed by all workers regardless of whether they are organized and unorganized, or working at home or overseas. All workers are

supposed to enjoy full protection through full employment, equality of employment opportunities, and rights to self-organization, collective bargaining, security of tenure, humane conditions of work, and a living wage.

The reality, however, is far different. A clear indicator of this is the tiny number of workers covered by existing collective bargaining agreements (CBAs). A CBA is a contract negotiated by the union with the employer to flesh out the terms and conditions of work that are generally higher than those mandated by law. A quick look at the labor statistics compiled by the Department of Labor and Employment (DOLE) reveals that only 220,000 workers, out of the 40.4 million in the labor force in 2012, were covered by CBAs (Bureau of Labor and Employment Statistics, 2014). This is one half of one percent of the total work force!

Why such a low number of workers covered by CBAs? There are political, historical, and other reasons why the enjoyment of the right to self-organization and collective bargaining is limited to a few. However, one major reason is the fact that we do not have enabling laws and programs in support of the Constitutional mandate on universal labor rights.

In particular, we have a Labor Code that fails to cover the majority of the labor force. It covers mainly the narrow formal sector of the economy, which consists of enterprises or activities that are formally registered with the government, or licensed by the government to do or conduct business. To be able to operate, a formal sector enterprise must secure a business permit or registration from the *barangay* and municipal or city hall, the Securities and Exchange Commission (if it is a corporation), the Bureau of Internal Revenue, the Social Security System, Philippine Health Insurance, and Home Development Fund (Pag-Ibig). Formal sector workers are workers hired by formal sector enterprises.

As a general backgrounder, the Labor Code has six substantial parts, or “books,” excluding a seventh book on “Transitory Provisions.” Books I and II deal with human resources development or skills upgrading and the rules governing the recruitment of workers. Books III and IV list down the laws on labor standards relating to wages, hours of work, employee benefits, health and safety, and so on,

We do not have enabling laws and programs in support of the Constitutional mandate on universal labor rights

while Books V and VI contain provisions governing labor relations concerns, such as unionism, collective bargaining, dispute settlement, and legal requirements on employee termination. To workers seeking protection or the assurance to enjoy the whole range of benefits and rights mandated by law—such as a minimum wage, holiday pay, overtime pay, non-discrimination, union representation, collective bargaining, non-termination without just cause, and so on—the various provisions of Books III up to Book VI of the Labor Code serve as their protective shields. The problem is that these provisions, each of which is considered a law by itself, apply largely to the formal sector workers because the enjoyment of such rights or entitlements requires proof of the existence of formal employer-employee relations.

In fact, most of the labor disputes in employment relations in the formal sector usually require a clarification of the existence of formal employer-employee relations. Employers are able to escape or avoid legal obligations, such as the payment of minimum wages, if they are able to prove that they are not the employers of the complaining workers; on the other hand, unions and workers are able to claim compensation for unpaid benefits and the correction of any abusive arrangement if they are able to prove that the erring employers are indeed their employers. Most of the cases on the non-payment of employee benefits, non-regularization of workers (after the six-month probationary period), and non-enrolment of employees in the Social Security System (SSS)—or the non-remittance by the employer of its share in the employee contribution to the SSS—involve a determination of the existence of formal employer-employee relations. As a result, the Supreme Court has developed the four “tests” on the existence of employer-employee relations, which essentially entail the determination of: 1) who hires the worker, 2) who pays the worker, 3) who disciplines or imposes penalty on the worker for infractions of company rules, and 4) who controls or supervises the worker in the performance of work. For more details and illustrative cases on the four tests, see Azucena (2007).

In short, the Labor Code, particularly Books III to VI, are meaningless to many workers who are either outside the formal sector or who are invisible or who are at the margins of the formal sector (see subsequent section). The Code requires a certain level of formality, such as the formal registration of the enterprise with the various government agencies cited earlier, and the existence of formal employer-

employee relations. A majority of the labor cases submitted to the Department of Labor and Employment (DOLE) and its arbitration body, the National Labor Relations Commission (NLRC), end up with the parties to a dispute contesting the existence or non-existence of formal employer-employee relations.

On paper the law does not forbid the formation of unions of informal workers. But there are no explicit laws encouraging, much less enabling, their formation and registration. A major initiative of DOLE in the 1970s was the registration of rural workers organizations under the Bureau of Rural Workers, which is now merged with the Bureau of Informal Workers. In the 1990s DOLE tried to promote the registration of workers' associations, meaning organizations of workers not for the purpose of collective bargaining. Yet data and statistics on both are limited and are hardly given recognition in the various tripartite meetings convened by DOLE.

As to the formal labor market, many Labor Code provisions are not observed or enforced due to the restrictive jurisprudence that says that there must be proof on the existence of formal employer-employee relations, and proof that the workers seeking union recognition are regular employees of a given principal. The message is that only regular workers can form a union because these regular workers can stay at the work place beyond three-to-five years. This is reinforced by the law governing CBAs, which states that a union can win political recognition up to a maximum of five years, and can negotiate over the terms and conditions of the CBA every three years.

As a result of the foregoing, the non-regular or short-term workers—probationaries, casuals, agency “*endos*” and substitutes—are effectively shut out of union formation and the collective bargaining system. Since the non-regular workers generally outnumber the regulars, union formation and collective bargaining become a privilege for a minority of workers. Given this reality, more and more employers are encouraged to institutionalize the practice of short-term hiring, and contracting the services of outside service contracting companies in order to avoid unionism and maintain some level of flexibility to hire and fire workers, adjust upward or downward certain employee benefits, and avoid the obligation to pay legally-mandated wages. On the other hand, union organizers, once the union is recognized by the government and the employer, try hard to bargain for the inclusion of all the excluded short-term workers in the CBA coverage.

The Excluded Working Poor: How Many Are They?

Who are the working poor? They are a multitude; one cannot miss them. They can be found everywhere in the archipelago, especially in the swelling urban and rural slum colonies in all 17 regions of the country. By working poor, we mean workers with no regular or stable jobs, and have no regular or stable decent wages and conditions of work.

There are two major categories of the working poor: First, the vulnerable workers in the informal sector or informal economy (IS/IE), and second, the precariat or paid workers with non-regular tenures in the formal sector.

The “Vulnerable” IS/IE Workers

The term IE or informal economy is often used interchangeably with the term IS or informal sector. The IE/IS is the catch basin of the labor market for workers who cannot find jobs in the limited and protected organized sector of the economy. IE/IS work is a coping or survival mechanism of informal workers in order to meet the requirements of daily living, no matter how minimal the income is from an informal economic undertaking, such as street hawking, home-based production, unregistered repair services, gold panning, and so on.

In the 1980s and 1990s, the IS was generally understood as including any economic activity not registered formally with the government and, therefore, not liable for taxes (see Ofreneo 1994). However, in 2002 the National Statistical Coordination Board (NSCB) adopted a more nuanced definition of the IS:

The IS [informal sector] consists of ‘units’ engaged in the production of goods and services with the primary objective of generating employment and incomes to the persons concerned in order to earn a living. These units typically operate at a low level of organization with little or no division between labor and capital as factors of production. It consists of household unincorporated enterprises that are market and non-market producers of goods as well as market producer of services. This means these are owned or operated by households engaged in the production of goods and/or services that are not constituted as legal entities independent of the households or household members that own them.

Labor relations, where they exist, are based on casual employment, kinship or personal and social relations rather than formal or contractual arrangements (cited in Labstat 2008, 1-2).

The NSCB classified “household unincorporated enterprises” into two categories: “informal own-account enterprises” and “enterprises of informal employers.” For the Bureau of Labor and Employment Statistics (BLES) of DOLE, this means the IS includes the self-employed or own-account workers without any paid employees, plus the unpaid family workers. In a way, the IS as defined is similar to the International Labor Office (ILO) concept of “vulnerable employment,” which covers the unpaid family workers and non-employer own-account workers.

