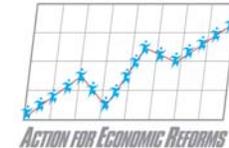


# Philippine Democracy Assessment

Rule of Law and  
Access to Justice



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## Rule of Law and Access to Justice

### AUTHORS

Edna E.A. Co

Nepomuceno Malaluan

Arthur Neame

Marlon Manuel

Miguel Rafael V. Musngi

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Unit 1403, 14th Floor, West Trade Center  
132 West Avenue, Quezon City  
Telefax: (632) 4265626  
E-mail: aer@aer.ph / Website: www.aer.ph

International Institute for Democracy and Electoral Assistance  
(International IDEA)  
SE-103 34 Stockholm, Sweden  
Phone + 46 8 6983700 / Fax + 46 8 202422  
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## Acronyms and Abbreviations

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ADR	Alternative Dispute Resolution
AFP	Armed Forces of the Philippines
AHJAG	Ad-Hoc Joint Action Group
ALG	Alternative Law Groups, Inc.
APJR	Action Program for Judicial Reform
ARMM	Autonomous Region of Muslim Mindanao
ASG	Abu Sayyaf Group
BJE	Bangsa Moro Juridical Entity
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHR	Commission on Human Rights
CJ	Chief Justice of the Supreme Court
CPJ	Committee to Protect Journalists
CPR	calibrated pre-emptive response
CPP	Communist Party of the Philippines
CSC	Civil Service Commission
DFA	Department of Foreign Affairs
DILG	Department of the Interior and Local Government
DOJ	Department of Justice
EJK	extrajudicial killing
FLAG	Free Legal Assistance Group
FPIC	free, prior and informed consent
GOCC	Government-Owned and Controlled Corporation
GRP	Government of the Republic of the Philippines
HiiL	Hague Institute for the Internationalisation of Law
HSA	Human Security Act
IALAG	Interagency Legal Action Group

IBP	Integrated Bar of the Philippines
ICC	International Criminal Court
ICC	Indigenous Cultural Community
ICG	International Crisis Group
ICJ	International Commission of Jurists
IDMC	Internal Displacement Monitoring Centre
IDP	internally displaced people/person
IHL	International Humanitarian Law
ILO	International Labour Organization
IP	Indigenous People
IPRA	Indigenous Peoples Rights Act
JBC	Judicial and Bar Council
JI	Jemaah Islamyah
JMC	Joint Monitoring Committee
Libertas	Lawyers League for Liberty
MDG	Millennium Development Goals
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MOA-AD	Memorandum of Agreement on Ancestral Domain
NCIP	National Commission on Indigenous Peoples
NCRFW	National Commission on the Role of Filipino Women
NDF	National Democratic Front
NGO	non-governmental organisation
NPA	New People's Army
OSG	Office of the Solicitor General
PAO	Public Attorney's Office
PCIJ	Philippine Center for Investigative Journalism
PLEB	People's Law Enforcement Board
PNP	Philippine National Police
RP	Republic of the Philippines
SCAW	Supreme Court Appointments Watch
SWS	Social Weather Stations
UN CEDAW	Committee on the Elimination of Discrimination Against Women
UN CERD	UN Committee on the Elimination of Racial Discrimination
UN CRC	UN Committee on the Rights of the Child
UN ODC	United Nations Office on Drugs and Crime

## Foreword

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The rule of law is critical for democracy's sustenance and survival. In a democracy, those who govern not only receive their mandate from the people but also govern on behalf of the people. Control lies with the people, and citizens should enjoy political equality in exercising that control over decisions and decision makers. It is with this promise of collective control, equality, freedom, justice and peace that democracy has witnessed unparalleled support and growth in the last few decades. In countries ruled by authoritarian regimes, this promise remains a motivating force for political change. Democracy needs institutions and laws: to define and regulate the actions and powers of both citizens and rulers; to define and protect the rights of citizens; to determine ways and means through which citizens will elect and effectively control their government; to ensure political equality; and to create an environment of freedom and security.

While democratic transitions may have their founding events, the building and consolidation of democracy is a long term process that takes years, if not decades. Typically, the consolidation of the rule of law, as a key ingredient of democracy, is one of those processes that require time, persistence and patience. It involves the development of knowledge, capacity and expertise, the establishment of functional institutions and the deepening of a legal democratic practice and culture. It requires a

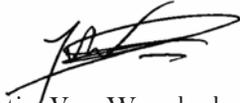
strong commitment to integrity as the rule of law is also a very fragile dimension of democracy, which requires constant citizen scrutiny and is exceptionally sensitive to perceptions of fraud or corruption.

Democracy's future, however, is increasingly perceived as not only depending on democratic institutions and processes but also on capacity to deliver on its promises: to deliver freedom, equality, peace, security, prosperity and a better quality of life for all citizens. This quality of life embodied in the idea of democracy is inseparable from the rule of law, including access to justice and human rights. As credibility of democracy in many countries is increasingly undermined by unlawful behaviour of those in charge of protecting the rule of law - by incumbents who manipulate constitutions and electoral laws to extend their hold on power, by the lack of transparency in the relations between politicians and influential business entrepreneurs, etc. - respect for the rule of law is increasingly perceived as an area in which democracy needs to improve its functioning and delivery.

Beyond formal institutions and processes, democracy's delivery and credibility also depends on an active engagement of citizens. Active citizenship has to be nurtured and supported by an institutional framework that facilitates a culture of openness for plural and contradictory discourses where reform priorities are debated and defined. Those who experience democracy on a daily basis, citizens, have to be at the forefront of evaluating its performance and articulating reform priorities.

In pursuing its democracy building mandate, the International Institute for Democracy & Electoral Assistance (International IDEA), has used approaches that not only seek to strengthen democratic institutions and processes but also support active citizenship. It is against this background that, in 2000, International IDEA developed a reform oriented and context sensitive State of Democracy assessment methodology (SoD) for citizens to evaluate the quality and performance of their democracies. It is in this context that

International IDEA is proud to have partnered with Action for Economic Reforms in support of the *Rule of Law & Access to Justice* assessment conducted by the Philippine Democracy Assessment team. This is the fourth assessment in six years in which Philippine citizens, ably led by Professor Edna Co, have contextualized and applied International IDEA's SoD assessment methodology to assess a dimension of Philippine democracy. Other assessments are *Free & Fair Elections and the Democratic Role of Political Parties* (2004); *Minimising Corruption* (2007) and *Economic & Social Rights* (2007).



Martin Van Weerdenburg  
*Acting Secretary General*  
*International IDEA*

## Preface

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An assessment on the rule of law and access to justice becomes timely when citizens and citizen groups raise questions on the extent to which the Philippines observe and uphold the rule of law and whether these rules do indeed enable people an access to justice. This is especially important for those who seek and need justice more.

Not a few sectors and citizens, including political observers, have noted a general weakening of public institutions. This assessment serves to validate such observation and to raise deeper questions on the state of the country's rule of law, justice and human rights. Whilst the assessment examines the rule of law as exemplified in institutions and the various pillars of justice, it also unravels the political and cultural texture of the rule of law, and brings up the complexity of upholding it and attaining justice and human rights, all of which intertwine in the equation of democracy. The assessors also see the importance of looking at terrorism, at human trafficking, at drug trafficking and so on as these seem to be an overlay in the complex structure of the rule of law, justice and human rights. The assessment on the rule of law and access to justice does not only look at the presence of laws and institutions but also examines the so-called sociology of the law. By doing so, the assessment connects the form of the rule of law to its substance. The assessment attempts to answer questions beyond the existence of the institutions of the rule of law, and goes on to examine whether these institutions do function to

achieve citizens' access to justice and to promote their rights.

It is equally interesting that the assessment uses a set of questions to examine the form and substance of the rule of law and access to justice. Its methodology sets it apart from the rating and ranking of democracy, and instead allows a discourse on the quality of the rule of law from the citizens' perspective.

This assessment on the rule of law and access to justice comes just at the time when a new administration that promises to restore the people's trust in institutions and to move democracy in the Philippines forward is installed.

Edna E. A. Co  
*Philippine Democracy*  
*Assessment Team*

### 1.1 Framework on the Rule of Law and Access to Justice

An inventory of the rule of law by academia and practitioners produced by the Hague Institute for the Internationalisation of Law (HiIL) in 2007 represents a remarkable piece of literature. The result of a high level discussion among experts, it is an interesting approach to the rule of law and offers an attractive framework for an assessment of democracy in the Philippines.

The inventory makes it clear that the rule of law is not only anchored on the orthodox notion of the rule of law as identified with a particular set of institutions, such as the judiciary, but also involves the values and ends that this institutional set serves. The rule of law is a complex concept—more complicated than the notion of constitutional state in which the relations defined are between the state and the citizens. The rule of law points toward the ‘relation among citizens’, or what Kleinfeld Belton distinguishes as ‘end-based definitions of the rule of law and institution-based definitions’ (HiIL 2007: 14). For such a definition, some guiding principles on how to promote the rule of law are in order, these being: (a) for any rule of law end, all institutions must be reformed; (b) achieving rule of law ends requires political and cultural, not only institutional, change; (c) not all work to reform legal institutions is rule of law reform; and (d) rule of law

ends are in tension, particularly in poor societies or societies with a weak rule of law. Following these principles, what then should be examined are the ends of the rule of law rather than the institutions per se (Kleinfeld Belton 2005: 22). Thus, there are competing definitions of the rule of law.

This assessment points out the complexity of the definition of the rule of law and the need for a framework with which to evaluate it. On the one hand, the audit hopes to focus on the rule of law as embodied in institutions; however, it also has to deal with the political and cultural texture of the rule of law. These are crucial in understanding why the public's confidence and trust in institutions are important, and why the ends of these institutions, such as the promotion of human rights and equality, and the fight against terrorism or human trafficking or drug trafficking are equally significant. Moreover, while the rule of law, just like democracy, travels and has a universal principle, it has a specific locus and context. In the Philippines, a developing society, institutions are formally present yet are substantially weak and sometimes dysfunctional. Previously completed assessments on Philippine democracy (that is, on elections and political parties, on corruption, and on citizens' economic and social rights) bear this out. It is therefore important that this assessment takes into account both institutions (and their performance) and citizens' access to their rights to the rule of law and justice. This allows the assessors to capture both the form and the substance of the rule of law and its essence, which is democracy. Furthermore, it should be noted that pre-colonial Philippine society left as a legacy an indigenous system that allows communities to gain access to justice based on customary laws and tradition. Such a system continues in the communities of indigenous peoples, and the modern justice system and the rule of law should reckon with the indigenous practice.

The International Commission of Jurists (ICJ) probably holds the most popular formulation of the rule of law, as pointed out by Dworkin. Dworkin refers to the 1959 ICJ conference in which the commission stated that the

“... function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual. This dignity requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality” (Raz, 1979). This conception... does not distinguish... between the rule of law and substantive justice; on the contrary it requires, as part of the ideal of law, that the rules in the book capture and enforce moral rights. (Dworkin 1985: 11-12)

The discourse on the rule of law continues. On the one hand, Hayek and Raz contend that the rule of law ‘means that government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge. (And that) ... the rule of law means literally what it says: the rule of laws. Taken in its broadest sense, this means that people should obey the law and be ruled by it.’ (Raz 1979: 210) On the other hand, while the existence of the rule of law is ideal, it is important to highlight the content of the laws that rule. The ideal of the rule of law is not necessarily the same as the ideal of substantive justice.

The connection between these two ideals is recognized by highlighting the rule of law and the extent to which citizens obtain access to justice within such rule of law. Indeed it is commonsensical that the rule of law is assessed side by side with substantive justice or access to justice.

Tamanaha (2006), in the Hague Institute for the Internalisation of Law (HiIL) inventory of the rule of law, articulates the so-called thin and thick complexions of the rule of law in which the conceptions of the rule of law range according to categories, generally from the formal version to the substantive one. The argument continues as to which one is better. Take note of the conception as stated in table 1.1.

**Table 1.1** Texture of the rule of law and democracy

Formal versions	Thin		Thick
	1. Rule by law - law as instrument of government action	2. Formal legality - general prospective, clear, certain	3. Democracy + legality - consent determines content of law
Substantive versions	4. Individual rights - property, contract, privacy, autonomy	5. Right of dignity and/or justice	6. Social welfare - substantive equality, welfare preservation of community

Source: Adapted from Walter Bryce Gallie, 'Essentially Contested Concepts', *Proceedings of the Aristotelian Society*, 56 (1956) , pp. 167-98

Going by this reasoning, there is a caveat to the rule of law: it may exist where human rights—civil, political, economic, social or cultural—are not necessarily respected. Furthermore, it may also exist in an undemocratic system. In an assessment of democracy using the lens of the rule of law, it is being sensitive (and sensible) to examine the principle of democracy, and particularly the access of citizens to justice, within the rule of law. In other words, it is important that in a democracy assessment of the rule of law, everyone—institutions, agencies, rule makers, decision makers, and citizens—agree on the definition of the rule of law. Moreover, it is important that values such as legal certainty, formal equality and prevention of the use of arbitrary power are upheld through the laws that rule. It is also understood that in the Philippine context, as in other societies, the communication and the conversation on these values and the rule of law continue as democracy is constantly in the process of building and strengthening. The 'thick' conception of democracy and human rights is by itself complex and could be conceptually contested.

On the one hand, the rule of law underscores the predictability of rules and procedures, the independence of procedures, the accountabilities of office and of the

persons holding such office, the boundaries and limits of power and discretion, and the consistency in the provisions of the constitution and statutes, among others. On the other, access to justice underlines the accessibility of justice to the citizen on the street. Accessibility is measured by a number of benchmarks, including: (a) the affordability of the judicial proceedings, the cost of bringing a case to court, and the efficiency of the court so that the proceedings do not wear out those involved and drain their resources; (b) the use of an intelligible language in court and judicial proceedings; (c) the use of sufficient and effective mechanisms of information for the citizens; (d) the showing of respect for an indigenous justice system considering ethnicity, religion, gender, and class; and (e) the provision of mechanisms for redress of grievance and maladministration of justice.

The rule of law and access to justice go hand in hand. If not, the essence of democracy in the judicial arena is doubtful. In a developing society such as the Philippines, access to justice revolves around and involves especially the basic sectors (Buendia 2001). In some cases, where the basic sectors fail to access justice through the appropriate institutions, they, alongside non-governmental organisations and the media, resort to moral and political pressures and similar modes of articulation for justice in other venues including international channels. Such articulation is also a means to access justice.

This assessment assumes that the baseline conception of the rule of law, which is the 'thin' conception, essentially refers to predictability, formal equality and the prevention of the use of arbitrary power. This has value in itself, especially where the society and government do not meet all the requirements of democracy and human rights. This is not to say, however, that the rule of law is confined to the 'thin' conception. It is critical to examine the wider values of rights, such as the right to participate (democracy), and human rights as enshrined in international instruments and to which the Philippines formally subscribes. Shuttling between the 'thin' and the 'thick' conceptions of the rule of law and considering

access to justice should allow this assessment to establish the performance of democracy—both its gains and its deficits. And given such, the assessment hopes to promote adherence to human rights and democracy and to strengthen the rule of law.

Overall, this assessment emphasizes the need to adopt an ends-based approach and not just an institution-based approach to the examination of the rule of law. This assessment assumes the presence of:

1. Laws. That there are publicly promulgated laws, that the laws are consistent (not conflicting, or in case of conflicts, to discover the cause and extent of such conflicts), practicable, intelligible (accessible to enforcers and to those affected), well publicized and widely known, and not too frequently changeable or widely discretionary. Finnis (1980: 270) enumerates eight principles of laws: (a) rules are prospective, (b) possible to comply with, (c) promulgated, (d) clear, (e) coherent with one another, (f) sufficiently stable, (g) the making of decrees is limited, and (h) officials are accountable for compliance with the rules, government *sub lege*.

John Rawls in his *A Theory of Justice* (1993) says that laws have the following requirements: ought implies can, similar cases are to be treated similarly, the principal of legality in criminal law, and fair trial.

The overlap in these principles of laws is further stated by Raz (1979) namely, that laws should be prospective, open and clear, and relatively stable; that there must be an independent judiciary; that a fair trial must be guaranteed; that courts must be accessible; that courts must have the power to review the implementation of other principles; and that the discretion of crime-preventing agencies should not be allowed to pervert the law.

Thus, if the laws are meant to rule, then they must be such that it should not be impossible to oblige people to obey them. Further, laws should be clear and determinate in meaning, must be adequately published and made accessible to all they address; that once laws are made

and implemented, they cannot be changed too often; and that laws have to be applicable to all classes of persons, acts, and circumstances, rather than take the form of specific decrees aimed at particular persons and situations.

2. Judiciary. The judiciary interprets and resolves disputes not only among citizens but also between government and citizens. Thus, it is essential that the judiciary is politically independent. Further, a fair trial means that there must be a fair and open hearing, an absence of bias, and a reasonable period within which a case is heard and decided. This also entails an independent legal profession that is empowered and willing to provide legal service. Lastly, the courts must be accessible, which means that the financial costs (in terms of court fees and lawyer fees) must be within the reach of ordinary people. Prosecutors must also be independent of the government apparatus.

One may say that these principles are Western and that the 'thin' conception of the rule of law is not sufficient, especially in a developing country. For example, a non-Western form of dispute resolution may exist that is possibly better or equally qualified to resolve disputes in an independent and impartial manner. Nevertheless, this 'thin' conception of the rule of law is a good starting point. The extensive and substantive ideals have to do with human rights. Also, the assumption of the 'thin' conception is that it entails access to justice. If people do not have the means to initiate legal proceedings or defend themselves in court, then the rule of law is problematic as the law does not offer equal protection to everyone.

3. Conditions of the rule of law. These pertain to the nature of the rules, to the institutions that create and apply the rules, and to the economic, cultural, and political context of these rules. It is therefore important that the conditions of the rule of law examine the economic, political and cultural conditions that may affect its promotion. The conditions have to do with the shared values and beliefs, including habit and commitment, as to how rules and institutions function. Carothers (2006: 20) says that 'law is not just the sum

of courts, legislatures, police, prosecutors, and other formal institutions with some direct connection to the law. Law is a normative system that resides in the minds of the citizens of a society.' In some instances, and this may hold true in the Philippines, culture is more important than institutions—when social and political cultures put a premium on the rule of law, the ends of the rule of law may be upheld even if there are weaknesses in the institutional arrangements. On the other hand, an obstinate culture and politics can undermine the best crafted and most articulate rules, and the rules merely become window dressing.

Conditions of the rule of law also include the people's trust, or the lack of it, in the courts or, more generally, in the whole legal system. It is easier to forge informal deals with friends who trust each other than go through an untrustworthy formal process. Certainly the relationship and interaction between rules and culture are complex; nevertheless, the assessment cannot dismiss the importance and effect of conditions of the rule on law on institutions, or vice versa. Trust, confidence and the perceptions which reflect the people's trust and confidence in the rule of law and institutions are thus given prime importance by countries that assess democracy based on the rule of law. One example is Ecuador. In its assessment of the rule of law and justice, Ecuador puts emphasis on public perceptions about the pillar of justice and the police (Seligson 2004). The presumption here is that people's perceptions and their trust in the institutions of law and justice are at the core of how these institutions are expected to perform. One may say that perceptions are not necessarily true because they (the perceptions) are the subjective views of people about their institutions. Nevertheless, these images and perceptions are facts—realities that exist in people's minds, products of their observations, experiences (albeit limited), hopes and expectations. Thus, perceptions are important in that they do reflect a slice of reality.

