

Summary of Visits of Ashraf Ghani and Hernando de Soto's meetings on Commission on Legal Empowerment of the Poor

In the first week of November, organizations involved in the preparation of the Indonesian National Consultation for the Commission on Legal Empowerment of the Poor hosted separate visits from Dr Hernando De Soto, Commission Co-Chair and Dr Ashraf Ghani, Commission Member. Both Dr De Soto and Dr Ghani were visiting Indonesia on other business but they kindly agreed to allocate some time to discuss issues relating to the Commission on Legal Empowerment of the Poor. In conjunction with Dr De Soto's visit, Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI or Indonesian Legal Aid Foundation) organized focus group discussions on working papers that were commissioned covering each of the four working groups.

Visit of Dr Ashraf Ghani, Commission Member

On Friday, 3 November, Dr Ghani met with members of the Steering Committee for the Indonesia National Consultation and made a presentation to representatives from civil society organizations in Indonesia. The presentation, hosted by YLBHI, was attended by approximately 15 representatives from civil society organizations most active in the preparation of the National Consultation and several journalists. The topic of the presentation was "The importance of Access to Justice in post-conflict and developing country context". Dr Ghani outlined four key issues that need to be addressed, namely, legal education, the composition of laws, repelling outdated legislation and promulgation of new legislation and the coherence of laws. The presentation was followed by a lively discussion with a focus on the roles and interrelationship of government institutions, civil society and multilateral organizations in developing countries such as Indonesia.

Following this the Decentralization Support Facility hosted a presentation from Dr Ghani on "Nation Building, Poverty Reduction and Justice in Developing Countries". This presentation was targeted at a different audience, composed primarily of government officials and donors working on economic development and poverty reduction issues. Approximately 60 people attended the presentation, which was co-chaired by Erna Witoelar, Commission Member and Sujana Royat, Deputy Coordinating Minister for People's Welfare. In the presentation Dr Ghani outlined, amongst other issues, the importance of functioning legal systems that maintained the confidence of communities on why some states in the East Asia region had been able to successfully reduce poverty and develop while others had been less successful. The presentation was followed by a wide-ranging question and answer session covering areas including the impact of corruption on development, the role of international financial institutions and the importance of investing in skills building for government officials and local organizations.

Visit of Dr Hernando De Soto, Co-Chair

On Saturday, 4 November, Dr De Soto opened the workshop that was organized to comment on draft working papers prepared for the National Consultation. Dr De Soto

outlined the history of the Commission and the rationale behind its establishment and the identification of the four areas of focus. The presentation highlighted the importance of legal identity to enable the poor to conduct their daily activities, including improving economic opportunities. Mr De Soto also detailed how some countries had successfully developed strategies to formalize property rights and the impact this had on economic development. Areas that were covered in the discussion included how land reform could address the needs of the poor and the ability of vulnerable communities to be engaged in policy discourse and the development of reform strategies. Approximately 25 representatives of vulnerable communities (such as domestic workers and street vendors) and civil society organizations attended the presentation. The representatives of civil society expressed concern that formalizing property law merely brings inflexibility and the system is used in the interests of the more powerful. Dr De Soto stressed that formalizing does not mean using the existing formal system but finding a system of rules which works and which may already exist in the informal system; hence, the need for finding out what works from the grassroots.

The presentation was then followed by focus group discussions examining working papers that had been drafted to cover each of the four working groups. It was stressed at the completion of these focus groups that the working papers had to identify concrete areas of success stories and also cases where reforms had failed to achieve their stated aims. The working papers will be edited taking into consideration the comments from the focus group discussions and will be presented to the National Consultation scheduled for 24-25 November. Summaries of the working papers will be provided to the Commission in English in the next few weeks.

Annex: Summary of Focus Group Discussions from each Working Group

Working Group 1: Access to Justice and Rule of Law

The FGD was attended by 6 representatives of legal aid foundations and human rights and urban poor NGOs. Problems were discussed such as the Advocates Law and the restrictions on the work of paralegals; corruption in legal institutions; the gap between legal aid NGOs and legal institutions and the community; and problems with informal justice systems not being recognized by the formal justice system. Solutions discussed included a Legal Aid Act with obligations to provide legal aid and a government budgetary commitment; increasing the transparency of legal institution procedures, decisions and budgets, and improving case management procedures and coordination between institutions; programs taking law students to provide assistance to villages and seconding law firm staff to legal aid NGOs. Success stories were discussed ranging from grassroots paralegal programs from women's NGOs and legal aid NGOs, local regulations being made in a pro-poor and participatory way (eg with respect to small traders and becak drivers) and corruption cases solved through mediation. The lack of identification of villagers was discussed as a root cause of problems ranging from lack of access to courts, property settlements on divorce, government payments and school enrollments. But concerns were raised that identification cards have frequently been used to discriminate against various groups in Indonesia.