The ILO’s *Decent Work and the Informal Economy* (2002) adopted the broader term “informal economy” or IE to cover all economic activities by workers and economic units that are, in law or in practice, “not covered or insufficiently covered by formal arrangements” (International Labour Organization 2002, 3). In the proposed House Bill 2295 providing for a “Magna Carta of Workers in Informal Employment,”¹ the bill’s proponents cite both the ILO and NSCB definitions of IS and the IE. HB 2295 has listed the following workers as belonging to the IS/IE:

- Small farmers owning not more than three hectares, and rural and agricultural workers serving as tenants, sharecroppers or laborers;
- Small fisherfolk/operators owning boats of three tons or less, and fisherfolk who have no fishing equipment;
- Fish workers, porters, and *batillos* (fish tub handlers);
- Home-based workers who are independent producers of goods or services;
- Industrial home-workers doing subcontracting work;
- Self-employed engaged by other contractors to do subcontracting work;
- Ambulant vendors or peddlers who ply their trades in search of buyers;
- Street vendors who sell their merchandise on streets and sidewalks;
- Vendors with stalls in public and private markets or with their own stores but with operating capitalization of not more than a million peso (roughly US\$23,000);
- Transport drivers, including “barkers,” fare collectors, dispatchers, and other workers who share income with self-employed or unincorporated operators;

- Transport operators (of jeepneys, pedicabs, tricycles, taxis, etc.) whose capitalization is not more than a million pesos;
- Unregistered and unprotected household domestic workers;
- Non-corporate construction workers, referring to those hired informally or through subcontractors;
- Small-scale miners doing their own processing, including those with capitalization of not more than a million peso,
- Workers of Barangay Micro Business Enterprises;²
- Non-corporate cargo handlers and allied workers;
- Waste pickers and recyclers;
- Workers engaged in producing seasonal products;
- Own-account workers doing repair and maintenance of equipment, appliances, etc., including beauticians, barbers, and masseuses;
- “On-call” workers in the entertainment, movie, and media, such as bit players, stuntmen, make-up artists, etc.;
- Volunteer workers in government receiving only allowances or honoraria, such as the *barangay* health workers and volunteers in non-governmental or people’s organizations;
- Unpaid family members, workers receiving allowances, and seasonal workers in micro enterprises and unincorporated household enterprises; and
- “Other similar economic activities that are “not illegal, criminal or life threatening in nature.”

Estimates of the IE/IS sector vary. The BLES-DOLE gives an IS estimate of about 41 percent of the total employed of 36 million for 2010 (see table 1). This is also the figure for the ILO’s “vulnerable employment,” defined as the total of the non-employed self-employed, and the unpaid or contributing family members. However, the estimate of the Employers Confederation of the Philippines (ECOP) is much higher—a whopping 77 percent of the employed, or 25 million out of the 36 million employed in 2006, belong to the informal economy (see table 2)! The higher ECOP estimate is due to the inclusion in the IS/IE total of the

TABLE 1. Percent share of total employed

BLES-DOLE count of formal and informal sector in the total employed, 1980-2010

Year	FORMAL SECTOR		INFORMAL SECTOR	
	Wage & Salary Workers	Own Account Workers	Unpaid Family Workers	Total Informal Sector
1980	42.4	36.9	20.7	57.6
1985	43.8	39.7	16.5	56.2
1990	45.5	38.8	15.7	54.5
1995	46.2	39.0	14.8	53.8
2000	50.7	37.1	12.2	49.3
2005	50.4	36.9	12.7	49.6
2010	51.8	29.8	11.7	41.5

Source: Bureau of Labor and Employment Statistics, Department of Labor and Employment.

TABLE 2. ECOP's estimation of the Number of IS workers, 2006 (in '000).

Indicator	2006*	
Underemployed	7,467	
<i>Underemployment Rate</i>		22.7%
Own-Account Workers	12,134	
Employer	1,467	
Self-Employed	10,667	
<i>% of employed</i>		32.3%
Unpaid Family Workers	4,038	
<i>% of employed</i>		12.3%
TOTAL		
As % of Employed	25,151	77%

*Annualized average of labor force surveys.

Source: Sergio Ortiz-Luis, Philippine Employer, May 2008.

“underemployed” who are assumed to be workers in the huge galaxy of micro, small, and medium (MSME) enterprises. As shown in table 3, the micro enterprises (with 1-10 employees) account for 91.3 percent of establishments, based on an NSO survey in 2005, contributing roughly two million in employment. It is also important to note that the data shown in table 3 is limited to registered enterprises only; there are hundreds of thousands of unregistered micro enterprises in the country.

Note that the BLES-DOLE estimation excludes the wage workers in all sectors, and tends to deviate from the broader official definition adopted in 2002 by the NSCB. The BLES-DOLE estimation also excludes the informal “industrial workers,” for example, those sewing garments at home subcontracted by some garment exporters and manufacturers, those producing and packaging confectionaries and native delicacies at home, etc.

Overall, the BLES-DOLE estimate is an underestimation, while the ECOP’s figure appears to be more realistic. However, one problem with the ECOP estimate is that it equates underemployment, generally defined by the NSO as someone employed and yet still looking for additional work, with informality at work. Of course it is not difficult to assume that a majority of the underemployed are looking for additional work precisely because of the marginal nature of work and income in the IS/IE.

Most of the IS/IE workers and families are people living on the margin. A few with special skills, who render unique but unregistered business services to different

TABLE 3. List of establishments, 2005.

	Number of employees	Capitalization (in million Php)	Establishments		Employment	
			Number	% Share	Number	% Share
Micro	1 – 9	Less than 3	714,675	91.3	2,057,388	37.6
Small	10 – 99	3 – 15	62,811	8.0	1,363,007	24.9
Medium	100 – 199	15 – 100	2,851	0.4	384,295	7.0
Large	200 & above	100 & above	2,643	0.3	1,674,607	30.6
Total			782,980	100.0	5,479,297	100.0

Source: National Statistics Office.

homes, such as electricians and plumbers, are compensated well; however, the overwhelming majority of the informal workers or “informals”—self-employed, unpaid family workers, and non-formal wage workers—are poor. The poorest among them end up as informal settlers, who build makeshift houses (around 2 x 2 m in size) made of light materials on vacant private and government lands and dangerous spaces, such as river embankments, canals, etc. They have even developed communities of the living in public cemeteries. The Climate Change Congress of the Philippines or CCCP (2011) identified the following among the poorest IS/IE households:

- *kariton* households (people living in push carts, which double for informal economic activities such as scavenging),
- seawall households,
- under-the-bridge and footbridge households,
- dumpsite households,
- hillside and mountaintop households,
- cemetery households,
- Luneta households (Luneta is a big national park in Metro Manila), and
- varied street households which move from one alley to another.

In terms of income generation, the CCCP identified the *hagdaw* households to be among the poorest. These are families who come in after a harvest, i.e., they glean or clean up leftovers, such as fallen rice stalks. The poorest also include the alm-seeking households, the slash-and-burn farming households (usually living on hillsides of public lands), charcoal-making households based in remote hills and mountains, and the small-scale mining households—those who do either gold panning in mineralized rivers or “camote” (rootcrop) mining on hilly mining sites.

The CCCP also observed that many of the informal workers are mobile, meaning they move from place to place in search of odd jobs on a seasonal and even day-to-day basis. For example, the landless rural poor, who have no land rights and no fixed or regular jobs, can be seasonal agricultural workers one day (hired during planting and harvesting), coastal/river fisherfolk another day, and construction aides in the cities on still another day. The landless rural poor happen to be the most numerous in the countryside.

Similarly, the urban poor with no regular jobs also keep moving from one job to another, or from one place to another in search of jobs. They are ambulant peddlers one day, construction workers another day, and cargo handlers still another day.

A big group of informal workers are the home-based workers, such as those who produce handicrafts, toys, processed food, household accessories, and numerous other products right at home. During the heyday of the export-oriented garments industry in the 1980s and 1990s, more than half a million workers were estimated to be home-based workers doing subcontracted embroidery work or assembly of garment parts (Ofreneo 2009).

The “Precariat” and the “Informalization” of the Formal Labor Market

The second major group or category of the excluded are the precariat, or the precarious paid workers, in the formal or organized sector of the economy. They are excluded in the sense that their job tenures are generally precarious and they get only a pittance for the work or service that they render for industry or commerce. Arne Kalleberg and Kevin Hewison (2013) define precarious work as work characterized by “*uncertainty, instability, and insecurity of work* in which *employees bear the risks* of work (as opposed to businesses or the government) and *receive limited social benefits and statutory entitlements*.” Simply put, precarity means the informalization or casualization of work in the formal sector through short-term or flexible hiring arrangements and limited compensation or benefits for the workers.