The relationship between a country's level of economic development and the rule of law is also an issue. Does the

rule of law cost money and does it presuppose a certain degree of economic development? Is the rule of law a prerequisite to economic development or does the rule of law contribute to development? Some international organisations believe that the rule of law contributes to economic development but there is no clear consensus on this. The United Nations Office on Drugs and Crime (UNODC), one of the UN's important commissions, emphasizes the significance of the rule of law—that it is crucial to the attainment of the Millennium Development Goals (MDG). Antonio Maria Costa (2008), head of the UNODC, claims that the rule of law should, in fact, be one of the goals of the MDG and should be a means to achieve them. He says that justice and stability, otherwise known as the rule of law, is a foundation upon which other development goals can be built, and that there is a correlation between rule of law performance and socio-economic performance. In countries where there is crime and corruption, and where government cannot take control of the land, either the poor cannot get access to services or services get delayed. Costa further says, '(P)oorly governed countries are the most vulnerable to crime, and pay the highest price in terms of erosion of social and human capital, loss of domestic savings, reduction of foreign investment, white-collar exodus, increased instability, and faltering democracy' (Costa 2008: <http://www.unodc.org/unodc/en/frontpage/rule-of-law-a-missing-millennium-development-goal.html>). Although there appears to be an open-ended discussion on the rule of law and development within the circle of international organisations, there is a strong inclination toward the view that the rule of law is complex and that there is a causal relationship between justice, stability and social-economic development.

This assessment recognizes the importance of traversing through international legal instruments, including specific measures such as human rights institutions, investigation programs, fact-finding commissions and reparation programs, and examining the practices related to these. The accountability of various institutions and bodies related to these instruments is quite important to the rule

of law. It is also crucial to strengthening and restoring people's confidence in the rule of law. Again, the dispensation of justice is both an institutional as well as an end goal of the rule of law. Accountability is also a matter of governance in which institutions, agencies and persons are expected to explain their actions relative to promulgated laws and human rights norms. In this regard, it may be necessary to bring into the assessment the contributions of non-state actors such as non-governmental organisations, media, citizens' groups and academe to the strengthening of the rule of law, either through the institutions of law and judiciary, or through the 'thick' conception of human rights and democratic values.

There seems to be only a limited number of studies on how international instruments contribute to or constrain the rule of law at the national level.

It is also important to ask if there is an emerging consensus on the nation's definition of the rule of law among researchers, practitioners and the public at large. Such a consensus is essential in the pursuit of the rule of law.

The assessment asks questions regarding the pursuit of an inclusive democracy, as: Are state and society consistently subject to the law? The assessment allows for the relative degree to which the values of democracy are realized and to which institutions contribute. These are handled by questions that ask: To what extent is the rule of law operationalized? What measures have been taken to remedy the problems of the rule of law and access to justice?

### **1.1.1 More about the Conditions of the Rule of Law**

As earlier stated, people's perceptions about the rule of law, specifically about the institutions of justice and those involved in the justice system, contribute to an understanding of the conditions of the rule of law. In 2008, the Alternative Law Groups (ALG) and the polling agency Social Weather Stations (SWS) conducted a survey

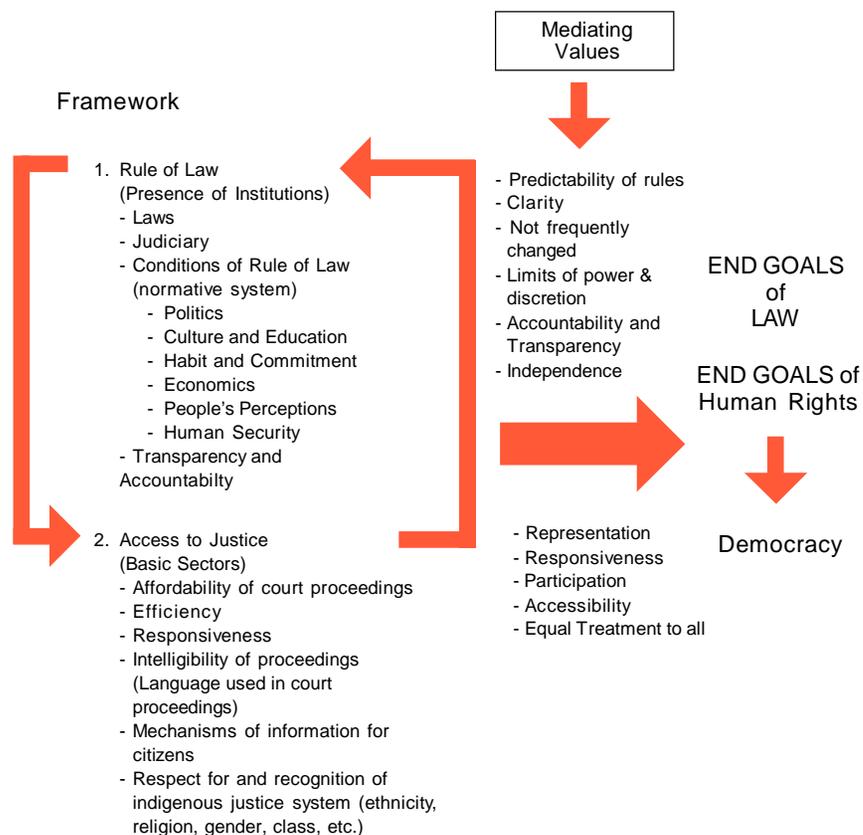
on access to justice by the poor. It was also intended to measure the extent to which a non-governmental group such as the ALG makes a difference in the advocacy for justice reform. In the survey, a wide range of questions were asked regarding marginalized groups' perceptions about the justice system; whether they had knowledge of the law, of justice, and of the procedural aspects of the courts; and whether they perceived a significant improvement in the performance of the justice system over the past five years. The responses to these questions are interesting in that they reflect the level of people's confidence in the justice institutions, their expectations of access to justice and their hope of gaining various other rights in a democracy. The survey results were validated by several focus group discussions held later. The details of this study are discussed in chapter five on public perceptions on the judicial and other justice institutions.

Various other surveys were conducted by SWS in the 1990s (variably from 1991 to 1996) regarding people's perceptions on the police, on civil servants and the civil service, on the judiciary and on confidence in public institutions, which enabled the comparison of net confidence in institutions in the Philippines with similar data from other countries. Follow up surveys were done on an irregular basis depending on the interest of agencies to commission these surveys. The latest survey on people's trust and confidence in governance institutions, including the courts, the Ombudsman, and other pillars of justice, was conducted in 2008.

For this assessment, SWS was asked to run a small survey on people's perceptions on the rule of law and access to justice. The questions asked were focused on people's perceptions and experience in the performance of the justice institutions, the accessibility of people to justice, and what measures might be needed to strengthen judicial reforms.

The schema for the assessment framework of the rule of law and access to justice conception is presented in figure 1.1 below.

**Figure 1.1 Framework of the assessment on the rule of law, access to justice, and democracy**



## 1.2 Parameters of the Assessment and Methodology

The assessment's reference period is 1986, or since the time of the people power revolution that toppled Ferdinand Marcos and brought Corazon Aquino to the presidency. Aquino restored the institutions of democracy, such as Congress, the Supreme Court and the Commission on Elections, which Marcos had closed down during his reign. Aquino appointed a multi-sectoral constitutional convention that drafted the 1987 Philippine constitution, which redefined the principles and parameters of democracy.

This assessment examines the rule of law and access to justice based upon the democratic institutions defined under the 1987 constitution. It then focuses on the Arroyo administration as the principal agency that constitutes the so-called condition of the rule of law.

Gloria Macapagal Arroyo assumed the presidency when another people power revolt instigated by some urban, reform-oriented Filipinos forced then President Joseph Estrada to step down in 2001 on allegations of corruption and a failure to lead. As Estrada's vice president, Arroyo succeeded the toppled leader. The political and legal circumstances of that leadership change have been questioned by not a few Filipinos, including scholars of democracy. While people power may be considered a form of direct democracy, this manner of leadership change outside of the prescribed electoral process reflects an aberration in the functioning of the institutions and the rule of law. Such an aberration is even more disturbing when one thinks about the absence of a proper impeachment procedure—actually, a unified understanding among the members of the Senate regarding the proper impeachment procedure during the Estrada administration—a precondition for leadership change under the constitution.

As if such a political crisis were not enough, Arroyo's subsequent victory in the 2004 elections was allegedly accomplished through the manipulation and influencing of the electoral exercise. Arroyo's reign has also been characterized as being high-handed, what with her declaration of a calibrated pre-emptive response (CPR) in 2005 and later with the issuance of Executive Order No. 464, both instruments designed to quash protests that the President said were part of attempts to oust her. The executive order was trashed by the Supreme Court which judged it to be deficient. Arroyo continuously rates, in many surveys and public opinion polls, as the most unpopular president the Philippines have ever had. In the last two years, this unpopularity has been stoked by allegations of corruption and attempts to corrupt institutions such as the Commission on Elections and the

Supreme Court, bodies that are supposedly independent from the executive branch. Congress' autonomy has also been compromised with the executive branch using its power to release funds to leverage the adoption of favoured and favourable legislation, including a charter change bill that, many suspect, is part of Arroyo's plan to stay on as president. These improprieties have caused many to question the legitimacy of the Arroyo administration. These perceptions, whether right or wrong, constitute a reality that reflects people's level of trust and confidence in the leadership and in government institutions.

The assessment heavily relies on documentary review and analysis of historical notes and various agency records on institutional performance related to the rule of law and access to justice. The opinions of experts, these being people who have a track record in the practice of law and justice, including legal experts, justices, law enforcers as well as legal advocates from the non governmental sector, are other sources of data and information. Case studies showcase the performance of these principles in the Philippine context. Initial findings were validated in a series of focus group discussions among expert actors and representatives of organisations and networks knowledgeable of the rule of law and access to justice.

Public perception and confidence in institutions, authorities and personnel, as well as in the justice system were gauged through surveys. A comparison of the perceptions of legal experts and of ordinary people was made in order to show the extent of progress achieved in realizing the rule of law and access to justice. People's perception of the accountability of public institutions and authorities and the equal application of the laws was also investigated.

Indicative benchmarks of the rule of law and access to justice were adopted by posing the following search questions:

1. To what extent are public officials subject to the rule of law and to transparent rules in the performance of their functions?

2. Is there a system of checks and balance among the branches of government?
3. Are there rules, institutions and mechanisms to make public officials accountable in the exercise of their functions?
4. How effective are the checks and balance and accountability mechanisms in practice?
5. How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?
6. How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration? Are there laws guaranteeing equal treatment of citizens in the justice system?
7. Are there laws providing special protection for vulnerable groups?
8. Are there laws and rules providing legal remedies and procedures equally applicable to all citizens? Are there laws that discriminate, directly or indirectly, against vulnerable groups?
9. Is the justice system in general accessible to all citizens, and especially to vulnerable groups needing protection?
10. How far do the criminal justice and penal systems observe due process in their operations? How far do the criminal justice and penal systems provide rules of impartial and equitable treatment? Is the criminal justice system working equally for both poor and rich litigants?
11. How is local counter-terrorism and anti-insurgency practice conditioning the rule of law and to what extent has the global war on terror influenced local laws and practices?
12. Are the same laws applied to both counter-terrorism and insurgency, or are there different laws associated with each or is existing criminal legislation simply applied?
13. What are the implications of terrorism and insurgency for territorial coverage of the law?
14. What are the implications of the active presence of active armed/violent groups for local officials and their accountabilities to citizens?

15. What are the implications for the protection of citizens' rights to life, property, basic needs and social services using the rule of law?
16. What are the implications of terrorism and insurgency for the conduct of judicial processes?
17. What role do international rules on the conduct of war play in the conduct of counter-insurgency and counter-terrorism operations? Are such rules legally enforced and consistently applied? What mechanisms exist for their application?
18. What international instruments have the Philippines signed up to that uphold the rule of law and guarantee citizens' access to justice?
19. Does the Philippines adhere to these obligations in practice in terms of: 1) processes and procedures applicable to citizens, 2) reporting requirements and 3) monitoring by government of compliance with these agreements?
20. What is the public perception on the judicial and other institutions? To what extent do the people trust the judicial and other institutions such as the courts, the police and other judicial authorities?

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## Institutions

# 2

### 2.1 Public Officials and the Rule of Law

**To what extent are public officials subject to the rule of law and to transparent rules in the performance of their functions?**

The latest inventory of government personnel conducted by the Civil Service Commission (2004) reports a total of 1,313,538 officials and employees deployed across the country's central and local governments as well as at government-owned and controlled corporations (GOCCs). The central government accounts for 832,676 of the total personnel, the local governments for 381,502; and the GOCCs for the remaining 99,360.

These public officials and employees are by definition subject to the rule of law. They hold public office that exists by virtue of a constitutional or statutory provision creating or authorizing it. Such constitutional or statutory source fixes the public official's right, authority and duty to perform a defined governmental function. The real test of the operation of the rule of law, however, is whether there are mechanisms meant to check excesses and to exact accountability in the exercise of such function, and whether these are effective in practice.

### 2.1.1 Mutual Checks and Balance

#### Is there a system of checks and balance among the branches of government?

The structure of the Philippine government is based on the principles of separation of powers and of checks and balances. By separation of powers is meant the powers of government are allocated among three branches, namely, the executive, the legislature, and the judiciary. The aim is to de-concentrate governmental power from any single entity or branch as a mechanism to prevent the abuse of governmental powers and authority. In the words of Supreme Court Justice Jose P. Laurel in the 1940 case of *Pangasinan Transportation vs. Public Service Commission* (Supreme Court 1940), '(T)he theory of the separation of powers is designed by its originators to secure action and at the same time to forestall over action which necessarily results from undue concentration of powers, and thereby obtain efficiency and prevent despotism. Thereby, the "rule of law" was established which narrows the range of governmental action and makes it subject to control by certain legal devices.'

The 1987 constitution allocates the legislative power, or the authority to make laws and to alter and repeal them, to the Congress of the Philippines. Congress consists of a Senate and a House of Representatives. The executive power, or the power to execute or enforce laws, is vested in a president. In the exercise of this power, the president is assisted by, or acts through, the extensive executive bureaucracy under his or her control. Finally, judicial power, or the authority to settle disputes involving legal rights, is vested in one Supreme Court and in the lower courts established by law.

While supreme in the exercise of their respective powers, these branches must conform to a system of checks and balances as provided by the constitution. This system provides points of contact between branches through which one branch can check the others in the exercise of their allocated powers. Among the major checks and balances provided by the constitution are the following:

*The president's veto power.* The constitution vested legislative power in Congress in a very general way. Article VI, section 1 of the 1987 constitution states: 'The legislative power shall be vested in the Congress of the Philippines, which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.' Jurisprudence has given this power a very wide scope, so that any power deemed to be legislative by usage or tradition is comprehended within legislative power, subject only to limitations provided by the constitution itself.

But for all the plenary legislative power of Congress, principally the power to enact laws and to alter or repeal them, its exercise is subject to check by the executive. Every bill passed by Congress needs to be presented to the president for his or her approval before it becomes law. If the president does not approve, he or she shall veto the bill and return it to Congress along with his or her objections. The president's veto may be overturned only by a vote of two-thirds of all the members of the House of Representatives as well as of the Senate, voting separately.

*Checks on martial law powers.* The 1987 constitution was written right after the successful people power revolution that ousted the dictatorship of Ferdinand Marcos. What facilitated the dictatorship was the proclamation in 1972 of martial law, which concentrated in then President Marcos vast military, legislative and even judicial powers. Two paragraphs of the proclamation embodying the sweeping arrogation of such powers are worth quoting:

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in Article I, Section 1 of the Constitution under martial law and, in my capacity as their commander-in-chief, do hereby command the armed forces of the Philippines, to maintain law and

order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction.

In addition, I do hereby order that all persons presently detained, as well as all others who may hereafter be similarly detained for the crimes of insurrection or rebellion, and all other crimes and offences committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in Orders that I shall subsequently promulgate, as well as crimes as a consequence of any violation of any decree, order or regulation promulgated by me personally or promulgated upon my direction shall be kept under detention until otherwise ordered released by me or by my duly designated representative. (Marcos 1972)

The source of the authority to declare martial law was found in article VII, section 10 (2) of the 1935 constitution. This states in part that '(I)n case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.'

The 1987 constitution introduced a number of significant checks on the exercise of this power. First, the grounds for the suspension of the writ or the declaration of martial law are now limited to actual invasion and rebellion through the removal of the phrase 'or imminent danger thereof'. Second, the initial suspension or declaration cannot exceed a period of 60 days. In addition, Congress may revoke a suspension or declaration by a vote of at least a majority of both houses voting jointly. This revocation by Congress cannot be set aside by the

president. Third, only Congress may extend the proclamation or suspension beyond the initial 60 days period upon a similar vote of at least a majority of both houses voting jointly, upon the initiative of the president. Fourth, the Supreme Court may review the sufficiency of the factual basis of the proclamation or suspension in an appropriate proceeding filed by any citizen, which must be decided within thirty days from its filing. Fifth, the constitution now expressly provides that a state of martial law does not suspend the operation of the constitution nor supplant the functioning of the civil courts or legislative assemblies nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function nor automatically suspend the privilege of the writ. Finally, the suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offences inherent in or directly connected with invasion. Any person detained or arrested for these offences must be judicially charged within three days; otherwise he or she must be released.

*Budget proposal, appropriation and execution.* Every year the government manages a huge amount of financial resources for the implementation of its projects, the provision of services, and the operation of the bureaucracy. Because of the magnitude of such financial resources, of the impact of their allocation on economic performance and on equity and quality of services, and of the constant dangers of unwise or irregular use, the constitution tries to provide limitations and checks and balances throughout the budget process. Thus, while the executive, in the execution of laws, is inevitably given authority to disburse or to pay out the biggest proportion of the government budget, it can only do so if supported by an appropriation made by Congress. But this power of Congress to appropriate the entire government budget by law (called the General Appropriations Act) is itself subject to numerous limitations, including checks-and-balance by the president. For one, Congress may not increase the appropriations recommended by the president as specified in the budget. For another, the president has the power to veto any particular item or items in an appropriation. Should

Congress fail to pass the general appropriations bill for the incoming fiscal year, the general appropriations law for the preceding fiscal year is deemed re-enacted and shall remain in force until the new bill is passed.

As an additional safeguard, the constitution also created the Commission on Audit, an independent body with the power and duty to examine and audit all revenue and expenditure accounts of the government. Part of its audit power is the authority to promulgate regulations for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and property.