Working Group 2: Property Rights

The WG#2 FGD was attended by 5 NGO representatives working primarily on land issues. The FGD was also attended by Professor Roy Prosterman of RDI/University of Washington and Robert Mitchell from RDI, the WG2 Rapporteur.

Due to the absence of the author of the working group background paper, a general discussion was held, focusing mainly on concrete actions to address the key obstacles to security of land tenure. Discussion largely focused on the fact that the legal framework in theory does recognize the rights of the poor, but implementation does not reflect the letter of the law. Thus, key recommendations emerging from the group were:

- Address overlaps and ambiguities in the regulatory framework for land usage inherent in the current mining, forestry and other sectoral laws by revising and passing a new, unified omnibus national land law.
- Consider recognition of adverse possession
- Increase the legal obligation of logging and plantation companies to fund community development programs in the vicinity of company sites
- Enhance public awareness and access to information on property rights
- Develop specific programs of support for landless agricultural laborers

Working Group 3: Labor Rights

The FGD was attended by three representatives of NGOs in addition to the author of the paper. Initial discussion was focused on the extent to which the existing legislation distinguishes between workers employed in the formal sector and those working in the informal sector. It was noted, for example, that the Law 13/2003 on Manpower does not differentiate between those working in formal sector or informal sector and provides the Government with an obligation to improve the prosperity of those working in the informal sector.

The discussion then focused on other factors that impact on the protection of labor rights. In particular, the participants discussed the fact that the economic environment was not conducive to encouraging employers to protect labor rights. The cost of doing business in Indonesia, including costs associated with dealing with bureaucracy, understanding varying and sometimes contradictory sub-national regulations and the recent increase in fuel prices due to a reduction in fuel subsidies, had meant that laborers both in the formal and informal sector suffered through lower wages and reduced job security. It was noted, that women, in particular, felt the impact of many of these issues.

Recommendations included:

- there was a need to undertake more extensive documentation of informal sector practices and highlight innovations in the informal sector;
- pro-poor civil society organizations active in protecting the right of laborers need to be included in the current process of amending the Law on Manpower; and
- the paper needs to highlight examples of attempted reforms to improve rights of laborers and assess why these reforms were successful or failed.

Working Group 4: Entrepreneurship and Expanding Opportunities for Legally Establishing and Operating Businesses Working Group

This FGD was attended by seven representatives of NGOs working to support small businesses in the informal sector, legal aid organizations and social research institutes. Nearly 80% of Indonesia's workforce remains in the informal sector. The challenge to formalize the informal sector with the aim of protecting it is therefore an important one. While some normative legal framework (rules and processes) exists to protect the informal sector and to facilitate legalization of their activities, the legislation is not adequate and is not sufficiently pro-poor.

- First, the processes to legalize remain overly bureaucratic and costly. This is exacerbated by corruption and lack of legal awareness among the poor to benefit from pro-poor laws.
- Second, the laws intended to protect the poor and support them in undertaking formal economic activities is often not enforced or openly ignored both state and non-state actors (namely, corporations). For example, Law 2/2002 prevents

- commercial markets from operating at the sub-district level to provide space for traditional markets, but this is ignored by companies and government.
- Third, the definitions and concepts employed in the relevant legislation are not sufficiently pro-poor. e.g. Law 9 / 1995 on Small Businesses defines small businesses as those businesses that generate under Rp.250 million per annum. NGOs suggest that this definition, while correct, is a better definition of medium-sized businesses and is not narrow enough to bring the necessary attention to small businesses. Additionally, the dominant paradigm still revolves around discussion of “small businesses” (*usaha kecil*), while considering pure numbers alone reveals that there are many more “small individuals” (*orang kecil*) in the informal sector (e.g. domestic workers, traffic light vendors, street musicians, etc). Thus, the discussion needs to come down one step further to highlight the plight of the micro-business, or business of the individual, within the informal sector.
 - Fourth, it was noted that, while considering the informal sector the ‘illegal economy’, the formal sector benefits from the existence of the informal sector and takes advantage of it. For example, the media sector utilizes the informal services of street vendors to distribute its products, government officials employ domestic workers on an informal basis, etc. It is a cheap service provider that is feared would become expensive if formal.

Civil society representatives suggested that the above obstacles to protecting the informal sector remain due to a national development paradigm that prioritizes economic modernization and that considers the informal sector as ‘illegal’ and therefore having to be eliminated. The challenge is to get policy makers to recognize the informal sector as possessing potential and to prioritize the needs of the poor.