As it is, the formal labor market is not only narrow because of the huge informal economy; it is also “informalizing.” This phenomenon of informalization is aided by the reality of jobless growth in the organized sector due to the weak agro-industrial base of the economy and, yes, the availability of a large reserve army of flexible labor from the informal economy. This informalization is dubbed by trade unions as “contractualization” or “casualization,” which generally means short-term and unprotected temporary hiring arrangements. A popular slang used for a short-term worker is “*endo*,”³ someone whose employment contract has ended or bound to end in a short time.

Because of the informalization processes in the formal sector, some researchers give a higher estimate of the size of the IS/IE by including the non-regular workers from the formal sector. This is the reason why the study of Rosario Manasan and Aniceto Orbeta (2012) of the Philippine Institute for Development Studies (PIDS) estimated the IE size to be as high as 89 percent of the total employed! They arrived at this figure by using the non-existence of a written employment contract and the non-application of labor regulations in the payment of benefits as the main criteria in measuring informality, especially in relation to wage workers. This approach is closer to the 2002 ILO and NSCB definitions which emphasize insufficient formality in work relations. The data on the absence of employment contracts and the non-application of labor regulations for wage workers were estimates given by the National Statistics Office (NSO) to Manasan and Orbeta. The following are interesting figures based on the study of Manasan and Orbeta:

- About 91.0 percent (9.2 million) of the self-employed (10.07 million) are informal;
- About 68 percent of the employers are informal (2.4 million out of 3.5 million);
- As to wage workers, per survey of the NSO, 40 percent of 17.7 million wage and salary workers in 2008 had only verbal contracts, and an additional 23 percent had no contract at all. Hence, more than 76 percent of wage workers were informal.

The Philippine trade union movement, which is badly divided on many issues, such as the minimum wage, is consistently united in their uniform denunciation of the flexibilization phenomenon that finds expression in various forms of flexible job hiring arrangements, such as the outsourcing or subcontracting of work, deployment of agency-hired (third-party-managed) workers within the company's work premises, and the direct hiring of workers under short-term employment contracts. This is why the labor union at the Philippine Long Distance Telecom Company (PLDT), formerly a big union with a five-digit membership (now four digits),⁴ has succeeded in building a broad-based labor coalition called *Kilusan Laban sa Kontraktualisasyon*, or Movement Against Contractualization.

Another big union, the Philippine Airline Employees Association (PALEA), has also managed to get the support of various competing labor groups, as well as the attention of Philippine Congress, on their bitter fight with Philippine Airlines (PAL) management regarding the outsourcing of 2,600 jobs occupied by regular workers, who are also union members. Congress has been conducting public hearings on the PAL-PALEA dispute, and asking both sides to explain what is the appropriate policy on job outsourcing. PAL management argues that outsourcing is a global trend and that the airline company cannot survive if it does not adopt the same global work practice. On the other hand, the PALEA union argues that the workers' basic union, job, and collective bargaining rights are being violated by the outsourcing measure, in violation of the Labor Code provision on security of tenure of regular workers. Both sides raise legal arguments in support of their respective positions—PALEA cites the Labor Code provisions protecting regular jobs, while PAL management cites Supreme Court rulings and Civil Code provisions on management prerogative⁵ to outsource jobs as needed or as required by business exigency. The PAL-PALEA dispute on outsourcing, which led to a near paralysis in PAL operations in late 2011 due to the militant labor protest of PALEA, is the most explicit illustration of the fierce debates between unions and employers on the issue of labor flexibility.

Unfortunately for the unions and many workers, the realities in the labor market are not too kind on them. Informalization or “flexibilization” is widespread in the formal side of the services, industry, and agriculture sectors.

Flexibilization also takes varied forms; but the common underlying thrust is to put workers under short-term employment arrangement, with the job contract ranging anywhere from one week to less than three years. The latter (three years) is the usual length or duration of a collective bargaining agreement (CBA), which explains why trade unionists complain that they have less and less workers to organize for collective bargaining purposes. Moreover, under the existing jurisprudence, non-regular workers are usually excluded from the scope of the CBA coverage. The following are the different forms of labor flexibilization based on the different studies conducted by Abrera-Mangahas et al. (1999) and Sibal, Amante and Tolentino (2012):

- *Hiring workers as temporaries or probationaries with no intention of regularizing them.* Are these workers formal or informal, or somewhere in between? The probably correct answer is the latter. Under the Labor Code

of the Philippines (LCP), a company is allowed to subject workers to six-months probation, beyond which he or she is entitled to regularization if the job is “regular and necessary” to the business. A company is also allowed to hire a casual worker; however, a year of accumulated service, even if intermittent, means he or she is also entitled to regularization. But what happens is that some companies and placement and manpower agencies are putting short-term workers on a “5-5 arrangement,”⁶ meaning they are hired for only five months without any hope of being regularized. For manpower agencies with a network of partner companies, these workers are simply redeployed in another outfit for another five months; thus, they are able to avoid the legal requirement for companies to regularize workers who have rendered at least six months of continuous service as probationaries.

- *Hiring workers as “project employees.”* Under the law, the tenure of project employees is co-terminus with the project they are assigned to, for example, developing a cell site for a telecom company, the completion of which is bound to happen on “a day certain.” This is the usual and well-established system of hiring workers in the construction industry, where work moves from one project to another. The problem is that the concept of project hiring, which can be of longer duration depending on the project (e.g., three years), has been adopted by non-construction companies or industries which simply package different aspects of work, e.g., assembly of one set of goods is treated as a project separate from the succeeding assembly of another set of goods. In the booming CC/BPO sector, most of the jobs are now under project-hiring arrangement. Today, project-based hiring is the norm for short-term hiring.
- *Hiring of trainees.* Under the law, companies can hire trainees for anywhere between six months to two years at compensation rates of 25 percent below the minimum wage. Some companies in the electronics assembly and auto parts industries are big users of this scheme. In one big electronics company with around 20,000 workers, the ratio of the apprentice-trainee is 19:1, meaning 19 apprentice-trainees for every one regular employee (Ofreneo and Hernandez 2010).

There are other flexible work and compensation arrangements (Kapunan and Kapunan 2006). They include the following: work on a commission basis, meaning workers are paid based on a percentage of the sales they make; “boundary” system, which is common in the transport sector (drivers are supposed to turn over a fixed daily amount of their earnings, or “boundary,” to the transport owner (e.g., taxi) and appropriate to himself or herself whatever is the surplus; and piece-rate system, meaning workers are paid on the basis of results (quite common in the heyday of the garments industry). There are also seasonal workers, or those hired during peak demands for business, e.g., production of Christmas decorations for the Christmas season.

The negative impact of flexibilization on unionism is palpable, as indicated by the declining number of CBAs and workers covered. Table 4/Figure 1 shows that the post-martial law period (1985 onward) has been recording continuing growth rate of union formations. However, the overall membership declined sharply in 2001-2005, from 3,849,976 to 1,910,166 in 2005, or a dramatic negative growth rate of 50.38 percent. As to the CBAs and the workers covered by CBAs, the growth rate has been relentlessly going down since 1991, except for 2001-2005. The number of workers covered by CBAs today ranges only between 200,000 to 250,000, which is puny compared to the 36 million employed workers in the country!

Overall, unionism is on the retreat. There has been a steady decline of unionization in both the entire employed sector and among the wage and salary earners from 1990 to the present. As can be deduced from the foregoing discussion, one ineluctable explanation is the increasing flexibility in hiring arrangements, which make it doubly difficult for unions to organize workers.

The “informalization” of work processes in the formal labor market also leads to the exit of casual workers from the formal labor market and their entry into the informal economy. This usually happens to casual workers who reach the vulnerable age of 40 to 60 years old. As Ludy Casana of the Federation of Free Workers put it, the casual workers at this age bracket are “too young to resign and yet too old to be hired.” The most vulnerable among these workers are the casuals doing simple repetitive jobs in the manufacturing sub-sector and in the distribution (retailing/wholesaling) industry. Workers in manufacturing who reach compulsory retirement age (between 60 and 65) have become a rarity these days.