*Senate concurrence on treaties and international agreements.* The president exercises a very wide discretion and authority over the conduct of the country's foreign affairs. The Supreme Court (2000) opines that, 'by constitutional fiat and by the intrinsic nature of his office, the President, as head of State, is the sole organ and authority in the external affairs of the country' and that 'his dominance in the field of foreign relations is conceded.' Still, the constitution provides some checks in the exercise of the president's prerogatives over foreign affairs. For one, no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate. The Supreme Court also has the power to declare a treaty and international or executive agreement unconstitutional.

*Checks on presidential power to appoint.* The president's power to appoint a person to public office is in itself a check on the legislature's power to create such public office. In creating a public office, Congress can only go as far as prescribing the powers of the office and the qualifications for the position, but not identify the person to be appointed or to make the appointment itself. That power, the Supreme Court holds, is 'the exclusive prerogative of the President, upon which no limitations may be imposed by Congress', although the constitution allows Congress to vest, by law, the appointment of officers lower in rank not just upon the president alone, but also in the courts, or in the heads of departments, agencies, commissions or boards.

However, the constitution has provided for a congressional check on appointments of officials at the highest levels of government. The appointment of the heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and officers whose appointment is vested in the president by the constitution (such as the commissioners of constitutional commissions), require the consent of a Commission on Appointments. The Commission on Appointments consists of the Senate President, twelve senators and twelve members of the House of Representatives. The confirmation process provides Congress the opportunity to examine the merit, fitness and qualifications of nominees for key executive and military positions.

For appointments to the judiciary, while the constitution expressly vests upon the president the power to appoint, it instituted the check of requiring the appointment to only come from a list of at least three nominees prepared by a Judicial and Bar Council to fill every vacancy. The Judicial and Bar Council is under the supervision of the Supreme Court, and is composed of the Chief Justice as ex officio chairman, the Secretary of Justice and a representative of Congress as ex officio members, a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court, and a representative of the private sector.

*Legislative inquiry and question hour.* The Senate or the House of Representatives or any of its committees may conduct inquiries in aid of legislation. They may also request the heads of departments to appear before them and be heard on any matter pertaining to their departments. However, being the highest official of a co-equal branch, the president is by long-standing custom beyond the reach of this power and prerogative. The check is not available directly, but only indirectly through the president's subordinates.

The prerogative to request the heads of departments to appear in order to elicit information constitutes an oversight function of Congress with respect to the

executive. But in keeping with the system of separation of powers, Congress may only 'request', and appearance is discretionary on the part of department heads. In contrast, when the inquiry is 'in aid of legislation', appearance is compulsory with an attendant power to punish for contempt for non-appearance. To be 'in aid of legislation', the inquiry must be material or necessary to the exercise of a power vested by the constitution in Congress, such as to legislate.

*Judicial review.* The judiciary has the power to check the other departments through the exercise of its power of judicial review.

### **2.1.2 Accountability of Public Officials**

#### **Are there rules, institutions and mechanisms to make public officials accountable in the exercise of their functions?**

The system of checks and balance are meant to confine public officials in one branch of government to the limits of their rights, duties, power and authority through the actions of the other branches of government. It is also meant to correct actions inconsistent with such rights, duties, power and authority. What about the public officer's accountability, that is, his or her responsibility, answerability or liability for wrongful action?

#### *Constitutional Mechanisms for Accountability*

The 1987 constitution is replete with provisions dealing with government accountability. It devotes article XI to the Accountability of Public Officers, which enshrines the principle that public office is a public trust.

*Impeachment.* One mechanism under article XI is the removal of certain high ranking public officials—the president, vice-president, members of the Supreme Court, members of constitutional commissions, and the Ombudsman—through the process of impeachment. The grounds for impeachment are culpable violation of the constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. The exclusive

power to initiate all cases of impeachment is lodged in the House of Representatives. The Senate, on the other hand, has the sole power to try and decide all cases of impeachment. When it is the president on trial, the Chief Justice of the Supreme Court presides but does not vote.

*Office of the Ombudsman.* Article XI also created the powerful and independent Office of the Ombudsman, composed of the Ombudsman, one overall deputy, at least one deputy each for Luzon, Visayas and Mindanao, and such officials appointed by the Ombudsman according to the civil service law. The Office of the Ombudsman has the power to investigate on its own, or on complaint by any person, any act or omission by any public official, employee, office or agency that appears to be illegal, unjust, improper or inefficient. Should it find a public official to be at fault, it has the power to direct the taking of appropriate action and recommend removal, suspension, demotion, fine, censure or prosecution.

*The Sandiganbayan.* Article XI, Section 4 of the 1987 constitution retained the then already existing anti-graft court known as the Sandiganbayan. It is a special court that has jurisdiction over criminal and civil cases involving graft and corrupt practices and other offences committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

*The Civil Service Commission.* Among the independent commissions created by the 1987 constitution under article IX is the Civil Service Commission (CSC). The CSC is the central personnel agency of the government, with the mandate to ensure a career service based on merit and fitness from first level positions (clerical, trades, crafts, and custodial service positions), to second level positions (professional, technical, and scientific positions up to the level of Division Chief) and to third level positions (Career Executive Service comprising the positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service, and other officers of equivalent rank).

In addition to the constitutional responsibility for the professionalization of the bureaucracy, the Administrative Code of the Philippines (Republic of the Philippines 1987) conferred on the CSC the jurisdiction to administratively discipline government personnel. It has appellate jurisdiction over all administrative disciplinary cases involving the penalty of suspension for more than 30 days, fine in an amount exceeding thirty days' salary, demotion in rank or salary, and transfer, removal, or dismissal from office. A complaint may also be filed directly with the CSC.

*The Commission on Human Rights.* Article XIII (Social Justice and Human Rights), section 17 of the 1987 constitution created an independent office called the Commission on Human Rights (CHR). The power of the CHR is principally investigatory. It may investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights. In this function the constitution has conferred on the CHR the power to cite for contempt anyone in violation of its operational guidelines and rules of procedure. It may grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority. Where human rights are threatened or violated, it may provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection. It may request the assistance of any government department, bureau, office or agency in the performance of its functions.

In addition to these basic powers, the CHR has visitorial powers over jails, prisons, or detention facilities. It is also mandated to monitor the Philippine government's compliance with international treaty obligations on human rights.

In terms of promoting human rights, the CHR is tasked with establishing a continuing program of research,

education and information to enhance respect for the primacy of human rights. It may recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights or their families.

#### *Dealing with Crimes Committed by Public Officers*

There are numerous laws that define certain acts of public officials and employees as criminal, and prescribe penalties for them. The Revised Penal Code, the principal codification of penal laws in the country, has been in force, with amendments, since 1 January 1932. Under Book II (Crimes and Penalties) of this code, two titles specifically deal with crimes relating to acts by public officials. Title II defines crimes against the fundamental laws of the state. These include crimes constituting arbitrary detention and expulsion, violation of domicile, the prohibition, interruption and dissolution of peaceful meetings, and crimes against religious worship. What this title penalizes are acts of public officers or employees that constitute violations of key guarantees in the Bill of Rights. Title VII refers specifically to crimes committed by public officers in the performance of their duties. These include various malfeasance and misfeasance in office such as dereliction of duty, bribery, frauds and illegal exactions and transactions, malversation of public funds or property, and infidelity of public officers in the custody of prisoners and documents.

In addition to the provisions found in the Revised Penal Code, there are numerous special laws defining and penalizing offences committed by public officers and employees. One major law is Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act. A 1960 law, it declares additional acts as constituting corrupt practices by public officers. Among these practices are: requesting or receiving gifts or benefits in connection with a government transaction or contract in which the public officer has to intervene in an official capacity; causing injury or giving advantage or preference in the discharge of a public officer's administrative or official function through manifest partiality, evident bad faith, or gross

inexcusable negligence; entering on behalf of government into a contract or transaction manifestly and grossly disadvantageous to the government; and having financial or pecuniary interest in any business, contract, or transaction in which the public officer intervenes or takes part in an official capacity.

Another important law is Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, approved on 20 February 1989. It spells out the norms of conduct of public officials and employees as well as their general obligations in the performance of their duties. Section 7 of this law enumerates prohibited acts and transactions in addition to those already existing, relating to their financial or material interests in transactions as well as outside employment. Violations of certain obligations under the act, such as on the disclosure of assets and liabilities of public officials, or the required resignation or divestments in private enterprise, are declared punishable.

#### *Accountability in Local Government and the Police*

The government agencies most proximate to the people are arguably the local government and the police. The local government units, divided into 81 provinces, 136 cities, 1,495 municipalities and 42,000 *barangay* (the smallest administrative units) as of end 2008, provide the most basic governmental services at the community level. These services include public health, environmental services and sanitation, local infrastructure, public markets, social welfare, public cemeteries, sites for police and fire stations, public parks, and livelihood support services.

The 1987 constitution devotes its article X to the subject of local government. While the president exercises general supervision over it, the constitution mandated the enactment by Congress of a local government code that provides a decentralized local government structure. It was granted by the constitution the power to create its own sources of revenues and to levy taxes, fees and charges. It exercises not only executive powers but legislative as well through local legislative bodies.

As mandated by the constitution, Congress passed the Local Government Code (Republic Act No. 7160) in September 1991. It was signed into law the following month. It spells out the local government structure and provides for the qualifications, election, appointment and removal of local government officials, as well as their powers, functions and duties. The law devolves to local government units the responsibilities of the national government for key public goods and services, particularly health, agriculture, social services and environment. The law increases the fiscal powers and resources of local governments by increasing their internal revenue allotments and by expanding their taxing powers. It provides for participatory planning mechanisms through the creation of the local health board, the local school board, and the local development council.

The national accountability mechanisms, such as the Ombudsman, the Sandiganbayan, and the various criminal laws governing public officers and employees apply equally at the local government levels. The public right to government information also applies to all local government units.

In addition, the Local Government Code provides for administrative disciplinary actions against elective officials. Section 60 enumerates grounds for the discipline, suspension or removal of elective officials.

The present Philippine National Police (PNP) is governed principally by a constitutional provision, as well as two legislative acts, Republic Act Nos. 6975 and 8551. Article XVI (General Provisions), section 6 of the constitution states that '(T)he State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law.'

The emphasis on a civilian police force responds to the country's experience over the military character of the police before the 1987 constitution. At that time the

national police force was the Philippine Constabulary. It had operational control over local police forces and was one of the services of the Armed Forces of the Philippines under the supervision of the Ministry of National Defense. The Philippine Constabulary, particularly its Manila unit, the Metropolitan Command (popularly known as METROCOM), became notorious for its crackdown on the political opposition during the martial law years, characterized by grave violations of human rights.

To implement the constitutional provision, Congress enacted Republic Act No. 6975 (approved on 13 December 1990) establishing the PNP under a reorganized Department of the Interior and Local Government (DILG). Its declaration of policy states in part that the national scope and civilian character of the police force shall be paramount, and that no element of the police force shall be military nor shall any position be occupied by active members of the Armed Forces of the Philippines. This law was later supplemented and amended by RA 8551, or the Philippine National Police and Reorganization Act of 1998.

Under these two laws administrative control over the PNP is lodged in a National Police Commission that is attached to the DILG. It is composed of a chairman, occupied ex officio by the DILG Secretary, and four regular members, three of whom come from the civilian sector and the fourth from the law enforcement sector. The Chief of the PNP also serves as ex officio member.

RA 6975 enumerates the following powers and functions of the PNP:

1. Enforce all laws and ordinances relative to the protection of lives and properties.
2. Maintain peace and order and take all necessary steps to ensure public safety.
3. Investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution.
4. Exercise the general powers to make arrest, search and seizure in accordance with the constitution and pertinent laws.

5. Detain an arrested person for a period not beyond what is prescribed by law, informing the person so detained of all his rights under the constitution.
6. Issue licenses for the possession of firearms and explosives in accordance with law.
7. Supervise and control the training and operations of security agencies and issue licenses to operate security agencies, and to security guards and private detectives, for the practice of their professions.

Also under RA 6975, the DILG, through the PNP, assumed the primary role over internal security, leaving to the Armed Forces of the Philippines (AFP) only the role of preserving external security except in areas where insurgents have gained a considerable foothold. Under RA 8551, however, the DILG was relieved of the primary responsibility over insurgency and other serious threats to national security, which reverted back to the AFP. The PNP was given only a supporting role through information gathering and the performance of ordinary police functions.

In the performance of its powers and functions, the PNP is in constant contact with the people. With a personnel force of 124,988 in 2007, the national police presence represents a manpower-to-population ratio of about 1:700. While tasked with enforcing all laws for the protection of lives and properties and the maintenance of peace and public order, what happens when members of the PNP themselves commit crimes or administrative wrongdoing?

The discussion earlier on crimes committed by public officers, and the role of the Ombudsman, the Sandiganbayan and the regular courts for the disposition of such cases, apply to the PNP. Upon the filing of a complaint or information against a member of the PNP for grave felonies where the penalty is six years and one day or more, the court shall immediately suspend the accused from office until the case is terminated. For the protection of PNP personnel, government lawyers may be authorized to provide legal assistance to a member of the PNP who is facing a charge arising from an incident related to the performance of his or her official duty. Should a PNP personnel who has been suspended or terminated

by reason of a criminal charge be acquitted, he or she is entitled to reinstatement and to payment of salary and other benefits withheld from him or her.

For administrative cases, RA 6975 as amended by RA 8551, provides the basic rules. Citizens, whether natural or juridical, may bring their complaints before the chiefs of police, city or municipal mayors or the People's Law Enforcement Board (PLEB), depending on the gravity of the imposable administrative penalty as provided in the implementing rules promulgated by the National Police Commission. For breaches of internal discipline, complaints shall be brought before the chiefs of police of cities and municipalities, provincial directors, regional directors, or the chief of the PNP, again depending on the gravity of the imposable administrative penalties. When the charge is serious and the evidence of guilt is strong or when the respondent is a recidivist or when the respondent is guilty of conduct unbecoming of a police officer, the chief of the PNP, as well as regional directors, are given authority to immediately dismiss a member of the PNP after due notice and summary hearings.

The People's Law Enforcement Boards are constituted by local legislative bodies to hear and decide citizens' complaints or cases filed before it against erring officers and members of the PNP. It serves as the central receiving entity for any administrative complaint against officers and members of the PNP, and either hears the complaint or refers it to the proper disciplinary or adjudicatory authority. The law mandates a minimum of one PLEB for every five hundred city or municipal police personnel and for each of the legislative districts in a city. A PLEB is composed of a member of the city or municipal legislative body, a barangay captain, and three other members chosen by the local peace and order council from members of the community. Disciplinary actions imposed upon members of PNP are final, except when the penalty involves demotion or dismissal. When such penalty is imposed by the PLEB, it may be appealed to the Regional Appellate Board of the National Police Commission in each administrative region. When the penalty is imposed

by the chief of the PNP, it is appealed to the National Appellate Board of the National Police Commission.

In addition, RA 8551 created an Internal Affairs Service, with inspection, audit, and investigatory powers over PNP personnel and units. It may file criminal cases against PNP members before the courts as evidence warrants, and provide assistance in the prosecution of PNP personnel, including by the Office of the Ombudsman.

#### *Accountability in the Military*

The Armed Forces of the Philippines (AFP) is a citizen armed force tasked with securing the sovereignty of the state and the integrity of the national territory. It comprises of three major services: the Philippine Army with a total workforce of 141,261 in 2007; the Philippine Air Force with a manpower complement of 17,919 in the same year; and the Philippine Navy, with total personnel of 21,259, also for 2007.

Civilian authority is supreme over the military, primarily expressed through the president as commander-in-chief of all armed forces. The constitution also provides that even under a state of martial law, the constitution is not suspended, the functioning of legislative assemblies and civil courts is not supplanted and military courts and agencies do not acquire jurisdiction over civilians where civil courts are able to function.

While intended primarily for external defence, the AFP has retained a role in internal security with respect to dealing with the insurgency and the Muslim separatist struggle. Thus, the AFP remains present in the countryside, undertaking covert and overt counter-insurgency operations as well as civil works in communities.

In terms of accountability mechanisms, the AFP has its own military justice system under Commonwealth Act No. 408, commonly known as the Articles of War. All officers and soldiers in active service are governed by such military law. While historically the civil courts have concurrent jurisdiction over AFP personnel for offences punishable under the Revised Penal Code and special laws. President Marcos (1982)

declared under Presidential Decree 1850 that all persons subject to military law, including members of the national police, shall be tried exclusively by courts-martial and their cases disposed of under the Articles of War.

On 20 June 1991 Republic Act No. 7055 was signed into law. This law strengthened civilian supremacy over the military by returning to the civil courts the jurisdiction over offences involving members of the AFP and other persons subject to military law. Under this act, members of the AFP who commit crimes or offences penalized under the Revised Penal Code, other special penal laws, or local government ordinances shall be tried by the proper civil court, except when the offence, as determined before arraignment by the civil court, is service-connected, in which case the offence shall be tried by court-martial. Service-connected crimes or offences were limited by the law to those defined in articles 54 to 70, articles 70 to 92 and articles 95 to 97 of the Articles of War as amended.

In January 1990 the AFP created the Office of Ethical Standards and Public Accountability (OESPA) as an anti-graft unit headed by the AFP vice-chief of staff. The OESPA assumes exclusive investigative jurisdiction over active military personnel and regular civilian employees of the AFP who are involved in graft cases. Its functions include: ensuring the implementation of the AFP code of ethics; collecting, analyzing, and compiling all sworn statements of assets and liabilities of military personnel and permanent civilian employees; receiving complaints, inquiring into and conducting overt and covert investigation on violations by military and civilian personnel of the various anti-graft laws; and evaluating, prosecuting, and monitoring civil, criminal, and administrative cases related to acts in violation of such laws.

For administrative discipline, the principle of command responsibility applies. Military commanders are accountable for acts of subordinates, as he or she has the authority to order, direct, prevent or control the acts of subordinates. A commander is duty bound to monitor, supervise and control the overall activities of subordinates

within his or her area of operation and is administratively liable for failure to take appropriate action to discipline subordinates. Included in the disciplinary powers of a commanding officer are the following: to take custody of military personnel who is the subject of an adverse report indicating commission of a serious offence, and to order an investigation of such report; to immediately order the arrest and confinement of military personnel who commit, is actually omitting or has been charged of committing a grave offence; and to promptly initiate the conduct of an investigation to determine the administrative liability of personnel involved in illegal activities.

### **2.1.3 People's Right to Information**

People's access to government information is an important mechanism for accountability. Recognizing this, the constitution includes in the Bill of Rights a distinct guarantee for people to have access to government information. Section 7 of the Bill of Rights reads:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as may be provided by law.

The constitution also declares that the state adopts and implements a policy of full public disclosure of all its transactions involving the public interest. Article II (Declaration of Principles and State Policies), section 28 states:

Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

The Supreme Court (2002) pointed out the link between the constitutional provisions on access to information and accountability:

These twin provisions are also essential to hold public officials "at all times x x x accountable to the people,"

for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation.

In addition to the twin provisions spelling out general rights and duties on public access to information, there are also specific classes of information that the constitution requires to be made public. Information on foreign loans obtained or guaranteed by the government shall be made available to the public. The declaration under oath of assets, liabilities, and net worth by the president, the vice-president, the members of the cabinet, the Congress, the Supreme Court, the constitutional commissions and other constitutional offices, and officers of the armed forces with general or flag rank shall be disclosed to the public in the manner provided by law. The records and books of accounts of Congress shall be preserved and be open to the public in accordance with law.

The Supreme Court (1987) laid down key principles governing the Bill of Rights provision on access to information. First, the court emphasized that the right is self-executing—it does not need legislation to be enforced. What may be provided by the legislature are reasonable conditions and limitations upon the access to be afforded which must be, in any case, consistent with the declared state policy of full public disclosure of all transactions involving public interest. Second, the court declared that the right to information is a public right. In order to bring a suit based on the right to information, one need not show a legal or special interest in the result; it is sufficient that one is a citizen. Third, the court ruled that government officials do not have the discretion to deny a request for information in the absence of a clear legal exemption. Every denial by a government agency of a request to information is subject to review by the courts, and in a proper case, access may be compelled by the court. While the right speaks of public concern as scope of available

information, it is for the courts to decide on a case by case basis what falls under it. In deciding, the Court noted that the term ‘public concern’ embraces ‘a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen’ (Supreme Court 1987).

The Court (Supreme Court 2007) also gave an opinion on the meaning of the state policy of ‘full public disclosure of all its transactions involving public interest.’ It said that under this policy, government agencies must disclose all steps and negotiations leading to the consummation of the transactions and contents of the perfected contract. It qualified, however, that such information must pertain to ‘definite propositions of the government,’ that is, official recommendations or final positions reached on the different matters that were the subject of negotiation.

Thus, in contrast to the provision under the Bill of Rights which requires that a request or demand for access to documents and papers in a particular agency be first made, under the state policy provision there is no need to demand disclosure as this is mandatory under the constitution.

## 2.2 Law Versus Practice

### **How effective are the checks and balance and accountability mechanisms in practice?**

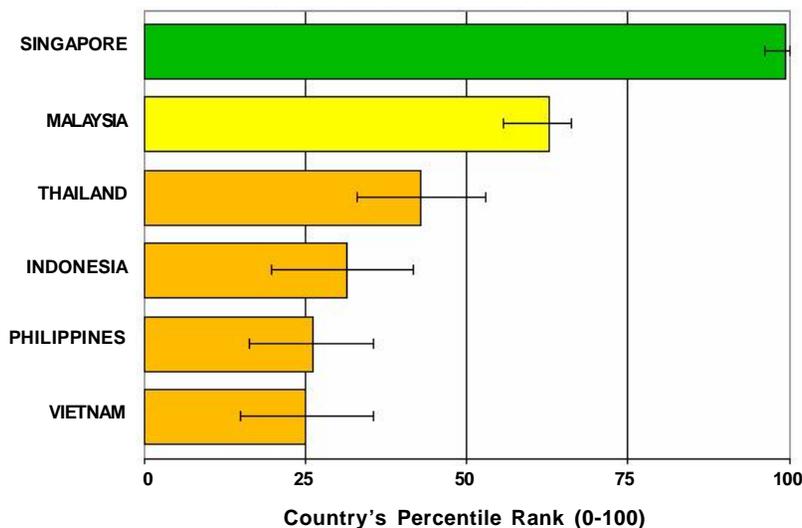
Overall, the rules defining the powers and duties of public officials and employees, the system of checks and balance and the accountability mechanisms in the Philippines are able to secure a functioning government. Subject to resource and institutional constraints as well as changing policy directions, there is delivery of an appreciable level of public services and infrastructure, regulation of private activities, peace and security, a civil and criminal justice system, and basic democratic processes. However, there are a number of negative outcomes that point to the continuing failure to effectively subject public officials to the rule of law in the performance of their duties.

**2.2.1 Graft and Corruption**

The first glaring negative outcome is the persistence of large-scale graft and corruption in government. In the Transparency International’s Corruption Perceptions Index for 2009 (Transparency International 2009), the Philippines scored 2.4 in degree of corruption as seen by business people and country analysts, on a range from zero (“highly corrupt”) to ten (“highly clean”). This placed the country at 139th among all the 180 countries ranked. Its ASEAN neighbours fared better, with Singapore scoring 9.2 (rank 4), Malaysia 4.5 (rank 56), Thailand 3.4 (rank 84), Vietnam 2.7 (rank 121), and Indonesia 2.8 (rank 126).

A similar result can be gleaned from the World Bank’s Control of Corruption Indicator (World Bank 2009). The indicator represents the percentile rank of each country indicating the percentage of countries worldwide that rate below the selected country. Higher values indicate better control of corruption. The Philippines registered a low percentile rank of 26.1 as shown in figure 2.1.

**Figure 2.1 Control of corruption (2008)**



Source: Chart reproduced from World Bank, Governance Matters 2009: Worldwide Governance Indicators, <[http://info.worldbank.org/governance/wgi/sc\\_chart.asp](http://info.worldbank.org/governance/wgi/sc_chart.asp)>

The result of the Social Weather Stations 2008 survey of enterprises on sincerity by government agencies in fighting corruption showed how dismal local perceptions on corruption were (Social Weather Stations 2008). Only seven agencies received ratings of moderate to good: the Social Security System, Department of Trade and Industry, Supreme Court, and City and Municipal Government, Department of Health, Commission on Audit, and Department of Finance. Getting mediocre ratings were the Department of Education, the Armed Forces of the Philippines, Sandiganbayan, Office of the Ombudsman, Trial Courts, Senate, and the Department of Budget and Management. Those getting a rating of poor were the Government Service Insurance System, Department of Agriculture, Department of Justice, Philippine National Police, Department of Interior and Local Government, Philippine Anti-Graft Commission, Department of Environment and National Resources, Commission on Elections, Department of Transportation and Communications and the Office of the President. The Land Transportation Office, Presidential Commission on Good Government, and the House of Representatives all got a rating of bad. Finally rounding the survey results were the agencies getting a rating of very bad: the Bureau of Internal Revenue, Department of Public Works and Highways, and the Bureau of Customs.

A considerable number of survey respondents reported having been asked by someone in government for a bribe the previous year on various listed transactions. As many as 71 per cent reported having been asked for a bribe in any of the transactions listed in the survey. As to specific transactions, 22 per cent reported having been asked for a bribe in availing of government incentives, 24 per cent in collecting receivables from government, 29 per cent in supplying government with goods or services, 31 per cent in complying with import regulations, including payment of import duties, 46 per cent in the assessment or payment of income taxes, 47 per cent in getting national government permits and licenses, and 49 per cent in getting local government permits and licenses.

Indicative of how much the country loses to corruption are the findings by the Senate on the plunder of public money through the Department of Agriculture’s program to distribute fertilizers to farmers in 2004 (Philippine Senate Committee on Accountability of Public Officers and Investigations, 2009). It involved PHP728 million in government funds purportedly intended to benefit farmers through the distribution of fertilizer, farm inputs, and farm implements. One of the frauds that the Senate was able to confirm in the investigation was the overpricing of liquid fertilizer. The supplier was being receipted by government for PHP1,500 per bottle when the actual selling price was only PHP150 per bottle. In all, one supplier appeared in the receipt as having sold PHP105 million worth of fertilizer, when in fact the value of the sale was only about PHP12 million to PHP13 million. Through bank withdrawal schemes, the overpayment went to various entities, either personally pocketed by government officials or fixers or used to support favoured candidates in the elections.

In terms of procurement, the World Bank identified key corruption risks in government procurement in the road sector, as shown in table 2.1 (World Bank 2008).

**TABLE 2.1** Key corruption risks in government procurement

Risks	Risk Description and Examples	Inherent Risk
<b>Procurement</b>		
Collusion	Bidders are manipulated by an ‘arranger’ under the direction of a patron, who for large national or international competitive bidding is typically a senior politician or elite, and who for regional or district level bids is typically a local politician	H
Bid-rigging	Bid prices are established by the arranger, with a sufficient margin above the cost estimate to pay kickbacks to the patrons, cartel participants and some officials.	H

	The margin is often high, e.g., 15-36 percent. The patron often requires payment at the time of award recommendation; other payments are usually made from the advance payment.	
Misrepresentation of Bidder Qualifications	Falsification of work history, productivity or financial records.	S
Fraud	Falsification of documents	S
Bid Evaluation	Manipulation of bid evaluation is relatively rare or minor under recent internal controls, but could re-emerge; for consulting services, manipulation seems common and high.	S
Bid Process	Interference with bid submission, substitution of documents or mis-reading of bid prices relatively rare in foreign-assisted projects due to observer controls, but may occur in locally-assisted projects & could re-emerge.	S
Contract Processing	Bribes to facilitate processing of contract award and subsequent payments are highly probable. The approval process has multiple layers and extended delays occur in key offices, e.g., legal services, construction, executive, project management office.	H
Preferred Suppliers	Nomination of preferred agents for key contract services such as bank guarantee, security, indemnity insurance, who provide kickback to project level officials is common.	H
Contract Variations	The size of some variations is inflated through estimates of quantities for pay items which are difficult to confirm or audit, such as repairs, excavation, landslide removal, etc. Usually results from collusion of contractor with officials, but may involve collusion of supervising consultant also.	H

Implementation		
Quality	Falsification of quality control test results, defect or repair inspections, etc. through collusion between contractor and supervising officials or consultant. Incidence very dependent on particular individuals and firms, ranging from negligible to modest in most foreign assisted projects, but minor to serious in locally-assisted projects.	S
Financial Management		
Internal controls	Internal control environment generally weak, e.g. cash advances not liquidated, false invoicing, double-billing, etc.	S
Payment Processing	Certification of invoices for payment may involve delays and bribes to project officials or supervising consultants, but this appears minor and has not been reported to be a major problem in FAP.	M
Fund flow	Weak controls on fund transfers, sub-allotment advices, etc.	H

Note: H- High; S – Substantial; M – Moderate; N – Negligible

Source: Reproduced from World Bank, *Project Appraisal Document on a Proposed Loan in the Amount of US\$232 Million to the Republic of the Philippines in Support of Phase 2 of the National Roads Improvement and Management (APL) Program*, Report No: 40764-PH, 15 April 2008, pp. 126-7

In local governments, the Local Government Academy, the training arm of the DILG, lists the following areas to be the most vulnerable to unethical practices by local officials in addition to the procurement problems discussed above (Sison 2001: 84-5):

- Personnel hiring and appointments – Politicians yield to pressure from relatives, friends, and supporters to appoint them or their protégés to government positions. Some create special and confidential positions to circumvent the Civil Service Law that bans nepotism.

- Enforcement of government rules and regulations – the following have been identified as the most common violators of the law: businessmen, political leaders, and members of interest groups who are either friends of the mayor or governor or whoever supported his campaign. The mayor or governor could turn a blind eye on offences committed by friends while imposing unreasonable demands on political opponents. Common violations involve: inspection of restaurants, beer gardens, hotels, sauna baths and massage parlours, food processing factories, markets, and other establishments; issuance of permits; enforcement of gambling laws; enforcement of laws against prostitution, child abuse, and hawking; and enforcement of zoning regulations.
- Employee relations – Local officials abuse their power to seek personal favours from subordinates.
- Personal use of government property
- Using inside information – Privileged access of information, such as planned government purchases of land, could be used for his own benefit, or that of friends, relatives, and associates.
- Zoning and business direction – The exercise of zoning authority can be used to favour certain groups and individuals. The same is true for the grant of incentives.
- Awarding of concessions – The mayor or governor has the authority to grant local concessions, which could be granted to undeserving groups and individuals.

We note that local government anomalies in the enforcement of rules and regulations are often done with the participation of the police.

Corruption in the military was highlighted when more than 300 junior officers and enlisted men from elite units of the AFP, denouncing such corruption, took-over the Oakwood Premier Apartments in Ayala Center, Makati City on 27 July 2003. In its report, the fact finding commission created to investigate the incident noted that the event was not spontaneous and that it was part of a

larger plan to achieve political change by military force. The commission acknowledged that some of the grievances expressed by the rebel soldiers were 'to a substantial degree real, and not merely fictitious' (Republic of the Philippines 2003: 33). Among the findings were anomalies in the running of the Armed Forces Retirement and Separation Benefits System (RSBS or System) funded by compulsory contributions of enlisted personnel, as well as fraudulent practices in the AFP procurement system. These consisted of: conversion, that is, the transforming of allocated funds into cash alongside non-delivery or under-delivery of procured goods; anomalies in the use of contingency or centrally-managed funds; rigged bidding; purchase order splitting to fall within the signing authority of the commander of the service unit doing the procurement in order to circumvent procurement standards; and leakages in the distribution of arms and ammunition that could end up in enemy hands.

### **2.2.2 Human Rights Violations**

The second negative outcome is the impunity with which the human rights of citizens continue to be violated by people in government. Everyone thought that this was a thing of the past after the toppling of the Marcos dictatorship in 1986.

The increasing incidence of reported extrajudicial killings in the country beginning in 2001 prompted the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Phillip Alston, to undertake a fact finding mission in the country in February 2007. One month before the mission, an independent commission chaired by retired Supreme Court Justice Jose A. R. Melo and created by the executive to address killings of media personnel and activists, completed its work and submitted its report.

In its report, the Melo commission showed the following undisputed facts (Republic of the Philippines 2007: 5-6):

- An alarming rise in number of extralegal killings, and that the victims were almost entirely members of activist groups or were media personnel.

- The victims were generally unarmed, alone, or in small groups, and were gunned down by two or more masked or hooded assailants, oftentimes riding motorcycles. The assailants usually surprised the victims in public places or their homes, and not during any military engagements or fire fights.
- Circumstances clearly show that such killings of activists and media personnel were pursuant to an orchestrated plan by a group or sector with an interest in eliminating the victims.

For the period 2001 to 2006 that the commission looked into, the police put the figure at 111 killings. Amnesty International gives a higher number at 244 while an activist human rights group (Karapatan) places the number at 724.

The Alston report (United Nations 2008) confirmed and even expanded on the findings of the Melo commission. It categorized the extrajudicial killings into five kinds: killings of leftist activists, killings related to the armed conflict in Mindanao, killings related to agrarian reform disputes, killings of journalists, and killings by what has been called the Davao death squads.

For the killings of activists, both the Melo commission report and the Alston report point to a role by the military. The Melo commission found that while the circumstantial evidence presented before it was probably grossly inadequate to support a criminal conviction, it nonetheless emphasized that 'it can proceed with a certain degree of certitude in stating that, in all probability, some elements in the military could be responsible for the recent killings of activists.' The same conclusion was reached in the Alston report. It related the counter-insurgency campaign to operations that resulted in the extrajudicial execution of leftist activists.

The Davao death squad targets a different set of victims: criminals, gang members, and street children. The Alston report pointed to strong indications that the practice was officially sanctioned. While the killing succeeded in

limiting the presence of some kinds of criminal activities, Alston noted the high human cost of such an achievement, with, over 500 people shot or stabbed to death since 1998.

There has also been the persistence of high profile cases of use of excessive force by police in dealing with suspected criminals. On 17 February 2009, for instance, three suspected car thieves were killed in an alleged shootout with members of the police force. Allegations of excessive force were made when news video footage showed a policeman in plainclothes shooting in close range what appeared to be already motionless suspects. The incident is under investigation by the Commission on Human Rights.

This was not the first time that news video footage had precipitated an inquiry by the Commission on Human Rights on a police operation. On 7 November 2005, three suspected car thieves were also killed under similar circumstances. On 26 May 2006, the Commission promulgated its resolution that forensic analysis and findings of fact point to the victims having been flagged down by the police, but upon stopping were suddenly fired upon by the state agents. The Commission concluded that 'the anti-car napping operations implemented by the police operatives on the evening of November 7, 2005 was feigned, premeditated and treacherous' (Commission on Human Rights 2006: 35).

### **2.2.3 Abuse of Powers**

President Gloria Macapagal Arroyo's presidency has been characterized by issuances of executive proclamations and orders containing provisions that are of highly doubtful constitutional or legal basis. Among these are: the policy of calibrated pre-emptive response or CPR adopted around September 2005 to replace the statutory policy of maximum tolerance in handling public assemblies; Executive Order 464 issued on 28 September 2005 providing guidelines for the appearance of executive officials in legislative inquiries; and Proclamation 1017 issued on 24 February 2006 declaring a state of national emergency.

Another area of abuse is the exercise of the president's appointing powers. Karina Constantino David, former chair of the Civil Service Commission (CSC), asserted that 'the most important reason why the government bureaucracy cannot function professionally is politics' (David 2008). The main culprit, she adds, 'is the abuse of presidential discretion and the discretionary exercise of presidential prerogative' (David 2008).

Indeed at the highest level of non-career appointive positions, considerations beyond fitness for the position, such as loyalty and political gratitude, generally come into play. But what the former CSC chief lamented was that such politicizing of appointments had infected even the top level career service that should otherwise be governed by civil service eligibilities. The positions affected were those of the undersecretaries, assistant secretaries, directors, and managers that comprise the managerial positions in government. Of the about 6,000 managerial positions in government, some 3,500 were appointed by the president. David pointed out that more than 50 per cent of these presidential appointments as of 2008 were not eligible, as table 2.2 shows.

In addition to lack of eligibility, David (2008) pointed to two other abuses in presidential appointments—the filling of positions in excess of the number required by law, and the large number of retired military and police personnel appointed to government positions. She stated that there were more than sixty assistant secretaries and undersecretaries in excess of what is provided for by law. In terms of retired military and police personnel, there were more than ninety that held key managerial positions. All of these deprived officials in the career service, who were qualified and have been in service for most of their professional life, of opportunities to be promoted to managerial positions. The result of these kinds of presidential appointments is demoralization among the lower ranks and the intense politicization of the highest ranks of the bureaucracy.

**Table 2.2** Top ten agencies with the biggest number of ineligible undersecretaries and assistant secretaries according to the Civil Service Commission

AGENCY	ELIGIBLE	%	INELIGIBLE	%	RANK
Department of Energy	0	0	4	100	1
Office of the President	4	11	33	89	2
Department of Justice	1	13	7	88	3
Department of National Defense	2	22	7	78	4
Department of Tourism	2	29	5	71	5
Department of Agriculture	3	30	3	70	6
Department of Education	3	33	6	67	7
Department of Environment and Natural Resources	5	45	6	55	8
Department of Labor and Employment	3	50	3	50	9
Department of Trade and Industry	5	56	4	44	10
Office of the Press Secretary	0	0	4	100	1

Source: Table reproduced from Lorenzo, Issa and Malou Mangahas, 'New CSC Chief Faces Pack of Ineligible Bureaucrats', Philippine Center for Investigative Journalism (PCIJ) Investigation, 24 April 2008, accessed online at <<http://www.pcij.org/stories/2008/ineligible-bureaucrats2.html>>

### 2.2.4 Failure to Bring Wrongdoers to Justice

Still another negative outcome is the failure of the accountability mechanisms to consistently bring perpetrators of corruption, human rights violations and other wrongdoing to justice.

For the extra-judicial killings, the Melo report noted that the PNP had not made much headway in solving them. It

found that out of the 111 killings of activists acknowledged by the PNP for the period 2001 to 2006, only 37 had been forwarded to the proper prosecutor's office for preliminary investigation or filing in court.