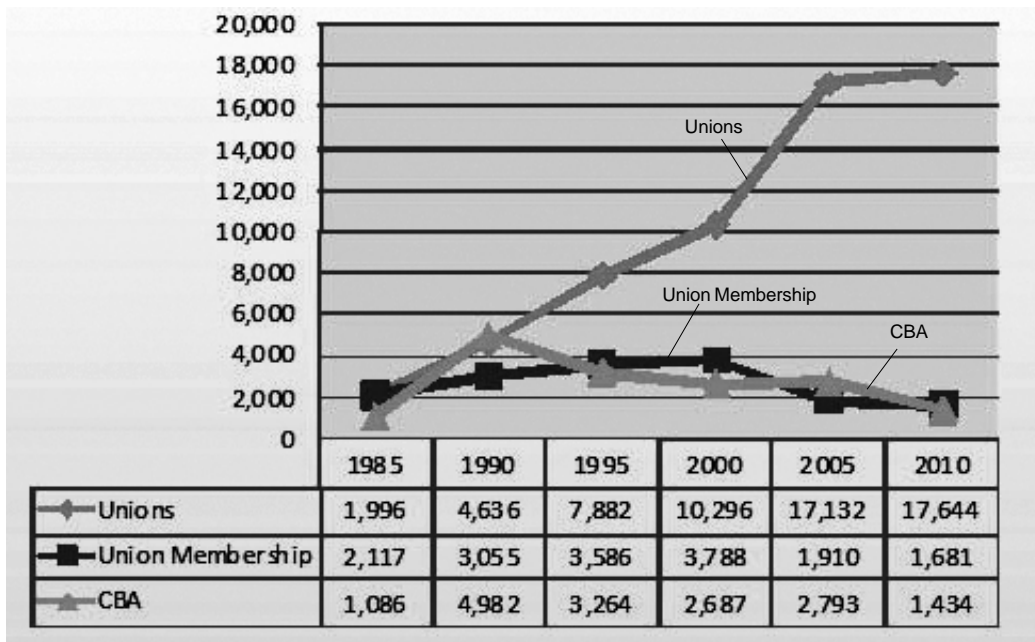


Table 4/Figure 1: Unions, union membership and CBAs, 1985-2010

Source of raw data: Department of Labor and Employment, Bureau of Labor and Employment Statistics.

The stagnant and even declining performance of Philippine manufacturing under a more open or liberalized economic environment has also pushed large numbers of formal sector workers, both regular and casual, out of the formal labor market. For example, the biggest unions in the Philippines in the 1970s up to the 1990s were in the textile and garment industries, such as Novelty and Aris, which had over 10,000 unionized workers each. With the collapse of the textile industry in the 1990s and the garments industry at the turn of the millennium (Ofreneo 2009), most of the unions had disappeared. In other manufacturing industries, the continuous processes of reengineering and “smart-sizing” (often leading to downsizing and outsourcing) have made most of these industries very lean and even non-unionized.

Shrinking Formal Labor Market and the Country's Failed Industrial Transformation

Some explanation for the shrinking formal labor market, and the consequent informalization of work in both the formal and informal labor markets, is in order.

In 2012, an Asian Development Bank (ADB) study, *Taking the Right Road to Inclusive Growth: Industrial Upgrading and Diversification in the Philippines* (Usui 2012), concluded that the country's industrialization efforts in the last three decades, 1980s to present, were a failure. The ADB study added that Philippine economic growth, buoyed by the huge overseas migrant remittances and the tremendous expansion of the call centre and business process outsourcing (CC/BPO) sector, is simply unsustainable if the industrial sector remains stagnant. The share of manufacturing in employment went down from 11 percent in 1980 to about 9 percent in 2009 (see table 5); in contrast, the percentage in neighboring Asian countries, such as Indonesia and Thailand, went up from single to double digits in the same period. Comparing the industrial performance of Malaysia, the Asian NICs, and China with that of the Philippines is even more embarrassing. Though the CC/BPO sector has become a major growth driver, its total contribution to direct job generation is just a little over one percent of the total labor force.

The above finding of the ADB on stagnant industrialization is not new, especially to progressive civil society organisations in the Philippines. They are also likely to find the ADB study somewhat incomplete in its diagnosis of the weaknesses of the economy. Bello (2004) and the Fair Trade Alliance (2006) pointed out that the *de-industrialization* of the Philippines in the last three decades has been accompanied by *de-agricultural development*, reaffirmed by the above-cited ADB study.

The country, a net agricultural exporting country in the nineteenth and twentieth centuries, has become a net agricultural importing country since 1995, the first year of its membership in the World Trade Organization (WTO). The Philippines has, in fact, become the world's biggest importer of rice. The nation's success in the production and export of banana and pineapple cannot make up for the country's failure in attaining self-sufficiency in staple crops (rice and corn), fishery and meat products, and in stabilizing the market for coconut, sugar, tobacco, vegetables, rubber, and other crops.

TABLE 5. Sectoral Composition of Economy, Output, and Employment (in percent, 1980 and 2009)

Sector	1980	2009	
Output Share			
Agriculture	25.1	13.1	
Industry	38.8	31.7	
of which Manufacturing		25.7	21.3
Services	34.3	55.2	
Employment Share			
Agriculture	51.8	35.2	
Industry	15.4	14.5	
of which Manufacturing		10.8	8.9
Services	32.8	50.3	

Source: Extracted from Table 2-1 of Usui 2012.

On industrialization, the country's manufacturing was hailed in the early 1960s by the World Bank as Asia's most dynamic, second only to Japan (Ofreneo 1993). However, as attested by the above three studies, the Philippines' industrial dynamism disappeared during the last three decades beginning from the 1980s. The latter period happens to be the decades of structural adjustment program (SAP) promoted by the economic technocracy in the name of export orientation and national competitiveness. The SAP neo-liberal economic policies were aimed at opening up the economy through programs eliminating tariff and non-tariff protection for local industry, privatizing government corporations and services, and deregulating different economic sectors. The whole SAP idea was to promote economic efficiency by subjecting a liberalized and deregulated Philippine economy to global competition. However, the outcome was the widespread collapse of domestic industries and even the weakening of some export industries, such as the garments industry. The Fair Trade Alliance (2006) explains that this is due to the arbitrary and one-sided way SAP liberalization policies were imposed, sans consultation with industry, labor, and other stakeholders, and without any clear development compass.

The collapse of industry and agriculture explains why the original programme of "temporary manpower export"⁷ has become permanent and has grown year by

year. Today the remittances of over ten million OFWs (Overseas Filipino Workers) and Filipino immigrants, equal to 10 percent of the population, provide the critical lifeline to at least a fifth of the population. The remittances, estimated to be over US\$20 billion a year, explain why the economy is described as a “consumption-led” one despite the precipitous decline in domestic manufacturing, agricultural production, and employment.

Low Incomes, Job Insecurity and Lack of Social Security

Now back to the situation of the IS/IE workers and the precariat. They generally face a three-fold problem: low incomes and wages, job insecurity, and lack of social security. The low incomes and wages are associated with the low valuation of the services these workers deliver, whatever the occupational faces they wear. This is reinforced by the reality that the buyers of their services are either informal enterprises themselves, or formal institutions which do so surreptitiously sans official blessing in terms of tax receipts and so on. As to job insecurity, this arises mainly from the nature of their jobs—in the case of the precariat, the lack of tenure means they can be removed and laid off anytime, while in the case of the IS/IE workers, the lack of demand for their services or market for their products means they have to move on to look for another income-generating activity. Under globalization, such insecurities are further intensified by a fast-changing market, for example, home-sewn garments can be wiped out by a flood of cheap imported ready-to-wear garments smuggled by *ukay-ukay* entrepreneurs.

Finally, the majority of the IS/IE workers and precariat do not enjoy any formal social insurance, the lack of which is rooted precisely in the informality and uncertainty of their work. Most of the members of the government-run Social Security System (SSS) are workers with regular jobs with clear employer-employee relations. The SSS is swamped with complaints of non-regular or short-term hires who discover that their employers never bothered to register them with the SSS. Under the SSS law, all enterprises are mandated to enroll their workers in the SSS and to share in the cost of an employee's premium contribution.