In his follow-up report dated 29 April 2009, Alston noted that he had seen no evidence of a good faith effort by government to address extrajudicial killings by the military (United Nations 2009). As of the date of the report, there had not been a single conviction of military personnel for those killings. The same failure to bring to justice any of perpetrators of extrajudicial killings was also true for the cases in Davao.

Specifically on journalists, the Committee to Protect Journalists (CPJ), an independent, non-profit organization promoting press freedom worldwide, recently released an Impunity Index (Committee to Protect Journalists 2009). Covering the period from 1 January 1999 through 31 December 2008, the index calculated the number of unsolved journalist murders as a percentage of each country's population. The Philippines ranked sixth in impunity among fourteen countries that had five or more unsolved cases, as table 2.3 shows.

On prosecuting corrupt officials, the Office of the Ombudsman has increased the conviction rate of its cases filed with the Sandiganbayan for the period 2003 to 2007. It also metes out administrative penalties, including demotion, reprimand, fine, suspension and dismissal from service. But what now undermines the credibility of the Office of the Ombudsman is its inaction over, or mishandling of, high profile cases that could potentially implicate officials at the highest levels.

## 2.3 Accounting for the Negative Outcomes

### 2.3.1 Congress Struggling with Independence

A number of the check and balance mechanisms are lodged in Congress. These congressional checks must be wielded with the requisite degree of independence for them to work. Unfortunately, the lack of mature political parties as well

**Table 2.3** Unsolved journalist murders per 1 million inhabitants for 1999-2008

Nation	Unsolved Cases	Population (in millions)	Calculation	Rating
Iraq	88	29.5*	88 / 29.5 =	2.983
Sierra Leone	9	5.8	9 / 5.8 =	1.552
Somalia	6	8.7	6 / 8.7 =	0.690
Sri Lanka	9	19.9	9 / 19.9 =	0.452
Colombia	16	46.1	16 / 46.1 =	0.347
Philippines	24	87.9	24 / 87.9 =	0.273
Afghanistan	7	28.2*	7 / 28.2 =	0.248
Nepal	5	28.1	5 / 28.1 =	0.178
Russia	15	141.6	15 / 141.6 =	0.106
Pakistan	10	162.4	10 / 162.4 =	0.062
Mexico	6	105.3	6 / 105.3 =	0.057
Bangladesh	7	158.6	7 / 158.6 =	0.044
Brazil	5	191.6	5 / 191.6 =	0.026
India	7	1,123.3	7 / 1123.3 =	0.006

Source: Reproduced from Committee to Protect Journalists, *Getting Away with Murder 2009 (Special Reports)* <<http://cpj.org/reports/2009/03/getting-away-with-murder-2009.php>>

as the system of incentives within Congress makes it easy for the president to capture the allegiance of a majority of the members of Congress, particularly the lower house.

The influence starts with the determination of the Speaker of the House and the makeup of the majority. With a multi-party system and party-list representation, the composition of the majority in the House is not immediately apparent after elections, and requires the formation of alliances and coalitions. In building this majority, the backing of the president becomes crucial as the president commands a sizeable following among

members of Congress, not only from his or her own party but also from new supporters looking to benefit from enormous presidential powers. As observed by Senator Aquilino Pimentel:

Because the president is the dominant force in the nation's political spectrum, he or she determines which bloc or coalition of blocs becomes the majority party in the legislature. Whoever is president, in fact, becomes a magnet that draws lawmakers from whatever party to his or her political party or coalition which thus becomes the majority or the ruling party.

The fact that the president has the power to create the majority in the legislature is bolstered mainly by his or her power over the purse. This is true even if under our Constitution, it is the legislature that enacts a national budget. The moneys thus appropriated may, however, only be disbursed by authority of the president. (Pimentel 2008)

That hold by the president on Congress is sustained, if not even strengthened, throughout the congressional term. A Speaker of the House who cannot remain loyal to the president is highly likely to lose his position. That was what happened to Jose De Venecia when his son accused the president's husband, Mike Arroyo, of involvement in a bribery scandal over a government contract with a Chinese firm. Soon after, in February 2008, De Venecia was replaced as Speaker of the House. The two sons of the president who are members of Congress figured prominently in the ouster.

What is at stake at being part of the majority does not confine itself to congressional matters but in fact relates to executive prerogatives. Being part of the majority becomes a key to securing particular interests, including prioritization of district projects in the executive budget proposal, budget disbursements for these projects, and appointment of favoured nominees to various government posts. Members of the House of Representatives see this as integral to their political survival. As former representative Prospero Pichay said,

It happens every day, it happens during deliberations on the budget. Every congressman would want to have a lot of allocations for his district. Because that is why they are elected...so that we can represent them in the House of Representatives so we can bring in a lot of projects in our districts. There's nothing wrong with that. (Pablico 2007)

### **But at what price?**

One check mechanism that Congress has watered down is parliamentary immunity. Article VI, section 11 of the constitution provides that no member of Congress shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any of its committees. This constitutional guarantee of free speech and debate, while it does not distinguish as to its object, is a powerful mechanism to check the other branches by allowing every member of Congress, even one from the smallest party or representation, to speak or debate without fear of being visited with peril except for the questioning or response of colleagues in debate or similar speech, the retort of the object of his or her speech, and ultimately, public opinion.

But in 1960 the House of Representatives watered down this check by its own precedent on an issue involving the president. On 23 June 1960, Representative Sergio Osmeña, Jr. delivered a privilege speech directed at then President Carlos Garcia, calling his attention to reports of bribery for exercising certain presidential prerogatives such as the granting of pardons. The House of Representatives created a special committee of fifteen members appointed by the Speaker with the authority to summon Representative Osmeña to appear before it and to force him to substantiate his charges. The special committee, in a resolution adopted on 8 July 1960, found Representative Osmeña 'guilty of serious disorderly behavior for making without basis in truth and in fact, scurrilous, malicious, reckless, and irresponsible charges against the President of the Philippines in his privilege speech' (Supreme Court 1960). Thus, while a member of

the House of Representatives may not be subject to civil or criminal liability for saying something in Congress, he or she could face the wrath of the president for critical speech through allies who may constitute the majority. This precedent carries on to this day.

The other mechanism that has been diluted by the lack of Congressional independence is impeachment. Because of presidential influence over Congress, impeachment has been regarded as an ineffective means for removing a president.

Finally, the congressional check on presidential appointments has been greatly discredited by evidence of bribery and horse-trading between the members of the Commission on Appointments and presidential nominees. In June 2007, for instance, Congressman Herminio Teves publicly stated that his son, Finance Secretary Margarito Teves, was asked through him for PHP5 million to be given to certain members of the commission in exchange for his confirmation. Interviewed over the radio, Secretary Teves did not confirm nor deny his father's statement but did say that cabinet members were asked for favours such as projects or lower-level appointments. The story received corroboration in the form of similar experiences by other nominees.

It has been asserted that the constitutional provision allowing the president to make effective appointments for positions requiring confirmation when Congress is in recess (referred to as *ad interim* appointments) undermines the power of consent by the Commission on Appointments. However, a vigilant Commission on Appointments is not really helpless. It can terminate the appointment by disapproving it. However, not acting on the appointment until the next adjournment of Congress, which also terminates the appointment, is in effect giving tacit consent.

The impact of a compromised Commission on Appointments goes deep into the performance of important public offices and institutions. Under President Arroyo's term, constitutional bodies have been damaged

by serious breaches of independence in relation to the presidency. The Commission on Elections, the body mandated to safeguard the integrity of elections, has been racked by charges of election fraud with regard to the 2004 elections. In 2005, recorded conversations between President Arroyo and Commission on Elections Commissioner Virgilio Garcillano during the canvassing of the 2004 poll results surfaced. The conversations indicated the manipulation of votes and the process of canvassing in order to ensure the victory of Arroyo. On 27 June 2005, Arroyo appeared on national television to admit having called a Commission on Election official before and during the canvassing of the results of the 2004 elections. She apologized for her 'lapse in judgment.'

### **2.3.2 Ombudsman: The Missing Link**

The Office of the Ombudsman plays a very central role in securing the rule of law within government. It was granted by the constitution the institutional independence as well as roving powers to ensure government compliance with rules, and to secure accountability for breaches thereof. It has investigatory powers, with the attendant powers to compel testimony and production of records. It has the power to prosecute erring officials as well as to mete out administrative penalties. It has the power to compel the performance of legal duties. It has the duty to recommend policies for the elimination of government inefficiency and corruption. For performing these responsibilities, the constitution calls the Ombudsman and his deputies 'the protectors of the people.'

Former Ombudsman Simeon Marcelo (incumbent from October 2002 to November 2005) cited a disabling lack of personnel as one of the key practical problems facing the Office of the Ombudsman (Marcelo 2003). When he assumed his post in 2002, the office only had 32 full-time public prosecutors handling some 2,500 cases. The prosecutors did not undergo any training program. The result was a very low conviction rate for cases they prosecuted at the anti-graft court (Sandiganbayan).

Through reassignments and new hires, Marcelo was able to increase the number of full-time prosecutors to 47 by November 2003. He also increased the number of full-time investigators. In addition, he introduced training and development programs as well as organisational restructuring to upgrade agency capacity. These efforts yielded improvements in the rate of conviction by the Office of the Ombudsman in the succeeding years, spilling over to the present term of Ombudsman Ma. Merceditas Navarro-Gutierrez.

However, as mentioned earlier, the credibility of the present Office of the Ombudsman has been undermined by its inaction over, or mishandling of, high profile cases that could potentially implicate officials at the highest levels. This was the case, for example, with the fertilizer fund scam where two thorough Senate investigations have already been completed whereas the Ombudsman still has to complete its own investigation into the matter. This is likewise true for the Ombudsman's resolution clearing former Commission on Elections (Comelec) Chairman Benjamin Abalos, five other poll officials, and executives of the Mega Pacific eSolutions Inc. (MPEI) of any criminal and administrative liability for the PHP1.3 billion poll automation contract that was declared void by the Supreme Court. This despite the directive of the Supreme Court for the Ombudsman to determine the criminal liability of the public officials and conspiring private individuals involved in the contract. A Senate investigation had also found certain Comelec officials liable for prosecution. In addition, a report by the Ombudsman's own field investigation office recommended that all sitting Comelec officers at the time the anomalous contract was signed, a Department of Science and Technology official, and six Mega Pacific incorporators and stockholders, be criminally, administratively and civilly proceeded against in connection with the contract.

Because of these and other criticisms, an alliance of business, civil society, church and lawyer groups (the Coalition Against Corruption) issued an open letter to Ombudsman Gutierrez in December 2008 expressing

dismay over the performance of the Office of the Ombudsman under her leadership.

The negative feeling about the incumbent Ombudsman is not confined to outsiders; it also permeates within the agency. One thorny issue has been the move by Ombudsman Gutierrez to reverse the policy of decentralization by former Ombudsman Marcelo. For instance, she has centralized the authority to approve resolutions in complaints involving high ranking officials, thereby clipping the authority that the Deputy Ombudsmen used to have. She has also been at odds with the Special Prosecutor, a fixed-term position under her control and supervision. These have caused demoralization within the ranks.

Other problems, not peculiar to the incumbency of Ombudsman Gutierrez, hamper the effectiveness of the Office of the Ombudsman. For one, while there are corruption prevention programs, the work of the Office of the Ombudsman remains largely complaints-based. This has relegated to the background the more pro-active powers of the office, including its broad investigatory and policy recommending powers. Also, the Ombudsman has inordinately focused on anti-corruption work even as its jurisdiction encompasses all illegal, unjust, improper or inefficient acts or omissions committed by any public official, employee, office, or agency.

### **2.3.3 Lack of Enabling Law on Right to Information**

While the Supreme Court has upheld the enforceability of the right to information, its effective implementation has, for the past two decades, suffered from the lack of necessary substantive and procedural details that only Congress can provide. The legal gaps that legislation must address include:

1. The absence of uniform, simple, and speedy procedure for access to information. Access to information is differently and inconsistently applied across government agencies. There is no uniform manner of making and responding to requests for

information by the public. Agencies are thus able to use the absence of uniform procedures to frustrate the public's exercise of this right.

2. The specification of the coverage of the guarantee, particularly the general rule on what information may be exempted, needs legislation. The constitutional provision states that access to information shall be afforded to citizens '*subject to such limitations as may be provided by law.*' Congress has yet to fulfil this mandate. To address the gap, the Supreme Court has stepped in by enumerating a number of exceptions through jurisprudence, but the lack of exactness in the absence of legislation opens the enumeration to wide interpretation.
3. Because of these limitations, it is difficult to enforce any available administrative or penal sanctions for violations of this right. There is no compelling deterrent to the unlawful withholding of information.
4. The current judicial remedy of *mandamus* is inaccessible to the public. In a survey by the Social Weather Stations, respondents were asked what the most likely action they would take if an agency were to refuse them access to a document. Only 12.7 per cent said they would file a case in court. Almost 40 per cent would look for help in another agency, while 36.7 per cent would report the case to the media. To their credit, only 10.6 per cent of the respondents said that they would do nothing about the refusal.
5. There is no enabling law that provides the mechanics for the implementation of the compulsory duty to disclose transactions of public interest without demand as provided for by article II, section 28 of the constitution.

The result of this lack of legislation is the routine violation by government agencies of the people's right to information. The resulting overall lack of transparency in government relates directly to the persistence of rampant corruption.

There has been a long-running campaign by media and public interest organisations for the passage of a Freedom of Information Act which came within reach in the 14th Congress. On 20 January 2010, the measure passed the bicameral conference committee, the process under which the disagreeing provisions of the House version (HB 3732) and the Senate version (SB 3308) were reconciled. It has been an arduous legislative process to reach this stage, from the first reading, committee hearings, submission of committee reports for plenary debates and amendments, and approval on second and third readings in both houses of Congress.

Still, while the Freedom of Information Act has advanced significantly, it does not become law until the final act of Congress on the measure is done and it is signed by the president. If Congress and President Macapagal Arroyo will it, the measure can become law before their term ends.

The proposed Freedom of Information Act will address many of the major legal loopholes that have made the right to information in the Philippines practically inoperable. It will provide a standard and definite procedure in dealing with requests for information. It will clearly define a narrow list of exceptions, each specifying the legitimate public interest in keeping them secret. It will secure for citizens concurrent remedies in cases of denial of access to information. In addition to remedies to reverse a denial or compel disclosure, where the denial is illegal, the citizen concerned may file the appropriate criminal or administrative complaint. It will provide implementing mechanics for the public disclosure, without need of request from anyone, of important government transactions. It will introduce numerous mechanisms for the active promotion of openness in government.

If passed in its present form, the proposed Freedom of Information Act will be a robust legislation that will be instrumental in addressing one source of failure of the rule of law.

## 2.4 The Independence of the Courts and the Judiciary

### **How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?**

The judiciary effectively checks the other departments in the exercise of its power to determine the law, and to declare executive and legislative acts void if they violate the constitution. Such a power is directly implied by article VII, section 4 (2) of the 1987 constitution which speaks of 'cases involving the constitutionality of a treaty, international or executive agreement, or law' or 'presidential decrees, proclamations, orders, instructions, ordinances, and other regulations.' This has been part of the traditional power of the Supreme Court, with similar provisions found in earlier constitutions (1973 and 1935).

Before the 1987 constitution, such power of judicial review stopped where the issue departed from being a constitutional controversy and instead treaded on the question of the wisdom of the act. However, in reaction to the avoidance by the Supreme Court to rule on major controversies during the Marcos martial law years through the 'political question' doctrine, the 1987 constitution expanded the scope of judicial review to include even the exercise of discretion of the other branches of government. Judicial power now includes the authority to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. There has therefore been a shift in the boundary of the allocation of powers with this expansion of judicial power.

In addition to expanding judicial power, the 1987 constitution also introduced new mechanisms to better secure the independence of the judiciary.

First, under the 1935 constitution, members of the Supreme Court and all judges of inferior courts were appointed by the president with the consent of the Commission on Appointments. This requirement of

consent by the Commission on Appointments was removed in the 1973 constitution. The 1987 constitution returned a check on this appointment power by creating a Judicial and Bar Council (JBC). The Council is composed of the Chief Justice as ex officio chairman, the Secretary of Justice, and a representative of the Congress as ex officio members, a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court, and a representative of the private sector. The regular members of the Council are appointed by the president for a term of four years with the consent of the Commission on Appointments. The president appoints members of the Supreme Court and judges of the lower courts from a list of at least three nominees prepared by the JBC for each vacancy. In addition to the nomination for appointments to the judiciary, the JBC also provides a list of nominees for appointments to the position of Ombudsman and of his deputies. The JBC comes under the supervision of the Supreme Court itself, which may assign it functions and duties aside from its principal function of recommending appointees.

Second, in both the 1935 and the 1973 constitutions, while the Supreme Court had the power to promulgate rules concerning pleading, practice and procedure in all courts; the admission to the practice of law; and the integration of the bar, such rules may be repealed, altered or supplemented by Congress. The 1987 constitution not only removed the authority of Congress to repeal, alter or supplement such rules, it also added to the Supreme Court's authority the promulgation of rules concerning the protection and enforcement of constitutional rights and of legal assistance to the underprivileged.

Finally, the 1987 constitution provided for the fiscal autonomy of the judiciary. Appropriations for the judiciary may not be reduced by the legislature below the amount appropriated the previous year and, after approval, shall be automatically and regularly released.

#### **2.4.1 Overturning Unconstitutional Actions**

Overall, the Supreme Court has provided a working mechanism for questioning the validity of actions by the other branches of government. Particularly with respect to the administration of President Gloria Macapagal Arroyo, the Supreme Court has struck down key presidential issuances and executive pronouncements containing provisions that had highly doubtful constitutional or legal basis. The Supreme Court has passed upon some of these issuances and declared them partly or entirely unconstitutional or illegal.

Sometime in September 2005 Executive Secretary Eduardo Ermita announced the adoption of the 'calibrated pre-emptive response' policy in lieu of the then maximum tolerance policy in the handling of public assemblies. The Supreme Court (2006b) ruled the policy as 'having no place in our legal firmament' and as 'a darkness that shrouds freedom', adding that it 'merely confuses our people and is used by some police agents to justify abuses.'

On 28 September 2005 President Macapagal Arroyo issued Executive Order 464 providing guidelines for the appearance of executive officials in legislative inquiries. The Supreme Court (2006a) held that the order was invalid insofar as it severely frustrated the power of inquiry of Congress by allowing officials to claim executive privilege without stating any specific basis for such claim, and for allowing such officials to exercise a privilege that was reserved only for the president without the president's explicit authority.

On 24 February 2006 President Macapagal Arroyo issued Proclamation 1017 declaring a state of national emergency. Under the proclamation, President Arroyo commanded the Armed Forces of the Philippines 'to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well any act of insurrection or rebellion and to enforce obedience to all the laws and to all decrees, orders and regulations' promulgated by her personally or upon her direction, and declared a state of national emergency.

While the Supreme Court (2006c) sustained the proclamation with respect to the president's exercise of her calling-out power for the armed forces to assist her in preventing or suppressing lawless violence, it declared the proclamation unconstitutional insofar as: a) it commanded the enforcement of all decrees, orders and regulations promulgated by her personally or upon her direction; and b) it presumed presidential authority to exercise the emergency powers of taking over or directing the operation of any privately-owned public utility or business affected with public interest. On the first point the Supreme Court said that the clause, which was lifted from President Marcos' Proclamation 1081 declaring a state of martial law, was unconstitutional for granting President Macapagal Arroyo the authority to promulgate decrees, which was a legislative power peculiarly vested with the legislature. On the second point, the Supreme Court emphasized that, under the constitution, the exercise of emergency powers required a delegation from Congress.

#### **2.4.2 Weakening Other Checks**

Still there have been Supreme Court decisions that have worked to weaken existing checks to presidential powers. One of these was its decision involving impeachment, arguably with the intent to protect one of its own. On 2 June 2003 former President Joseph Estrada filed an impeachment complaint against Chief Justice Hilario Davide and seven associate justices, a complaint that was endorsed by some members of Congress. The House Committee on Justice found the complaint sufficient in form but on 22 October 2003 voted to dismiss it for being insufficient in substance. Before the committee report was sent to the plenary, a second impeachment complaint was filed with the secretary general by Representatives Gilberto Teodoro and Felix Fuentebella, accompanied by a Resolution of Endorsement/Impeachment signed by at least one-third of all members of the House of Representatives. Under the constitution, such a filing should have constituted the articles of impeachment and trial by the Senate should have forthwith proceeded.

A number of petitions were filed with the Supreme Court questioning the validity of the second impeachment complaint for violating the constitution. At issue was the interpretation of the constitutional provision that no impeachment proceeding could be made against the same official more than once within a period of one year. The House of Representatives, through Speaker Jose De Venecia and by way of special appearance, submitted a manifestation asserting that the Court had no jurisdiction to hear, much less prohibit or enjoin, the House of Representatives, which is an independent and co-equal branch of government, from the performance of its duty to initiate impeachment cases. Senator Aquilino Pimentel, Jr., in his own behalf, filed a comment questioning the jurisdiction of the Court over issues affecting the impeachment proceedings. The Senate, through its president, Franklin M. Drilon, filed a manifestation stating that insofar as it was concerned, the petitions were premature.

Still the Supreme Court (2003) proceeded to rule on the matter. It struck down as unconstitutional sections 16 and 17 of the rules of procedure in impeachment proceedings. The said sections embody the interpretation of Congress of when impeachment proceedings are deemed initiated, which then bars the initiation of another impeachment within the same year. Under section 16, an impeachment proceeding is deemed initiated under the following instances:

- (1) In cases where a member of the House of Representative files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a member through a resolution of endorsement against an impeachable officer, impeachment proceedings against such official are deemed initiated on the day the Committee on Justice finds that the verified complaint and/or resolution against such official, as the case may be, is sufficient in substance.
- (2) If the Committee on Justice finds the complaint not sufficient in substance, it is deemed initiated on the

date the house votes to overturn or affirm the finding of the committee.

- (3) In cases where a verified complaint or a resolution of impeachment is filed or endorsed, as the case may be, by at least one-third of the members, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the secretary general.

Under the above rules, no impeachment complaint had yet been initiated that would have barred a second complaint. But the Supreme Court substituted its own interpretation of when an impeachment proceeding is initiated: it is when a verified complaint is filed and referred to the Committee on Justice for action. The effect was to weaken the power of Congress to initiate impeachments by allowing the filing of weak complaints with the intent of providing impeachable officials, notably the president, with protection from serious impeachment complaints through the one-year ban. This was the case with the filing by lawyers Oliver Lozano and Ruel Pulido of weak complaints against President Macapagal Arroyo that effectively protected her for at least a year from good-faith impeachment complaints.

Another Supreme Court ruling that has weakened an existing check is the case of *Neri vs. the Senate* (Supreme Court 2008). The Court ruled as valid Secretary Romulo Neri's invoking of executive privilege as the basis for his refusal to answer three questions by senators relating to his conversations with President Arroyo on the controversial National Broadband Network (NBN) project. The three questions were: a) whether the president followed up the NBN project; b) whether Neri was ordered to prioritize the bid of ZTE Corporation; and c) whether the president told Neri to go ahead and approve the project even after Neri had related that an attempt to bribe him had been made.

In arriving at its decision, the Court examined whether the answers sought were covered by presidential communications privilege and whether the privilege was

properly invoked. In answering the first question, the Court developed the elements of presidential communications privilege based on its reading of American cases. The elements were as follows: a) the protected communication must relate to a 'quintessential and non-delegable presidential power'; b) the communication must be authored or solicited and received by a close advisor of the president or the president himself, with the advisor being in operational proximity with the president; and c) the presidential communications privilege is a qualified privilege that may be overcome by a showing of adequate need, such that the information likely contains important evidence that is unavailable elsewhere.

Looking closer at the ruling, we raise issue with the Court's finding that the record was bereft of any categorical explanation from the respondent committees to show a compelling or critical need to acquire answers to their three questions with respect to the enactment of a law, and that the questions veered more toward the exercise of oversight function than on legislation. On the contrary, the Senate on record pleaded the materiality and pertinence of Neri's testimony to legislation. In its comment, it enumerated the bills that had been filed and to which the inquiry was related. These included: Senate Bill 1793 which sought to amend Republic Act No. 9184 (2003) or the procurement law; Senate Bill 1794 which sought to amend Republic Act No. 8182 (1996) or the Official Development Assistance Act; and Senate Bill No. 1317 entitled 'An Act Mandating the Concurrence to International Agreements and Executive Agreements'. On the materiality and importance of the testimony, the Senate emphasized that the refusal of Neri to answer effectively denies the Senate access to information that may be material to the crafting of remedial legislation to government procurement procedures. Also on record were the answers of the Senate counsel to clarificatory questions propounded by Chief Justice Puno on the importance of the questions to legislation.

At the very least, the Court should have passed upon and evaluated these categorical explanations. Such evaluation

of the Senate's showing of need was precisely what Chief Justice Puno did in his dissenting opinion on the ruling. He arrived at the conclusion that the questions were pertinent to pending legislation, that there was no effective substitute for the information sought, and that Neri's refusal to answer the three questions would seriously impair the Senate's function of crafting specific legislation pertaining to procurement and concurring in executive agreements based on facts and not speculation. In contrast, the majority of the justices turned a blind eye to the Senate's assertion of need by making the sweeping statement that 'the record is bereft of any categorical explanation from respondent Committees to show a compelling or critical need for the answers to the three (3) questions in the enactment of a law' (Supreme Court 2008).

By brushing aside, without discussion, the Senate's pleading of need for the information in aid of legislation, the Supreme Court decision in *Neri vs. Senate* of upholding executive privilege was able to stand on the mere presumption of privilege with respect to the subject of presidential communications. The Court did not then have to proceed to a proper balancing of the president's interest in the expectation of confidentiality of her conversations and correspondence, on the one hand, and the legislature's interest for the requisite information to aid wise and effective legislation, on the other.

While the Court stated that the presidential communications privilege is a qualified privilege that may be overcome by the demonstration of adequate need, the way the Court ruled in this case, it may have well declared that presidential communications privilege is absolute and conclusive upon Congress as well as upon the courts.

### **2.4.3 Strengthening the Judicial and Bar Council**

The process of appointing judges to the Supreme Court and the lower courts is critical to the independence of the judiciary. As mentioned earlier, the 1987 constitution introduced a major innovation to the process of appointing judges. Instead of having complete freedom

to appoint anyone to the judiciary, subject merely to confirmation by the Commission on Appointments, the president's choice is now restricted to the list of nominees prepared by the Judicial and Bar Council. The composition of the Judicial and Bar Council is also an important innovation. All three branches of government are represented in the Council.

Still, for all the checks to ensure non-dominance by any branch in the appointing process, the Council is known to be very much politicized. Candidates for vacant positions in the judiciary and the Office of the Ombudsman vie for the endorsement of influential politicians, with those close to the president enjoying a premium. Indeed, with a compromised Commission on Appointments and House of Representatives, the balance of power over the composition of the Council tilts in favour of the president.

A development under the Arroyo administration has increased concern over the performance of the Judicial and Bar Council. Because of the length of stay of President Macapagal Arroyo in office and the timing of retirement of judges of the Supreme Court, the president stands to have appointed all members of the Supreme Court before she steps down in 2010. This has triggered active monitoring by public interest groups of the nomination process in the Council. Among these watch dog groups are *Bantay Korte Suprema* led by Senator Francis Pangilinan, former Senator Jovito Salonga, and University of the Philippines College of Law Dean Marvic Leonen. There is also the Supreme Court Appointments Watch (SCAW) convened by the Lawyers League for Liberty (Libertas), Alternative Law Groups, Transparency and Accountability Network, Philippine Association of Law Schools and Newsbreak Online.

The vigilant monitoring by these groups could result in long-lasting reforms for a better-functioning Judicial and Bar Council. For instance, among the demands that SCAW has been pushing are: a) stopping the practice of reappointing regular members of the Council; b) limiting the number of nominees for each vacant position to three; c) implementing a more transparent evaluation of the

qualifications of competence, integrity, probity and independence of the applicants; d) an open voting policy; and e), the Council rejecting any lists returned by the president. Already the SCAW members have won on some of their demands. An open voting policy has already been adopted by the Council. Also, the Council stood its ground when the president returned its list of nominees for a vacant position in the Supreme Court, forcing the president to appoint from the Council's original list of nominees.

On the other hand, the matter of appointing members of the judiciary has come under another public controversy lately. At issue are two constitutional provisions—one providing that any vacancy in the Supreme Court shall be filled within 90 days from its occurrence, and another prohibiting the president from making appointments within two months immediately before upcoming presidential elections and until the end of his or her term of office. In its decision, the Supreme Court held that the prohibition applies only to executive appointments, and does not extend to appointments to the judiciary (Supreme Court 2010).

The issue has divided the legal community, with those critical of the ruling fearing that the decision undermines a constitutional check on the already extensive and often abused appointing power of the president. The case is yet to be resolved with finality as it remains under a motion for reconsideration. If the Supreme Court does not reconsider its ruling, the independence and transparency of the Judicial and Bar Council all the more becomes critical. It is also a question how the ruling affects other appointments outside the executive, such as those in the independent constitutional bodies.

## 2.5 Recommendations

- As the country transitions into a new Congress, riding on the expectations generated by the first credible elections in years, the House of Representatives must seize the opportunity to regain

its independence and exercise its legislative and checking powers with transparency and responsiveness to the public interest. It must reinstate the full privilege of free speech and debate inside the chamber by not subjecting its exercise to internal discipline. It must recover the efficacy of impeachment by not allowing members to protect impeachable officials with weak impeachment complaints. It must regain the integrity of the Commission on Appointments in the confirmation process. This can only be done by electing as Speaker of the House a person not steeped in traditional politics and committed to reform the House of Representatives and rebuild the institution.

- The victory of Senator Noynoy Aquino in the recent elections on a good governance platform should be an opportunity to reverse the practice of abuse of powers by the executive. A good starting point is the exercise of the appointing powers of the president—there should be strict adherence to the eligibility requirements in the career service positions and greater transparency in the selection of appointees for the non-career or political positions. The new government should stop issuing constitutionally tenuous executive orders.
- The choice for the next Ombudsman will be critical in regaining the independence and effectiveness of this powerful office.
- Despite reaching the final stages of the legislative process, the passage of the Freedom of Information Act was blocked by the leadership of the House of Representatives. The resulting public outrage over the unfair manner by which the measure was blocked, however, has heightened the clamour for the passage of the measure in the Fifteenth Congress. The Congress and the incoming president must respond positively by ensuring the quick passage of the Freedom of Information Act.
- The independence and transparency of the Judicial and Bar Council must be secured. Civil society monitoring of its performance must be sustained.

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## Access to Justice

# 3

### 3.1 Laws on Due Process and Equal Protection

**How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration? Are there laws guaranteeing equal treatment of citizens in the justice system?**

Equality is a revered principle in the 1987 constitution. 'Equality' occupies a prominent position in the preamble as one of the core values of the desired independent and democratic government. The very first provision under the constitution's article III, Bill of Rights, is a categorical statement that '(n)o person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws'. This provision combines two important rights—the right to due process and the right to equal protection.

The first right (covered by the due process clause) is the comprehensive protection of life, liberty and property that is guaranteed to all persons within the country's territory without regard to any differences as to race, colour or nationality. Even foreigners and juridical persons such as corporations are within the ambit of the protection. The second right (covered by the equal protection clause) has a similar universal application and is usually understood as the equality of all persons before the law and the legal system, that is, regardless of personal, social, economic, cultural and political differences. While the guarantee of

equal protection allows for reasonable classification based on substantial distinctions, the due process clause is a general shield against discrimination. Moreover, the equal protection clause is seen as a constitutional mandate for the government to take positive measures toward eradicating inequalities and achieving a reasonable measure of equality in certain areas. Hence, the constitution, in article XIII, section 1, mandates the 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'.

Pushing the concept of equality further, article II, section 14 mandates the state to ensure the fundamental equality before the law of women and men. This provision is significant as a constitutionally enshrined affirmation of gender equality.

### **3.2 Laws Providing Protection for Vulnerable Groups**

#### **Are there laws providing special protection for vulnerable groups?**

Throughout the constitution, there are strong bases not only for equal protection of citizens in general but also for special protection for vulnerable groups. Article II, Declaration of Principles and State Policies, contains a provision that seeks to 'promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty' and one that ensures the inclusion of 'social justice in all phases of national development'. Related to these provisions are the special declarations concerning the rights of workers and indigenous peoples, and the promotion of agrarian reform.

The constitution devotes the entire article XIII to Social Justice and Human Rights. It contains provisions elaborating on article II's declarations on labour and

agrarian reform, and special provisions protecting the rights of fisher folk, the urban poor, disabled persons, and working women.

The constitutional provisions on the identified vulnerable sectors are complemented by legislation applicable to these special groups. Some notable laws are cited below.

#### **3.2.1 Labour**

The Labor Code, Presidential Decree No. 442 issued by President Marcos in 1974, is the primary legislation that protects the rights of workers. While the law predates the 1987 constitution, subsequent amendments have granted more rights to workers. The law provides for the minimum terms, conditions and benefits of employment such as wages, hours of work, and other monetary and welfare benefits. The law also governs the relationship between individual workers and labour organisations, on the one hand, and employers, on the other, with regard to collective bargaining, strikes and concerted activities, and termination of employment. In 2007, Republic Act No. 9481 was passed strengthening the right to self-organisation of workers by making it easier to form labour unions and start the process of collective bargaining.

With millions of Filipinos working abroad, the Congress passed a special law governing migrant workers in 1997. The Migrant Workers and Overseas Filipino Act, Republic Act No. 8042, regulates the recruitment and placement of workers for overseas employment, and provides for the rights of migrant workers and the remedies for the enforcement of such rights.

#### **3.2.2 Farmers**

Pursuant to the constitutional mandate on agrarian reform, the Congress passed the Comprehensive Agrarian Reform Law, Republic Act No. 6657, in 1988. The agrarian reform program sought to distribute wealth and income in a more equitable manner, to promote economic growth that benefits everyone, and to raise productivity as the foundation for a improving the general welfare.

### 3.2.3 Fisherfolk

The primary law governing fisherfolk is the Fisheries Code, or Republic Act No. 8550, which was passed by the Congress in 1998. The law limits access to the country's aquatic and fishery resources to its citizens, protects the rights of fisherfolk, especially the right of municipal fisherfolk to preferential use of municipal fishing waters and regulates commercial fishing.

### 3.2.4 Indigenous Peoples

The Indigenous Peoples Rights Act of 1997, Republic Act No. 8371, declares that it is state policy to recognize and promote all rights of indigenous cultural communities and indigenous peoples within the framework of the constitution. The law recognizes the rights of the indigenous peoples to their ancestral domains, and their rights to self-governance and empowerment, protection of cultural integrity, and promotion of social justice and human rights. The law outlines the procedure for the delineation and recognition of ancestral domains and creates the National Commission on Indigenous Peoples as the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the indigenous peoples.

### 3.2.5 Urban Poor

In 1992 Congress passed the Urban Development and Housing Act, Republic Act No. 7279. The law commits the state to a program that provides housing to the poor and homeless citizens in urban areas and in resettlement areas. The law provides, among others, mechanisms for socialized housing, resettlement of people living in dangerous areas such as *esteros* (estuaries), railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places. It criminalizes professional squatting and squatting syndicates. A community mortgage program assists legally organized associations of the poor to purchase and develop land under the concept of community ownership.

### 3.2.6 Women

A number of significant legislation concerning women followed the ratification of the 1987 constitution. One of the first laws that gave effect to the constitutional provision on fundamental equality before the law of women and men is Republic Act No. 6725, which was passed in 1989, amending article 135 of the Labor Code. The amendment introduced by the law made it explicitly unlawful for employers to discriminate against women in the workplace due solely to their gender. Under the amended provision of the Labor Code, the following acts were declared discriminatory:

- (a) payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and
- (b) favouring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

In 1988 the Family Code, Executive Order No. 209, became effective and amended certain provisions of the New Civil Code that pertain to the rights of women. The Family Code introduced provisions that sought to recognize the equal rights of husband and wife in marital life as regards the administration of the conjugal property, the selection of the family residence, and the management of household affairs, among others. The Family Code also provided for the remedy of legal separation through court action on specified grounds. More significantly, the law introduced a new provision allowing the declaration of a marriage as void if one of the spouses is found to be psychologically incapacitated to perform essential marital obligations.

After the Family Code and the Labor Code amendment, the Congress enacted other significant laws on women's rights, namely:

- (a) Republic Act No. 7192 (Women in Nation-Building Act, 1992), which recognized the 'equality in capacity

to act' and declared that women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances. The law provides that in all contractual situations where married men have the capacity to act, married women shall have equal rights.

- (b) Republic Act No. 7877 (Anti-Sexual Harassment Act, 1995) which defines and criminalizes sexual harassment in the employment, education or training environment.
- (c) Republic Act No. 8353 (Anti-Rape Law, 1997) which expanded the previously limited definition of rape under the Revised Penal Code, and changed its category from being a 'crime against chastity' to a 'crime against persons'.
- (d) Republic Act No. 9208 (Anti-Trafficking in Persons Act, 2003) which defines and penalizes the offence of 'trafficking in persons'. The law mandates confidentiality, and directs law enforcement officers, prosecutors, judges, court personnel and medical practitioners, as well as parties to the case, to recognize the right to privacy of the trafficked person and the accused.
- (e) Republic Act No. 9262 ('Anti-Violence Against Women and their Children Act', 2004) which criminalizes violence against women and their children as a special offence defined as 'an act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty'. The law provides for mechanisms for the issuance of protection orders by the courts or the barangay officials (to a limited extent) in order to prevent further acts of violence against a woman or her child.

The most recent law enacted that promotes and operationalizes women's rights is Republic Act No. 9710 or the Magna Carta of Women. Enacted into law last August 2009, it expands the recognition of women's rights inside the home, in the workplace and in other fields of society.