Because of the limited number of workers covered by the SSS, the government amended in 1997 the SSS law to allow coverage of self-employed workers, agricultural workers, and household helpers. And yet ten years after, or in 2007, the percentage of active SSS members of self-employed and agricultural workers reached only 20 percent, with the formal wage workers constituting 80 percent of the total. The main complaint of would-be members among the self-employed is the high cost of the premium, which in the case of the formal sector workers is jointly shouldered by the employer and the workers.

As to the government Philippine Health Insurance (Philhealth), which was created in 1995, there has been some progress in membership expansion covering the “vulnerables” and “indigents” because of social and political pressures put on various Administrations. However, the major lament of IS/IE organizations and CSOs is the limited range of services covered by Philhealth. For example, outpatient consultations are not covered, and the participating hospitals and clinics are also limited.

The reality is that IS/IE workers and the precariat face numerous problems at work, at home, and in the community, most of which are rooted in the lack of job security, limited income, and lack of social insurance. Each worker has a story to tell. Box 1 is a summary of complaints by home-based women workers from Barangay Balingasa of Caloocan, who weave rags subcontracted by rag dealers. The list shows that the life of every IS/IE woman worker is strenuous and complicated as she has to bear the multiple burdens of earning an income while raising a family in a community bereft of basic health and other services. The situation of landless rural workers who have no lands and no secure jobs is no less strenuous and complicated. The same is true with street vendors who have to face daily the informal impositions of local police and local government, and the high interest charged by informal creditors, such as the 5-6 lenders. And so with the informal construction workers, the domestic workers, the informal transport workers, and the unregistered providers of varied services ranging from appliance repairs to home service massage.

The point is that, unlike the regular workers in the formal sector, the IS/IE workers and the precariat do not have stable jobs and do not enjoy labor and social protection.

Box 1. Laments of Home-Based Workers Producing Rags

Financial (work- and income-related)

Limited orders
Low productivity due to antiquated sewing machines
Limited work hours because sewing machines are borrowed from others
High cost of rental for production equipment
High cost of commodities and raw materials
Low price of finished products
Low income (a full day's work nets women sewers only a third of the minimum wage or less—the Metro Manila minimum wage is P500.00 daily versus informal sewers' income of P150 to P200 maximum for a day's work)
Lack of capital/fund resulting in stoppage of small/micro business
Inability to buy raw materials in bulk/volume due to lack of capital
Lack of additional capital to increase production
"Credit pollution" (many aggressive lenders with aggressive collection tactics)
Lack of credit assistance with low interest rate
Lack of access to government financial programs/services (particularly, credit facilities) for small enterprises with low interest rate
Delayed payment by subcontractors, aggravated by lack of written agreement
Non-repayment/delayed repayment of customers on credit basis
Very low payment/wages for home-based work
Lack of alternative source of income/alternative skills
Product/price competition

Financial (family-related)

Lack of financial resources for everyday consumption of the family and monthly payment of bills, such as water and electricity
Inability to send children to college (up to free public secondary education only)

On social protection

No social protection in place
Lack of free consultation and treatment for poor and marginalized HBWs in emergency under the Philhealth system
Problems with SSS/ PHILHEALTH coverage and membership
Limited education for children (high dropout rates)

Product-related

Lack of regular market outlet for products produced
No job-out from subcontractors due to lack of raw materials/product
Seasonality of work/products
Unsold products are stocked; no customers due to oversupply in the market

Health and safety issues

Noise pollution in the community (overcrowded place)
Air pollution (chemicals exuded by neighboring manufacturer of Zonrox)
Small and crowded work station/place of work
Crowded space inside the house (where work is done) due to extended family, and limited housing space
Lack of toilet inside the house for some households
Clogged drainage
Lack of water supply

Other concerns

Multiple burdens inside the home (too many household chores)
Over-fatigue due to multiple tasks at home
Lack of knowledge and skills to run small business

Source: Focused group discussion with home-based women workers of Balingasa, Caloocan City, May 2014.

Government Initiatives on Social Protection for the Poor

Through the decades, various administrations have initiated programs to combat mass poverty and improve the welfare of those in the margins of society and economy. However, there is no precise targeting of social protection for the IS/IE workers and the precariat. We even have a bizarre situation where, under RA 8425 creating the National Anti-Poverty Commission (NAPC), “workers in the informal sector” are lumped together with the “disadvantaged sectors” that include women, children, youth and students, senior citizens, persons with disabilities, cooperatives, NGOs, fisherfolk, farmers, urban poor, indigenous people, workers in the formal sector, and victims of disasters and calamities. This is confusing because it is difficult to distinguish each of the so-called NAPC sectors in terms of employment, income, and overall position in the labor market.

During the first term of the administration of Gloria Macapagal-Arroyo (2001-2004), there were four major anti-poverty programs (apart from the overall national macroeconomic development programs aimed at employment generation):

- Credit support for Grameen-style microfinance lending, with the government’s People’s Credit and Finance Corporation providing loanable funds to non-governmental organizations (NGOs) re-lending to the entrepreneurial poor, such as those fattening pigs at home or maintaining a small neighborhood store;
- Credit support for small enterprise development dubbed “*Sulong*” (advance);
- Assistance to the poorest communities and municipalities in building roads, water systems, clinics, and schools; and
- Inclusion of indigents in the coverage of the Philippine Health Insurance (Philhealth), which provides health insurance via affordable insurance premiums.

In her second term (2004-2010), the Arroyo government focused on the conditional cash transfer (CCT) which was introduced in 2008 courtesy of the World Bank and the Asian Development Bank. The CCT provides a poor family with children a monthly cash allowance of P1,400 (US\$30.00) at the maximum, and P800 at the minimum, on the condition that the mother is committed to visit

a maternal health clinic regularly and the family pledges to keep their school-age children in school.

All the foregoing five programs have been continued by the Aquino Administration which chose the CCT program as a flagship anti-poverty program, and immediately doubled the target CCT beneficiaries from one million in 2010 to two million in 2011 (Department of Social Welfare and Development 2011).

Most of these anti-poverty programs overlap or intermesh with other programs created by special laws, such as the Magna Carta for Small Farmers (RA 7607), Magna Carta for Small Enterprises (RA 6977), and Barangay Microbusiness Enterprises Act (RA 9178). Also, there are other related social development programs being carried out by various institutions, such as the skills training program for out-of-school youth by the Technical Education and Skills Development Authority (TESDA), and the small lending programs for livelihood development for the poor and displaced that are managed by DOLE and the Department of Social Work and Development. In 2013 the inter-agency Cabinet Committee on Social Development (SDC), on the recommendation of the Sub-Committee on Informal Sector (SCIS) chaired by DOLE and the Sub-Committee on Social Protection (SCSP) chaired by DSWD, endorsed the expansion of the informal sector coverage of SSS, Philhealth, and Pag-Ibig.

At DOLE, there are efforts to expand the implementing rules of the Labor Code in order to cover certain categories of informal workers. Thus, in the early 1990s, two Department Orders (DOs)—DO No. 5 and DO No. 19—were issued. DO No. 5 entitled, “Employment of Homeworkers,” was formulated to cover home-based workers, specifically the “industrial home workers.” DO No. 5 provides for a DOLE-supervised determination of appropriate wage rates for piece-rate work, the registration of contractor and subcontractor, the contractor’s obligation to remit the employer’s share in the payment of the SSS premium, and the prohibition of child labor. The determination of wage rates can be done through time and motion studies and dialogue among the workers, contractors, and DOLE. DO No. 5 was issued by DOLE on February 4, 1992 in response to the widespread complaint that piece-rate workers working at home were being abused by garments contractors and outsourcing agents.

The problem, however, is that there is no evidence that DO No. 5 was ever used to prosecute contractors which deviated or have been deviating from the rules promulgated by the said DO. PATAMABA⁸, a home-based organization with a large number of garments industrial homeworkers as members, reported that DO No. 5 was hardly used by their members because no cases were filed using DO No. 5 as a defense. Nevertheless, the salutary effect of DO No. 5 is that it helped stabilize wage rates for industrial homeworkers in the 1990s onward for it forced industry to maintain a reasonable standard of compensation for piece-rate work. Today, however, DO No. 5 is fading in the collective memory of industrial homeworkers because very little outsourcing is being done by the export-led garments industry which is also fading because the industry is losing out to the more competitive producers of Asia. As to the local outsourcers, the primary concern of the industrial homeworkers is the lack of effective and sustained demand for their work. Hence, nobody is thinking of how to utilize DO No. 5.