The Magna Carta requires the attainment of a '50-50 gender balance' in third-level government positions to be equally shared by men and women. At the local level, the law mandates that members of local development councils should be at least 40 per cent women. Incentives are also given toward the establishment and strengthening of political parties with a strong agenda on women.

The Magna Carta also provides security for women in armed conflict and restrains government from forcibly removing them from their land during periods of such conflict. This is particularly true for indigenous or *Lumad* women who require protection when caught in the crossfire and are forced to abandon their lands.

### 3.2.7 Children

Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, states that it is the policy of the state to 'protect the best interests of the child through measures that will ensure the observance of international standards of child protection, especially those to which the Philippines is a party. Proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely. The participation of children in the program and policy formulation and implementation related to juvenile justice and welfare shall be ensured by the concerned government agency.

The law provides for mechanisms for the implementation of a restorative juvenile justice and welfare system. It 'recognizes the right of every child alleged as, accused of, adjudged, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and desirability of promoting his/

her reintegration'. Thus, it is declared as a policy that 'whenever appropriate and desirable, measures shall be adopted for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected'. The law likewise declares that it is state policy 'to ensure that children are dealt with in a manner appropriate to their well-being by providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programs and other alternatives to institutional care'.

The Juvenile Justice and Welfare Act enumerates the rights of children in conflict with the law, and increases the minimum age of criminal responsibility to 15 years from the previous nine. Children below 18 years of age are also exempt unless they acted with what the law calls 'discernment'.

The above discussion shows that there are a number of concrete substantive policies, both constitutional and statutory, guaranteeing equal protection and due process to all citizens (and even foreigners), and providing special protection for certain groups. These substantive policies are complemented by procedural rules providing for remedies for violations of rights. This will be tackled next.

The number of laws enacted for vulnerable groups is apparently regarded by the public as an improvement in accessing justice. This is according to the survey results cited at the latter part of this study. However, such perception is only noticeable in the National Capital Region. Furthermore, a dissonance is perceived between the laws and their implementation. On that score, the focus group discussion participants for this study observed that education on these laws is necessary to effectively improve the system of justice in the country over the next five years.

During the focus group discussions, it was also pointed out that certain groups seek access to justice by means other than mainstream channels. Lucy Rico, a member of a *Lumad* (indigenous) community in Mindanao, explained that

mainstream law enforcers know little of their customary laws. Conflicts within the community are resolved through the mediation of a council of elders with the whole community participating to exhaust all remedies to settle conflicts. The families involved talk over their differences for two to three days or until they can agree on a resolution. Through mediation and consensus, a resolution is arrived at that is acceptable to the opposing parties. There is no need for payment of money for the facilitation of the resolution since peace is its own reward. Ms. Rico said that the cost of bringing any dispute to mainstream legal channels is huge both in terms of money and time.

On the implementation of the Indigenous Peoples Rights Act, Ms. Rico observed that certain sections of the law facilitate the establishment of mining operations within ancestral domains. She underscored the contradiction between government's policy of protecting IP communities and the current drive to revitalize mineral resources extraction including those in ancestral domain lands.

Another participant, Sultan Maguid Maruhom, explained the dynamics between mainstream legal channels and Muslim customary law. He observed a bias against Muslims exhibited by the courts whenever the opposing party is a Christian or a wealthy person. He also lamented the failure of the justice system to protect people against the *rido*, the violent feuds between warring clans. Because of *rido*, many Muslims are forced to flee their homes and leave families behind.

### 3.3 Laws and Rules Providing Legal Remedies to All Citizens

**Are there laws and rules providing legal remedies and procedures equally applicable to all citizens? Are there laws that discriminate, directly or indirectly, against vulnerable groups?**

Section 8 of the Universal Declaration of Human Rights states: 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the

fundamental rights granted him by the constitution or by law'. This declaration has a parallel provision in the 1987 constitution. Article III, section 11 says that free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. Although the Philippine version differs from the Universal Declaration in the sense that the constitutional provision speaks of free access instead of effective remedy, and focuses on poverty, the provision remains a good foundation for the right to seek remedy through judicial and other available venues for the enforcement or vindication of rights.

Article VIII, section 5 of the constitution grants the Supreme Court the power to:

Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Pursuant to this power, the Supreme Court has promulgated the rules of court that are applicable to judicial proceedings for all types of cases. There are different sets of rules that apply to civil cases and to criminal cases. Rules of procedure of quasi-judicial and administrative bodies are generally patterned after the rules of court.

There are no specific rules that discriminate outright against a particular group of litigants seeking redress. On the contrary, there are laws and rules that seek to give special treatment to poor litigants. Republic Act No. 6033 (1969) requires all courts to expedite the hearing of criminal cases involving indigents and their disposition

within a period of two weeks. Republic Act No. 6034 (1969) allows poor litigants to ask the court for allowances for to travel to hearings as well as to cover meal and lodging expenses should hearings be extended the whole day and for several days at a stretch. In addition, stenographers' notes of hearings are required to be provided for free to poor litigants by Republic Act No. 6035 (1969). Furthermore, the rules of court (rule 141) exempt the poor from having to pay legal fees.

The Supreme Court's Administrative Matter No. 08-8-7-SC which took effect on 1 October 2008 (Supreme Court 2008) provides for the rules of procedure on small claims cases. It was promulgated as a 'significant step to increase access to justice'. The Supreme Court claims that the designation of the small claims courts has 'shortened the distance between [the Court's] dream of justice for the poor and the cruel reality on the ground'. With 70 per cent of the caseloads of the first-level courts in Metro Manila consisting of small claims cases in which many of the litigants are poor, the rule now provides an inexpensive and expeditious means to settle actions before first-level courts (excluding Shari'ah Circuit Courts) for money claims not exceeding PhP100,000.00. The Court claims that this is actually the second step under its Increasing Access to Justice by the Poor Program to widen the avenues to justice for the poor.

### 3.4 Access to the Justice System

**Is the justice system in general accessible to all citizens, and especially to vulnerable groups needing protection?**

Before discussing the question of whether the justice system is accessible to all citizens, and especially to vulnerable groups, it is essential to make a quick review of the Supreme Court's Action Program for Judicial Reform (APJR) and other related documents which endeavoured to look into the issue of access to justice. The Supreme Court's assessment of the issue is particularly significant as a self-evaluation.

### **3.4.1 Action Program for Judicial Reform**

The APJR, a comprehensive package of reform projects and activities, was initially presented in May 2001 as a four-pronged program of reforms on: (1) judicial systems and procedures; (2) institutions development; (3) human resource development; and (4) reform support systems. The reform projects and activities were 'aimed at enhancing judicial conditions and performance for the improved delivery of judicial services' (Supreme Court 2001a: i). The Supreme Court issued a supplement in August 2001 to address two important issues: (1) institutional integrity development and (2) access to justice by the poor (Supreme Court 2001b: ii).

The APJR identified the following major policies and strategies under the access to justice component:

- Improvement in the overall institutional capacity of the Judiciary for improved efficiency
- Reforms in judicial systems and procedures
- Improving public information for the poor
- Initiatives that encourage reforms in judicial systems components outside of the Judiciary – studies in substantive law, strengthening of the Public Attorney's Office (PAO), strengthening of alternative dispute resolution (ADR) mechanisms, strengthening of the Barangay Justice System
- Legal and judicial education
- Assessment of the impact of judicial reform program on access to justice by the poor.

The APJR identified the factors that hinder access to quality judicial services by the basic sectors (Supreme Court 2001b: 2-2 – 2-4). They are: delays in judicial proceedings, erroneous decisions rendered by lower courts, prohibitive costs of litigation and inadequacy and lack of information about the judicial system. The APJR also tried to explain the reason for why these factors exist:

Delays can also occur because the poor do not have adequate resources to hire lawyers. This condition

protracts the litigation process as a handful of government defenders attempt to service the swelling ranks of the poor requiring their assistance. While there are several agencies in the national government providing legal services to the poor, there is a need to consolidate or closely coordinate their activities to avoid duplication and maximize the benefits of coordination and complementation.

It must be emphasized, however, that the costs of delay to the poor are many and profound. They translate to prolonged unemployment and income foregone due to detention, and to further erosion of the social and economic condition of the accused or aggrieved party and his family.

Decisions rendered by the lower courts are not always accurate, and, therefore, not always just and fair. Upon review on appeal, the Supreme Court has had the opportunity to correct inadequacies in lower court decisions. By this time, however, a poor party may have already suffered from the penalties imposed by the lower courts.

The costs of litigation to the poor are many. Litigation involves the hiring of a competent lawyer who must be paid for every hearing attended. The poor, on the other hand, will be deprived of income for each day of hearing. And poor persons accused of crimes lose income during their detention.

The state of the basic sectors is aggravated by their ignorance of the law. This might be considered as a mixed result of their deficient appreciation of the law, their educational status which is oftentimes deplorable, and the inability of the judicial system, agencies of the government and even non-governmental organisations to provide information and improve the basic sectors' levels of understanding. (Supreme Court 2001b: 2-2 – 2-4)

The observations in the APJR on the issue of access to justice echoed the findings contained in an earlier document entitled *Blueprint of Action for the Judiciary*.

### **3.4.2 Blueprint of Action for the Judiciary**

In the Blueprint of Action for the Judiciary (Supreme Court no date), a document that is considered as the immediate predecessor of the APJR, the Supreme Court explained the problem of access to justice as follows:

*Basic Sector Access.* The courts are perceived to be inaccessible especially by the marginalized sectors. The inaccessibility covers both the judicial processes and the physical layout of the Halls of Justice. In general, the marginalized groups have the least awareness and understanding of laws. As opined by some human rights lawyers, perhaps this can be attributed to the nature of many of our laws which are not only archaic but alien in that they are loaded with values and culture alien to Filipinos. Another constraint in communicating with the basic sectors is the issue of language. The *common tao* does not fully understand the law and court procedures because the latter are written in English and proceedings are in the same language. Most hearings are conducted in a language in which the litigants are not familiar. Hence, questions and answers had to be translated. Litigants have no recourse but to trust what their lawyers say in court even if the latter are unable to adequately explain what is happening.

*Litigation Cost.* The apparent rising cost of litigation has reportedly prevented some individuals from seeking redress from the courts, and has dissuaded them from pursuing judicial action, or even worse has constrained them to seek alternative ways of obtaining justice. For the marginalized sector of the populace, filing a case in court or being dragged into a court battle is not only time consuming but also a heavy burden on their meagre budget. Any expense beyond their regular family budgets will be a serious blow to their present state. Their physical presence in court hearings deprives them

of the time to work and earn a living. (Supreme Court no date)

The Blueprint of Action highlighted two significant factors that adversely affect the poor's access to justice: (1) the substance of laws that are 'loaded' with foreign values and culture, and (2) the use of a foreign language both in the written law and in court proceedings. This finding is reinforced by the results of earlier surveys that revealed that access to justice is impinged upon by several considerations including resource constraints, for example, in terms of costs incurred on the part of the litigant and the over-all cost imposed on the judicial system in administering justice, and technicalities including the language employed by the system and its labyrinthine rules. In the 2009 survey, high cost still ranks as the primary hindrance to accessing justice across geographic groupings, income classes and degree of education attained. This is followed by the difficulty in getting the services of a lawyer. Even with the annual increase in the number of lawyers, the perception persists that there is great difficulty in availing of the services of one. This may indicate a problem of meeting the demand for legal services even in the face of a seemingly abundant supply of attorneys.

Comparing the results of the survey conducted in 2007 and the more recent 2009 survey, the perception among respondents that it is difficult to fight for their rights in court has increased. This result was consistent across the board among all respondents regardless of geographic origin and income. Interestingly, those who said that they would have a hard time fighting for their rights were those who claimed very little knowledge about the justice system.

Attorney Arellano, one of the participants in the Davao focus group, explained the resource requirements in developing a case. In the case of a poor farmer being killed, evidence must be gathered and leads must be followed. The government, he admitted, lacked the necessary resources to conduct these activities. For example, Davao Oriental in Region 11 registers the second highest number

of criminal cases but it has only one prosecutor and one public attorney to handle all of them. To address the situation, Arellano proposed the establishment of an institute composed of the government, the private sector and the different law schools that will handle case buildup for litigants who lack resources.

One innovation that the Supreme Court is currently implementing is the Justice on Wheels program. This involves putting judges and court staff in special buses that roam the provinces to hear and resolve cases. Judge Paredes from Cebu said that there were 150 cases resolved through the program in his province alone. However, some judges see the program as mere *palabas*, that is, largely for show. The original concept of justice on wheels was for the buses to penetrate the remote areas of the provinces, go to areas where the dockets are severely clogged, or visit those places where the litigants and their witnesses find it difficult to travel due to the distance between their residences and the courts or due to threats to their lives. This concept, according to Judge Paredes, was not followed. Each bus costs around PHP8 million plus the expense for security, repairs and the driver, money that could have been used to appoint judges to empty *salas* (courts) and to provide better facilities in detention centres.

### **3.4.3 Diagnostic Report: Strengthening the Other Pillars of Justice through Reforms in the Department of Justice**

In the Supreme Court's June 2003 report, *Strengthening the Other Pillars of Justice through Reforms in the Department of Justice*, two major constraints to citizens' access to justice were identified. These were the high costs of litigation and legal services and the lack of adequate knowledge about the law and institutions of the justice system (Supreme Court 2004a: 173).

The report devoted a significant portion to an assessment of the Department of Justice's legal assistance program through the Public Attorney's Office (PAO). The PAO's task is described in the report as enhancing access to legal services and knowledge of indigent persons who have no

means of availing themselves of the services of private law practitioners. According to this report, the PAO has a clientele base equivalent to 34.9 per cent of the country's population, consisting of those who are considered living below the poverty threshold (Supreme Court 2004a: 173).

Interestingly, the report highlights the role of PAO in all five pillars of the criminal justice system as follows:

PAO participates in the law enforcement pillar when it represents the suspect or respondent during custodial investigation, and assists the suspect or respondent in preparing and filing legal pleadings. It has a role in the prosecution pillar in representing the suspect or respondent during inquest and preliminary investigation, and in assisting the suspect or respondent in preparing/filing petitions and in effecting compromise agreements.

Under the judiciary pillar, the PAO acts as defence counsel for indigent litigants at all stages of case trial, sentencing and appeal. Under the corrections pillar, PAO conducts visits to jails and prisons to determine inmates' legal concerns, provides advice to inmates regarding PAO services and opportunities for early release through probation, parole and other schemes, and assists in preparing legal pleadings. In the community pillar, PAO provides/disseminates legal information through campaigns and free legal counselling, and establishes linkages with non-governmental organizations and other government agencies on provision of legal services to the poor. PAO's other services come in the form of notarial services and representation of clients in other quasi-judicial bodies. (Supreme Court 2004a: 174)

Despite the PAO's major role as a leading institution in the effort to enhance the poor's access to justice especially in the criminal justice system, public information about the PAO and its services is still inadequate. The report states that:

Many qualified indigents do not avail of PAO services because they do not know that the PAO exists. Other

clients who hear of PAO programs for indigents are not, however, aware of the means through which the agency services could be provided. Some clients seek PAO's assistance already at a late stage; case handling would have been less taxing and complicated if issues have been brought to PAO's attention at a much earlier time. More active and comprehensive involvement by PAO in community activities will help in this advocacy effort, which is now limited to serving as guests in radio and television programs and attending community and barangay assemblies. (Supreme Court 2004a: 186-187)

In summary, the diagnostic report makes the interesting finding that the PAO provides essential services to the poor but has not maximized its major role in enhancing the poor's access to justice. The reason seems to be simply because the public has very limited knowledge of the office and its services.

#### **3.4.4 2003 Assessment of the Public Attorney's Office**

In another Supreme Court report specifically assessing the institutional capacity of the PAO to provide legal assistance to the poor, the conclusion was rather ambivalent. The report said:

The findings indicate that the PAO, perhaps contrary to common perception, is able to provide adequate and affordable access to justice for its poor clients despite immense resource constraints. However, the PAO appears to have reached its peak capacity, with the limited budget constraining it from further expanding its services. With the demand for its services expected to rise even more in the coming years, the sustainability of its operations is severely challenged. x x x (Supreme Court 2004b: 31-32)

Further emphasizing the institutional limitations of the PAO, the report also pointed out a major gap in the agency's programming.

Access to justice also evokes questions on the standard of justice being provided by the PAO. Does an

aggrieved indigent seek the services of the PAO as a complainant or an accused? Apparently, if an indigent accused does not have a lawyer to represent him, the judge provides him with a public attorney from the ranks of the PAO.

If, on the other hand, the complainant is indigent, the complaint, if criminal in nature, is first lodged with the police authorities, who, in turn, bring it to the attention of the Prosecutor's Office. Seldom does an indigent seek a PAO lawyer to file a civil case on his behalf. The secondary data analysis does not identify the number of civil cases wherein the indigent is the complainant. Such data would have shown that the poor actually seek redress through the justice system, from which it could be deduced that the poor trust the system and are empowered to use it. (Supreme Court 2004b: 39-40)

It is interesting to note that the same report included a discussion of empowerment of the poor and emphasized the need to develop tools and systems that will empower them to assert their rights and gain access to justice. Unfortunately, the suggestions for empowerment centred on establishing an indigent card system without elaborating on its features; creating a feedback mechanism to monitor the performance of PAO lawyers; and developing information materials on PAO services. No clear explanation, however, was given on how the recommended measures would indeed bring about the desired empowerment.

#### **3.4.5 National Survey of Inmates and Institutional Assessment**

A study on access to justice by those detained in prison conducted in 2003 for the Supreme Court found that poor prisoners lacked access to legal services and assistance. Without such services, these inmates found it difficult to deal with the complex judicial system about which they knew and understood little. The inevitable delays in the way their cases progressed led them to lose confidence in the system of justice (CPRM Consultants, Inc. 2003: 5-1)

These findings led the investigators of the study to identify policy implications that need consideration. These address the unlawful delays faced by poor prisoners who lack proper information and knowledge regarding judicial processes, who do not understand their rights and entitlements, and who do not get proper assistance regarding these procedures. The report cited the need for a program to increase the awareness of law enforcers, jail guards and public lawyers of these fundamental justice issues and barriers to justice for the poor in order to regain the trust and confidence of those in prison in the justice system (CPRM Consultants 2003: 3-12). On the issues of lack of knowledge and information on the justice system and legal processes as major barriers to justice, this report affirms the findings of the previous studies considered.

Participants in the Visayas focus group discussion noted that judges, at least in Cebu, conducted monthly jail visits as mandated by law. Judge Paredes, Executive Judge of the Regional Trial Court of Cebu, described prison cells as generally being small with only tiny openings, with inmates commonly getting sick. He said that regular reports were submitted to the Supreme Court on the status of such facilities. It was pointed out that law school students could play a helpful role by gathering prison-related data such as the status of the cases of inmates and the condition of the detention facilities.