The other DO is DO 19, issued on April 1, 1993. This DO clarifies the distinction between “project” and “non-project” employees in the construction industry. As is well known, work in construction projects, especially those involving huge infrastructures or buildings, is an intricate collection of projects (e.g., steel works, plumbing, electrical, etc.) spread out, sometimes through several phases of construction. What the DO sought to explain was that project employees, many of whom were informal construction workers, must have written project employment contracts with “a day certain” indicated as to when the project would end based on the description of a “project” or “phase” of a construction project. If a worker is terminated before this “day certain,” he or she is entitled to benefits for the unworked days or weeks covered by the contract, on the condition that his or her termination was not justified, usually determined if there is lawful basis for the termination and if due process was observed. Without a written contract, project employees who have accumulated a year of service are entitled to regularization. And with or without written contracts, all project employees are entitled to other statutory benefits due to wage workers, such as the minimum wage and a rest day.

Somehow, the issuance of DO 19 helped mute the issue about the possible regularization of project employees after the six-month period (based on the Labor

Code provision stating that probationary employees should be regularized after six months) and after rendering a one-year service (based on the Labor Code provision stating that casual employees should be regularized after accumulating a one-year service). The tenure of project employees is co-terminus with the project, as specified in a written project employment contract. DO 19 has somehow made it clear to parties in the construction industry that there are basically two types of employees: the project employees, who are mostly informal construction workers, and the non-project regular employees, who are mostly the skilled workers. Construction companies usually maintain in the payroll the skilled regular workers even if there are no ongoing construction projects because it is difficult to train expert workers, such as master carpenters, who are vulnerable to poaching by local and foreign labor recruiters.

However, the classification of employees between project and non-project has been adopted by the proliferating manpower agencies or service contractors which provide companies with short-term hires. In the past, most agencies deployed short-term hires for less than six months to avoid the dispute over the Labor Code provision that workers have to be regularized after a six-month probationary period or, in the case of casual workers, after one year of cumulative service. What is happening in the labor market today is that the rules on project hiring, developed by DOLE to curb abuses related to non-regularization and non-benefit-payment challenges in the construction industry, are now being applied to other industries. But this time the focus is how to use “project hiring” as basis for the deployment of workers in a manufacturing outfit or merchandise store for two or longer years without getting regularized, like in the construction industry. In short, the idea is to do away with the “5-5 labor market” practice which leads to the casualization of workers, in favor of longer project-hiring arrangements up to three years, which enable employers to keep short-term workers for two or more years without the workers getting regularized. Meanwhile, the business of service contractors, manpower agencies which do certain services outsourced by the principal, has been explicitly recognized in DO 18-A, issued in November 2011 by DOLE.

Another major government reform initiative is the passage of RA 10361, otherwise known as the Domestic Workers Act or *Batas Kasambahay*. This law got

the nod of Congress because the Philippines was a prime mover or lead campaigner for the adoption by the ILO of Convention No. 180 (Decent Work for Domestic Workers). The rationale for the campaign was to help curb abuses of Filipina maids by their employers in East Asia, the Middle East and a number of Western countries. The plight and abuses suffered by these migrant Filipina domestics are well-documented and well-publicized.

The *Kasambahay* law is fairly advanced. RA 10361 requires employers to provide their maids with copies of a written employment contract, pay the minimum wage set by the law (P2,500 in Metro Manila), give maids a full 24-hour rest day once a week, enroll the maids in the SSS and cover the full amount of the monthly premium, and comply with the statutory five-day service incentive leave and other applicable Labor Code provisions. However, unions trying to organize the domestics complain that the new law is by and large still not being enforced in most households. For example, only a handful of law-abiding employers in Metropolitan Manila are complying with the requirements of the law on the issuance of employment contracts. On paper, most LGUs in Metro Manila require the registration of domestics, and yet there is hardly any active registration happening.

Labor Rights for All: The Need for Coherent and Comprehensive Policy Regime

The foregoing government initiatives, positive as they are, are not sufficient to address the hunger of the large mass of IS/IE workers and the precariat for comprehensive and meaningful labor and social protection. As it is, social protection for the vulnerables, while accepted by the government, is often reduced to a question of how much funds the government can allocate to the various anti-poverty programs, such as credit assistance for livelihood projects, skills training for out-of-school youth, and CCT for poor mothers with school-age children. Laudable as they are, they have not altered the unequal structure of the labor market that has remained two-thirds informal and the other one-third partly informalizing.

The ideal is to have a society and economy where the majority, if not all, of the workers enjoy secure or regular well-paying jobs that are amply protected by law.

This is the reason why there are ongoing debates in the ILO on how the IS/IE workers, who are the most numerous in many developing countries like the Philippines, can transition from informality to formality. A draft Recommendation, prepared by the ILO Secretariat for the 2014 annual international labor conference, states that the rationale for such transition is “to promote decent work for all” and “to achieve inclusive development.” In the draft Recommendation, the ILO Secretariat pointed out that

the high incidence of the informal economy in all its aspects is a major challenge for the rights of workers, including the fundamental principles and rights at work, for social protection and decent working conditions, inclusive development and the rule of law, and has a negative impact on the development of sustainable enterprises, public revenues and government's scope of action, particularly with regard to economic, social and environmental policies, the soundness of institutions and fair competition in national and international markets (International Labour Organization 2014).

The above ILO proposal has attracted widespread support among the trade unions because informality indeed deprives workers of basic social and labor protection. In the case of the Philippines, the Labor Code's Book III to VI on labor standards and labor relations do not apply to the informals. The problem is that the ILO proposal tends to assume that formalization per se is sufficient to make work decent for all. As discussed in this paper, varied non-regular hiring arrangements in the formal sector have produced a large mass of precarious workers, the precariat, who do not necessarily enjoy all the labor rights fleshed out in the Labor Code and other related labor laws, such as the SSS law.

But the bigger problem is the reality that one cannot change the economy and the labor market overnight—from informal to formal, from two-thirds informal to 90 percent formal or higher. From the time of Magsaysay in the 1950s to the present, the IS/IE simply kept growing year by year through the decades, while the formal labor market has been subjected to increasing informalization in the last three decades or so.

So what can be done policy-wise in a realistic manner? This paper advances several do-ables based on the following realities: one, there are labor rights which

could be guaranteed without the State incurring any financial haemorrhage; two, there are universal labor entitlements which the State must and should provide, costly though they maybe, simply because they are universal rights due to all workers and citizens; and, three, the proposed transitioning program should be part of the bigger task of crafting and pursuing a development program that can help transform the economy to be vibrant, inclusive, and sustainable for all.

Labor Rights: Enabling Laws at No Cost

On the first premise, there are labor rights guaranteed by the Constitution which are not extended to the working poor even if the enjoyment of such rights do not entail any budgetary allocation on the part of the State. Foremost among these rights is the democratic right of workers to form freely an association of their own choosing for the express purpose of advancing their collective interests. Why should the right to form a union be the exclusive right of a few regular workers, and why should the right to bargain be exclusive to the regulars who have succeeded in forming a union? In Japan, part-time workers are able to form unions of their own and conclude CBAs to protect their collective rights. Why should agency workers, project workers, and other non-regular workers not be allowed to form their own unions and bargain for their collective interests accordingly?

As to the informals, the State should likewise guarantee their rights to form associations or unions to advance their collective interests. As it is, various segments of the informals, such as farmers, home-based workers, fisherfolks, jeepney drivers, informal construction workers, and so on have been forming their respective associations. Some have succeeded in popularizing and advancing their sectoral development agenda, such as the landless farmers demanding the speedy and comprehensive implementation of land reform. The point, however, is that there is a need to put in black and white that the right to form unions and associations is an inherent right of all workers, and that there is a need for the government, at both the national and local levels, to provide guarantees that these rights shall be observed everywhere. This is why the provision of the proposed Magna Carta for Informal Workers (HB No. 2295) on the creation in every LGU of an office dubbed as

“Workers in Informal Economy Local Development Office” is most relevant. The role of WIELDO is to give legal recognition to IS/IE organizations, help organize dialogues between the IS/IE organizations and the government and other sectors of the community, and assist in the formulation of development agenda for IS/IE workers through the proposed “Informal Economy Development Council” or IEDC. Finally, the informal workers should have representatives in tripartite and other consultative bodies at the LGU and national levels.

Now can IS/IE organizations also do collective bargaining? Why not? As pointed out, the problem in the Philippines is that the laws and rules on unionism and collective bargaining have become so narrow and restrictive that these rights have become the exclusive rights of the few regular paid workers. In India, IS/IE organizations, such as the Self-Employed Women Association (SEWA), through their organized strength, have succeeded in getting recognition as legitimate unions, and have also successfully negotiated with State governments on welfare issues such as housing, education, and varied social and economic concerns of the IS/IE workers (see Agarwala 2013 and Bhatt 2006). This is citizenship-based collective bargaining, that is, workers bargaining with an entity that cannot run away from them – the local or State government.

Institutionalizing Universal Social Protection

The State should move towards a regime of universal social protection, which entails State direct assistance for the least capable, and State subsidy to those partly capable. To a certain extent, there are efforts along this line, such as the continuing expansion of the coverage of Philhealth and the CCT.

But more can be done. Per an ILO study in 2008, governments of developing countries can achieve universal social protection if social spending is increased to at least 5-6 percent of the GDP; in developed welfare states, social spending is over 20 percent. In contrast, Philippine spending is still around three percent of GDP (Asian Development Bank 2013).

Also, much remains to be done on the design of the social protection programs. For example, social insurance coverage, as discussed earlier, has remained narrow

and oriented to the formal sector paid workers, mainly the regulars. To enroll more self-employed informals, the government should be prepared to come in as co-payer of the premium, for in the formal sector, employers share the burden of paying the premium. For those totally incapable of paying any premium, the government should cover everything.

As to the CCT, this should not be treated as a stand-alone program to help the poorest of the poor. In the first place, the program tends to miss the “floating population,” the landless rural poor and the jobless urban poor who have been moving from one place to another in search of available jobs. Many of these poor have no school-going children and, therefore, are excluded from the CCT program which requires attendance of children in schools. Secondly, the CCT monthly allocation of P1,400 is not and will not be enough to liberate poor people from the quagmire of poverty. In Brazil, the *Bolsa de Família*, or CCT, was able to lift many out of poverty during the time of President Ignacio Lula because the *Bolsa* was only part of a broader anti-poverty program which included land reform, rural industrialization, and minimum wage increases for workers.

On Philhealth, universalization means not only full coverage of the population but also fuller coverage of a whole range of health and medical services, including out-patient services and spending on basic medicines. The “capitation” program should be improved to increase the focus on preventive health practices through stronger and sustainable community health programs.

Ultimately, a comprehensive social protection program should cover other basic needs of the working population, such as affordable housing, education of children, and yes, jobs. In particular, the CCT should be expanded to give equal weight or importance to cash-for-work arrangements, especially in the development of homes and community infrastructures.

Ultimately, a comprehensive social protection program should cover other basic needs of the working population, such as affordable housing, education of children, and yes, jobs.

Transition or Transformation?

Finally, the task of the government is to address the root causes of poverty, informality, and exclusion in society and economy. The “transitioning” proposal of ILO seeks a general uplifting of the IS/IE workers through programs “formalizing” informal enterprises and activities, and extending to the informal workers the rights enjoyed by the formal workers.

However, this transitioning proposal will remain a transitioning proposal if the structural causes that bring about a divided and even segmented economy and labor market are not understood and addressed. Hence, the demand of IS/IE advocates for social and labor protection, taken from a rights-based approach (meaning that demanding such protection is an inherent right of informals as citizens), has evolved into a broader demand for development programs that promote a more balanced and equitable economy. There is increased realization that fulfilling the vision of the Constitution of an empowered and protected informal work force requires bold reforms on the economic, social, and political fronts.

Thus, one of the key demands of the IS/IE advocates is policy coherence. For example, social protection for the landless rural poor cannot be met by only providing CCT to the poorest families, the creation of additional jobs through labor-intensive infrastructure projects, the subsidized enrolment of the landless in the SSS and Philhealth, and the recognition of their rights to form organizations. Social protection for the landless also requires the completion of agrarian reform, and of capacity building for the agrarian reform beneficiaries (ARBs) to [form?] agrarian reform communities (ARCs) in order to modernize and industrialize farming so that more rural jobs can be created and more progressive rural communities can be developed.

It is in this context that Homenet Philippines and the UP Center for Labor Justice forged unity with other IE advocates in the drafting in 2010 of the *People's Social Protection Agenda* (PSPA), the contents of which are virtually self-explanatory: Jobs for All, Social security for All, Health care for All, Education and skills for All, Basic services for All, Social assistance to All in need, Justice for All, and Voice for All. The list of rights and entitlements due to each informal worker, as a citizen and as a human being, are itemized in the PSPA. However, what the PSPA emphasizes is that the realization of such rights and entitlements requires a transformation of the

development framework to insure that growth is balanced, sustainable, and inclusive. Hence, while the PSPA calls for urgent job creation through labor-intensive infrastructure development badly needed by the country, it also demands full implementation of asset reforms to help empower the landless, homeless, and asset-less informals. A discussion of these reform programs—agrarian reform, urban reform, coastal reform, ancestral domain reform, and basic services delivery reforms—is in order.

However, what is abundantly clear is that a holistic economic transformation program, not only a transitioning program for the informals, is needed to make economic growth inclusive, job-full, and sustainable. In particular, there is a need to reverse stagnant industrialization and agricultural development by developing programs to rebuild both sectors. As Usui puts it, the country must restore “industrial dynamism” to make the economy sustainable (2012). This ADB proposal, which is classic Industrial Policy, is asking the government to take an outright leadership role in diversifying the economy and pushing the private sector to go up the higher rungs of industrialization. The key is to go higher value-added manufacturing, supported by skills development for the work force and upgrading of the educational system, including the R&D capacity of the country. Incidentally, this approach will strengthen industrial peace because going higher up means moving away from the traditional labour-intensive (but not necessarily job-intensive economy-wide) processes and the practice of short-term hiring, which fuels labour unrest due to the emphasis on wage and union restraint.

Likewise, there should be an all-out program to upgrade and modernize agriculture, supplemented by programs supportive of increased processing or industrialization of agricultural products in situ. The Constitution envisions just, balanced, and industrially-developed rural communities. And yet the country’s experience with the 25-year-old Comprehensive Agrarian Reform Program (CARP) has been dismal. The land transfer is still a work in progress, while joblessness is widespread in the countryside because no agri-based industrialization has taken place. As it is, the country still has to strategize ways by which it can regain self-sufficiency in staple crops, vegetables, and other agricultural products. The obvious solutions are patently non-SAP: hasten the completion of CARP, transform CARP beneficiaries and small farmers into modern agribusiness producers with full support from government, strengthen R&D and extension work in agriculture, and promote rural industrialization.

All of the above require separate papers and broad debates among policy makers, academics, and society's stakeholders, particularly the representatives of IS/IE workers and the precariat, or those who have less in life and yet continue to be marginalized by the absence of enabling laws and programs to even the social and economic field for them. But let the debates on non-traditional and non-SAP policies begin—now.

Notes

- 1 HB 2295, filed under the sixteenth Congress (2013-2016), was originally filed in the twelfth Congress and re-filed in the succeeding thirteenth, fourteenth, and fifteenth Congresses. This means it has been languishing in Congress for over ten years already, given the three-year cycle of each Congress. However, advocates of the Magna Carta are heartened by the adoption in February 2014 by the House Committee on Labor of the said bill and its supposed submission to the House plenary meeting anytime in 2014-2015. In the February 2014 Committee deliberations, House members proposing a similar Magna Carta agreed to have a consolidated bill based on HB 2295 authored by Congressman Dan Fernandez.
- 2 The BMBE law of 2002 seeks to promote the development of micro enterprises by exempting them from the coverage of the minimum wage law and the application of tax on operations. BMBE stands for Barangay Micro Business Enterprises.
- 3 An indie film maker even produced in 2007 a movie titled *Endo*, showing the employment saga of a contractual employee hopping from one job to another.
- 4 The union membership at PLDT, over 10,000 in the 1980s, has shrunk to only over two thousand due to changes in technology, competition from the wireless telcos, and outsourcing of the different phases of work, such as billing, collection, repairs, etc., to different outside service providers.
- 5 The general meaning of management prerogative is the right of an employer to manage business freely as he or she sees fit. The only definitive limitations are existing laws and legal contracts. See Azucena, *Employment and Outsourcing Under Philippine Law*, 2010.
- 6 The term “5-5 labor market” was coined by Dr. Ofreneo in his report on the labor market situation in the garments situation in 1999. The report was part of the evaluation report by the Independent Monitoring Group on the “Terms of Engagement” of the Levi Strauss Company with its contractor-producers in the Philippines. See Abrera-Mangahas et al., 1999.
- 7 The “temporary manpower export” program was launched by the Marcos administration in the mid-1970s to ease unemployment. It was officially considered an “interim” program while the “labor-intensive export-oriented” (LIEO) industrialization had not yet taken off. In the 1980s, the acronym LIEO was shortened to EOI, or export-oriented industrialization, while the “overseas contract workers” were re-christened as “overseas Filipino workers” or OFWs.
- 8 PATAMABA stands for Pambansang Tagapag-ugnay ng mga Manggagawa sa Bahay, or National Linkaging of Home-Based Workers. It has been renamed as the Pambansang Kalipunan ng mga Manggagawang Inormal sa Pilipinas, or National Association of Informal Workers in the Philippines. The acronym PATAMABA has been retained.

Bibliography

- Abrera-Mangahas et al. *Philippines Independent Evaluation Project for Levi Strauss & Co.'s Terms of Engagement*. Quezon City, Philippines: Multi-versity, 1999.
- Agarwala, R. *Informal Labor, Formal Politics, and Dignified Discontent in India*. Cambridge: Cambridge University Press, 2013.
- Asian Development Bank. *The Social Protection Index: Assessing Results for Asia and the Pacific*. Mandaluyong City, Philippines: Asian Development Bank, 2013.
- Azucena, C. A. *The Labor Code with Comments and Cases, 6th Ed, Vols. I and II*. Manila, Philippines: Rex Book Store, Inc., 2007.
- _____. *Employment and Outsourcing under Philippine Law*. Manila, Philippines: Rex Book Store, Inc., 2010.
- Bello, W. *The Anti-Development State: The Political Economy of Permanent Crisis in the Philippines*. Quezon City: Focus on the Global South, 2004.
- Bhatt, E. *We Are Poor But So Many: The Story of Self-Employed Women in India*. Oxford: Oxford University Press, 2006.
- Bureau of Labor and Employment Statistics. "Concept and Measurement of Employment in the Informal Sector." *Labstat Updates 12*, No. 17 (2008).
- _____. "Profile of Workers in the Informal Sector (IS), 2001-2006." *Labstat Updates 12* no. 18 (2008).
- _____. "Profile of Workers in Vulnerable Employment." *Labstat Updates 15*, no. 19 (2010).
- _____. *Current Labor Statistics*. April 2010.
- _____. *Current Labor Statistics*. April 2014.
- _____. *Current Labor Statistics*. 2012.
- BusinessWorld*. "Poverty numbers worsen." November 14, 2011.
- Climate Change Congress of the Philippines. "Paglilimi sa Kahirapan, Pagsalok sa Katotohanan, Paghahanap sa Maayos na Landas." In *Report on Church-CSO-Government Interface on Poverty Reduction*. Quezon City, 2011.
- Department of Labor and Employment. "Guidelines Governing Occupational Safety and Health in the Construction Industry." 1998. <http://www.dole.gov.ph>,
- _____. *The Philippine Labor & Employment Plan 2011-2016*. Manila: Institute for Labor Studies, Department of Labor and Employment, 1998.

- Department of Social Work and Community Development. *Pantawid Pamilyang Pilipino Program: Status Report*. 2011.
- De Vera, L. "Philippines: A Broad Labor Alliance against Contractualization and Casualization." 2007. <http://www.labournet.uk>.
- Fair Trade Alliance. *Nationalist Development Agenda: A Road Map for Economic Revival, Growth and Sustainability*. Quezon City: Foundation for Nationalist Studies, 2006.
- House of Representatives. 16th Congress, 1st Regular Session. *House Bill No. 2295: An Act Providing for a Magna Carta of Workers in the Informal Economy, Institutionalizing Mechanisms for Implementation Thereof and for Other Purposes*, 2013.
- International Labour Organization. *Decent Work and the Informal Economy*. Geneva: International Labour Organization, 2002.
- _____. "Transitioning From the Informal to the Formal Economy." Report V for the International Labour Conference (103rd Session 2014), Geneva, 2014.
- Kapunan, R. and Kapunan, R. *Labor-Only Contracting in a 'Cabo' Economy*. Quezon City: C & E Publishing, 2006.
- Kalleberg, A. and K. Hewison. "Precarious Work and the Challenge for Asia". *American Behavioral Scientist* 57(3): 271–288. doi: 10.1177/0002764212466238
- Ligtong, G. *A Primer on the Human Rights of the Members of the Philippine Informal Sector*. Manila: Economic, Social and Cultural Rights Asia, 2005.
- Manasan, R. "Social Protection Policy and Programs in the Philippines: In Times of Crisis and Beyond." In *Enhancing Social Protection in Asia and the Pacific*, edited by S. W. Handayani, 104-34. Mandaluyong, Philippines: Asian Development Bank, 2010.
- Manasan, R. and Orbeta, A. "Expanding Social Protection Coverage to Informal Sector Workers: A Think Paper." In *Strengthening Social Protection Components and Strategies in the Philippines: A Compilation of Think Papers*. Manila: United Nations Development Programme, 2012.
- Metro Manila Development Authority. *Report of Accomplishment, July 27, 2010 to July 18, 2011*. 2011.
- National Economic Development Authority. *Medium-Term Philippine Development Plan 2004-2010*. Mandaluyong: National Economic Development Authority, 2004.
- _____. *Philippine Development Plan 2011-2016*. Mandaluyong: National Economic Development Authority, 2011.

- _____. *Philippine Development Plan Midterm Update*. 2013.
- National Statistical Coordination Board. "Concept of IS." *Labstat*, May 2008.
- _____. "2006 Poverty Statistics for Basic Sectors." Presentation at the Users' Forum on the 2006 Poverty Statistics for the Basic Sectors and 2006 Child Development Index, Dusit Thani Hotel, June 25, 2009.
- National Statistics Office. *Philippine Yearbook 2005*. Manila, Philippines: National Statistics Office, 2005.
- _____. *Philippines in Figures 2010*. Manila, Philippines: National Statistics Office, 2010.
- _____. "Labor Force Surveys." Various years. <http://www.nso.gov.ph>.
- Ofreneo, R. E. "Labor and the Philippine Economy." PhD diss., College of Social Sciences, University of the Philippines, 1993.
- _____. "The Informal Economy: An Unseen Drama." In *Economics & Business in the Philippines*, edited by V. Tirol, 25-30. Manila, Philippines: Press Foundation of Asia, 1994.
- _____. "Development Choices for Philippine Textiles and Garments in the Post-MFA Era." *Journal of Contemporary Asia* 39, no. 4 (2009): 543-61.
- _____. "Garments: Seeking Protection Through Free Trade?" *BusinessWorld*, May 23, 2011.
- Ofreneo, R. E. and J. Hernandez. *Freedom of Association and Collective Bargaining in the Philippine Export Processing Zone*. Quezon City, Philippines: School of Labor and Industrial Relations, University of the Philippines, 2010.
- Ortiz-Luis, S. "The Practical Approach to Benefit the Majority." *Philippine Employer*, May 2008.
- Pineda-Ofreneo, R., ed. *People's Social Protection Agenda*. Quezon City, Philippines: Center for Labor Justice/Association of Construction and Informal Workers and Homenet Southeast Asia, 2010.
- Sibal, J., Amante, M., and Tolentino, C. "The Philippines: Changes at the Workplace." In *Globalization and Changes in Employment Conditions in the Asia Pacific*, edited by Sangheon Lee and Jai-Joon Hur, 461-499. Seoul, Korea: Korea Labor Institute, 2012.
- Usui, N. *Taking the Right Road to Inclusive Growth: Industrial Upgrading and Diversification in the Philippines*. Mandaluyong: Asian Development Bank, 2012.