From the studies considered above, it is evident that the different factors that were identified as hindering access to justice combine problems of the institutions and the administrators of the system with the problems suffered by the litigants themselves, especially the poor among them. In summary, the following may be considered as the major obstacles to litigants' access to justice:

- Problems besetting judicial proceedings, including delays, complexity, and erroneous decisions
- Prohibitive costs of litigation and scarcity of affordable or free legal services
- Inadequacy of information about the justice system and legal processes, compounded by the lack of familiarity in English, the language of the law and legal processes

These problems were confirmed by the results of a series of regional consultation conferences held with representatives of grassroots organisations and communities as primary participants. The consultation conferences were conducted throughout the country in 2003 by the Alternative Law Groups (ALG), a coalition of legal resource NGOs that are engaged in grassroots empowerment and judicial and policy reform.<sup>1</sup> In these regional consultation conferences, the ALG members met with their partner organisations and communities as well as other stakeholders. The consultation conferences were intended to involve the poor and other marginalized groups in discussions concerning the problems of the justice system and the efforts to reform it, to identify specific problems concerning the justice system that directly affect the poor and other marginalized groups, and to offer concrete policy recommendations to address these problems and concerns.

The majority of the participants were representatives of people's and non-governmental organisations. Other participants included judges and government officials, law students, lawyers, members of the academe and representatives from mass media. They were asked about the problems that they themselves personally experienced in trying to access the justice system, in general, and the judiciary, in particular. The Alternative Law Groups report on the consultations gathered the problems identified into the following major areas:

- Lack of access to legal education by the poor and marginalized groups who are generally not aware of their rights and the procedure for remedying violations of such rights. The participants reported a general lack of knowledge among members of communities about their rights, the laws governing their rights and the operation of the judicial system.
- Lack of information on the part of judges and other administrators of the justice system (like prosecutors and police officers) about the issues concerning the poor and marginalized groups and the special laws governing them. The regional consultations showed

that the lack of information on the part of the poor and marginalized groups was compounded by a similar lack of information on the part of the administrators of justice on the special needs and concerns of the poor and marginalized and the law's affecting these needs and concerns.

- Lack of adequate legal representation before the courts and other tribunals. Concrete problems cited under this general area included the limited number of lawyers who are willing to handle cases for the poor, the expensive fees for lawyers' services, the non-recognition of paralegals from communities who were not given the opportunity to assist in cases, and the prohibitive costs of court litigation, including direct and indirect expenses.
- Lack of support mechanisms for the poor and members of marginalized groups who are involved in cases. The participants cited the absence of support mechanisms such as an effective witness protection program and adequate financial support, which makes it difficult for members of poor and marginalized groups and communities to sustain the prosecution or litigation of a case in court.
- Issuance and implementation of anti-poor policies and decisions. These policies and decisions were cited as violative of the rights and detrimental to the interests of the poor. Trial judges' erroneous assumption of jurisdiction over agrarian related cases, and conflicting laws on the environment were cited as some of the concrete examples of this problem.
- General discrimination against the poor and marginalized groups within the judiciary and the justice system. Many participants cited examples of insensitivity of some judges and other officials to the situation of the poor and marginalized groups and even reported cases of abuse or discrimination against these vulnerable persons.
- Structural and systemic problems within the judiciary and the justice system that impedes the poor and marginalized groups' access to justice. The use of English instead of the local dialects in court

proceedings was identified as a major obstruction to the poor and marginalized groups' access to justice.

- Gender insensitivity and bias of the courts and other government offices involved in the administration of justice. Many participants complained about the low level of gender sensitivity in the courts and in the justice system, and the prevailing bias against women. (Alternative Law Groups, Inc. 2004: 20-27)

Three years after the regional consultations were conducted, the same issues would be restated by representatives of the poor and marginalized groups in another gathering. In June 2006, the ALG organized a National Paralegal Conference that gathered the biggest number of grassroots paralegals. These paralegals were members of people's and non-governmental organisations, or leaders of local communities, who had been trained under a capacity-building program in which they acquired knowledge of laws and the legal system, and skills on how to address the legal issues of their respective organisations and communities through the justice system. They are the frontliners of the poor and marginalized groups in accessing the justice system.

More than 150 stakeholders of justice reform, including 83 paralegals (47 males and 36 females) representing 57 organisations from various parts of the country, attended the conference and discussed common issues in accessing the justice system. One of the culminating activities of the conference was a visit to the Supreme Court. During the visit, the paralegals presented a manifesto on access to justice issues (containing the paralegals' recommendations) to the Supreme Court through its Public Information Office.

The paralegals' manifesto contained an eloquent presentation of the problems of the justice system, from the point of view of the front-liners of the poor and marginalized groups and communities. The statements are worth quoting:

*Discrimination and marginalization of paralegals before courts and quasi judicial bodies.* There are not enough alternative lawyers that have the heart to work with marginalized groups and identities. We, paralegals, are the ones that perform many of the legal work: conduct of legal research, gathering of evidence, and community strategizing of legal angles. Unfortunately, amid our efforts, we are not recognized when we go to courts and wish to represent ourselves in litigations. More so, when we go to courts, we are discriminated just because we are not graduates of law, not wearing formal attire, and not speaking in the English language.

*Expensive justice and complex justice system.* Expensive court fees, docket fees, and other expenses that are needed in filling cases often hinder us from seeking social justice. Distance of courts to our communities also hampers our access to justice. Also, the use of legalese and the English language during hearings and in the legal documents alienates us from the law and the legal system. Beyond processes, disputes could be filed in many quasi-judicial bodies and courts (multiple entry points).

*Delayed administration of justice, leading to loss of interest of litigants.* Our cases are long and overdue and as we have experienced ourselves, justice delayed is justice denied. Every day, month and year that we cannot till our lands, gather our livelihood from forests, and secure our food from the oceans means every day, month, and year that we are less in our lives and in the bar of justice.

*Lack, if not absence, of training of judges and court personnel on laws addressing sectoral issues.* We recognize that our issues are not the subjects of law training. In many instances, issues concerning agrarian reform, urban housing, coastal management, and indigenous people's rights are not appreciated by judges and court personnel.

*Lack of designated courts.* Amid the presence of our Moro brothers and sisters in Manila like Taguig and Quiapo, we do not have Shari'a courts in these places. Environmental courts are sorely missing too.

*Lack of court personnel and huge gender disparity among court personnel.* In many places, there are not enough judges that could attend to our cases. Women are also not sufficiently represented in our justice system. (Alternative Law Groups, Inc. 2006)

The same litany of issues already discussed by the various reports considered earlier was repeated at these consultations and the paralegals' conference. There are significant additions, however, like the inadequacy of courts and court personnel, the issuance of anti-poor policies and decisions, general discrimination against the poor, and the marginalization of paralegals.

At the same time, significant points arose concerning the lack of information. First, it is interesting to note that lack of information was identified not only as a problem of the poor but also as a problem of the administrators of justice who lack information on the issues concerning the poor and marginalized groups, and the special laws governing them. Second, it must likewise be pointed out that the paralegals, who are knowledgeable about their rights and about the operations of the legal system, still experience difficulties in accessing the justice system. This only shows that while addressing the issue of the poor's lack of information about their rights and about the justice system is important in improving access to justice, this alone will not be an adequate measure. In short, the capacity problem includes the issue of information but is a lot more complex.

These problems still permeate the justice system in the country today. Data culled from relevant surveys show that there has been no significant improvement in the public's perception on matters concerning access to justice by the poor and marginalized. Most of the survey respondents believe that the rich and poor are not equally

treated in court. Although more judges believe that the poor have access to justice, lawyers believe that the pace by which the system delivers justice to the poor is very slow. An even fundamental issue is that, from the viewpoint of legal practitioners, the enforcement of laws at the level of the police is very problematic.

Judge Paredes of Cebu lamented the inequality between the rich and the poor in terms of accessing justice from the courts. Although he admitted that the rules of the game apply equally to both the rich and the poor, and in some instances the poor are even favoured by the law, the justice system is still lopsided against the poor. He attributed this to the fact that Philippine society is dominated by the rich and powerful who wield political power. Even if the rules are the same for everybody, the structure of society permits the rich to accumulate power.

The 2008 Statistical Indicators on Philippine Development noted that:

In terms of achieving holistic reforms in the criminal justice system, there is a need for a more vigorous implementation of the strategies in terms of expediting resolution of cases, construction and repair of jail facilities and rehabilitation programs for prisoners. There is also a need to improve on the provision of free legal services, recruitment of qualified prosecutors, advocacy on the alternative dispute resolution, and funding for effective and efficient safekeeping and rehabilitation of prisoners. (National Statistical Coordinating Board 2008: <<http://www.nscb.gov.ph/stats/statdev/default.asp>>)

Table 3.1 below reveals that the number of indigent persons served by PAO decreased from 2006 to 2007. This performance was rated as average.

**Table 3.1** Number of indigent persons served by the Public Attorney’s Office

Strategy/Target	Indicator	Accomplishments vs. Targets	Performance										
Free legal services improved	Number of indigent persons served by the Public Attorneys Office	<p>NUMBER OF INDIGENT PERSONS SERVED BY PAO (in thousands)</p> <table border="1"> <tr><th>Year</th><th>Number of indigent persons served by PAO (in thousands)</th></tr> <tr><td>2004</td><td>5,324,487</td></tr> <tr><td>2005</td><td>4,495,634</td></tr> <tr><td>2006</td><td>4,609,627</td></tr> <tr><td>2007</td><td>4,382,611</td></tr> </table>	Year	Number of indigent persons served by PAO (in thousands)	2004	5,324,487	2005	4,495,634	2006	4,609,627	2007	4,382,611	Number of indigent persons served by PAO 
Year	Number of indigent persons served by PAO (in thousands)												
2004	5,324,487												
2005	4,495,634												
2006	4,609,627												
2007	4,382,611												

Source: PAO decreased from 2006 to 2007  
 Source: Table reproduced from National Statistical Coordinating Board, '2008 Statistical Indicators on Philippine Development', at <[http://www.nscb.gov.ph/stats/statdev/2008/ruleoflaw/Chapter\\_ruleoflaw.asp](http://www.nscb.gov.ph/stats/statdev/2008/ruleoflaw/Chapter_ruleoflaw.asp)>

Likewise, table 3.2 reveals that the prosecutor to case ratio decreased, showing a slight improvement in performance. However, the rate of disposition of cases investigated by the prosecutors dropped from 86 per cent in 2004 to 80 per cent in 2007.

**Table 3.2** Prosecutor to case ratio and disposition rate of cases investigated

Strategy/Target	Indicator	Accomplishments vs. Targets	Performance										
Recruitment of qualified prosecutors intensified	Prosecutor to case ratio Source: NAPROS	<p>PROSECUTOR-CASE RATIO</p> <table border="1"> <tr><th>Year</th><th>Prosecutor to case ratio</th></tr> <tr><td>2004</td><td>322</td></tr> <tr><td>2005</td><td>238</td></tr> <tr><td>2006</td><td>233</td></tr> <tr><td>2007</td><td>228</td></tr> </table>	Year	Prosecutor to case ratio	2004	322	2005	238	2006	233	2007	228	Ratio of prosecutor to cases declined from 1:322 in 2004 to 1:228 in 2007 
Year	Prosecutor to case ratio												
2004	322												
2005	238												
2006	233												
2007	228												
Resolution of cases expedited	Disposition rate of cases investigated Source: NAPROS	<p>DISPOSITION RATE OF CASES INVESTIGATED</p> <table border="1"> <tr><th>Year</th><th>Disposition rate of cases investigated</th></tr> <tr><td>2004</td><td>86</td></tr> <tr><td>2005</td><td>76</td></tr> <tr><td>2006</td><td>78</td></tr> <tr><td>2007</td><td>80</td></tr> </table>	Year	Disposition rate of cases investigated	2004	86	2005	76	2006	78	2007	80	Disposition rate of cases investigated dropped from 86 percent in 2004 to 76 percent in 2005 but started to rise in 2006 
Year	Disposition rate of cases investigated												
2004	86												
2005	76												
2006	78												
2007	80												

Source: Table reproduced from National Statistical Coordinating Board, '2008 Statistical Indicators on Philippine Development', at <[http://www.nscb.gov.ph/stats/statdev/2008/ruleoflaw/Chapter\\_ruleoflaw.asp](http://www.nscb.gov.ph/stats/statdev/2008/ruleoflaw/Chapter_ruleoflaw.asp)>

Table 3.3 shows the ever increasing congestion of jails in the country. This is a clear indicator of the poor performance of prison authorities.

**Table 3.3** Congestion rate of prisons

Strategy/Target	Indicator	Accomplishments vs. Targets	Performance
Construction and repair of jail facilities pursued	Congestion rate of prisons <i>Source: BuCor</i>	<p>46% 52% 57% 65%</p> <p>2004 2005 2006 2007</p>	Congestion rate of prisons continued to rise 

*Source:* Table reproduced from National Statistical Coordinating Board, '2008 Statistical Indicators on Philippine Development', at <[http://www.nscb.gov.ph/stats/statdev/2008/ruleoflaw/Chapter\\_ruleoflaw.asp](http://www.nscb.gov.ph/stats/statdev/2008/ruleoflaw/Chapter_ruleoflaw.asp)>

As regards the disposition of cases pending before the courts, table 3.4 shows the increasing backlog in the rate that courts are able to dispose of cases. The table illustrates the disposition rate of cases in various lower level courts in the country between 1999 and 2007:

**Table 3.4** Court-case disposition rate by type of court, 1997-2007 (in per cent)

Court	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total	0.59	0.63	0.69	0.70	0.70	0.74	0.82	0.85	0.85
Supreme Court	1.22	1.10	1.10	1.00	0.98	0.97	...	...	
Court of Appeals	0.77	0.87	0.99	0.93	1.00	0.96	...	...	1.24
Sandiganbayan	0.80	1.46	1.48	1.28	3.75	1.98	0.97	1.17	2.24
Court of Tax Appeals	0.74	0.78	1.10	0.84	0.72	0.73	0.71	1.21	1.28
Regional Trial Courts	0.69	0.71	0.72	0.68	0.64	0.69	0.79	0.79	0.78

Court	1999	2000	2001	2002	2003	2004	2005	2006	2007
Metropolitan Trial Courts	0.43	0.45	0.49	0.59	0.60	0.68	0.76	0.73	0.75
Municipal Trial Courts in Cities	0.59	0.64	0.73	0.79	0.75	0.87	0.84	0.88	0.93
Municipal Trial Courts	0.61	0.62	0.80	0.72	0.79	0.77	0.89	1.03	1.03
Municipal Circuit Trial Courts	0.64	0.67	0.73	0.75	0.80	0.76	0.95	1.12	1.16
Shari'a District Courts	1.06	1.03	0.78	0.81	2.80	1.5	1.17	0.77	1.65
Shari'a Circuit Courts	0.97	0.90	0.98	0.93	0.66	0.89	0.90	1.07	0.82

Note: Court-case disposition rate is the ratio of total cases in a year over total cases filed. A ratio of less than 1 indicates an increasing backlog; greater than 1, decreasing backlog; and equal to 1 means that the backlog is being maintained.

*Source:* Table reproduced from National Statistical Coordinating Board, 'Statistics: Public Order, Safety and Justice', available at <[http://www.nscb.gov.ph/secstat/d\\_safety.asp](http://www.nscb.gov.ph/secstat/d_safety.asp)>, accessed 9 April 2009

In terms of actual number of cases disposed, the Supreme Court reported that:

At the end of 2006, our lower courts had a total of 714,782 pending cases. By December 31, 2007, that number stood at 675,368, a decrease of 39,414 pending cases. The decrease is significant considering that 324,521 new cases were filed in 2007.

Despite the limitations brought about by the Judiciary's limited physical, financial, and human resources, in 2007 it disposed of 416,979 cases as follows: 273,299 cases were decided or resolved; 119,790 were archived; and 23,890 were transferred to other courts. (Supreme Court 2007: 31-34)

Tables 3.5 and 3.6 show the status of cases in the various lower courts for the years 2006 and 2007, respectively.

**Table 3.5** Disposition of cases, as of year end 2006

Courts	Pending Cases	Newly Filed	Revived/ Reopened	Rcvd from Other Salas
RTCs	358,495	184,908	11,893	10,635
METCs	129,702	58,755	12,807	817
MTCCs	101,885	57,564	8,128	2,612
MTCs	67,604	28,850	2,306	1,260
MCTCs	58,695	18,178	1,941	614
SDCs	60	26	16	0
SCCs	341	240	7	8
TOTAL	714,782	324,521	37,098	15,946

Source: Table reproduced from Supreme Court, Annual Report 2007 (Manila: Supreme Court, 2007) p. 33

**Table 3.6** Disposition of cases, as of year end 2007

Courts	Decided/ Resolved	Archived	Transferred to Other Salas	Pending Cases as of 12/31/07
RTCs	128,522	44,714	12,432	360,263
METCs	44,139	38,839	5,580	113,523
MTCCs	53,676	22,470	3,430	90,613
MTCs	25,645	8,443	1,331	60,601
MCTCs	21,073	5,227	1,117	50,011
SDCs	43	3	0	58
SCCs	201	94	0	301
TOTAL	273,299	119,790	23,890	675,368

Source: Table reproduced from Supreme Court, Annual Report 2007 (Manila: Supreme Court, 2007) p. 33

The report also said that the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals likewise were burdened by many cases. In 2007, the Court of Appeals handled 30,867 cases, the Sandiganbayan 2,627 and the Court of Tax Appeals, 1,198, as shown in table 3.7.

**Table 3.7** Number of cases in three special courts and disposal rate

		Case Input	Case Output	% of Case Disposal
Court of Appeals	Judicial Matters	30,867	13,245	42.9%
Sandiganbayan	Judicial Matters	2,627	380	11.72%
Court of Tax Appeals	Judicial Matters	1,198	405	33.8%

Source: Table reproduced from Supreme Court, Annual Report 2007 (Manila: Supreme Court, 2007) p. 34

The Supreme Court was not excluded from this heavy case load. It had 16,188 cases in 2007 of which the Court disposed more than half--8,303 cases. This is shown in table 3.8 below.

**Table 3.8** Number of cases brought before the Supreme Court and rate of disposal

		Case Input	Case Output	% of Case Disposal
EN BANC	Judicial Matters	752	311	41%
	Administrative Matters	766	492	64%
First Division	Judicial Matters	3,223	1,865	58%
	Administrative Matters	1,109	698	63%
Second Division	Judicial Matters	3,918	2,257	58%
	Administrative Matters	1,592	750	47%
Third Division	Judicial Matters	3,726	1,318	35%
	Administrative Matters	1,102	612	50%

Source: Table reproduced from Supreme Court, Annual Report 2007 (Manila: Supreme Court, 2007) p. 34

Faced with these challenges, the Supreme Court has actively engaged in justice reform initiatives in order to improve access to justice by the poor and other vulnerable groups.

### 3.5 Criminal Justice System

**How far do the criminal justice and penal systems observe due process in their operations? How far do the criminal justice and penal systems provide rules of impartial and equitable treatment? Is the criminal justice system working equally for both poor and rich litigants?**

The right of a person to due process and equal protection of the laws occupies a pre-eminent position in the constitution's Bill of Rights. Section 1, article III states that 'No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.' Section 14 provides in particular that 'No person shall be held to answer for a criminal offense without due process of law.' In criminal cases, the requirement of due process of law 'requires that the procedure established by law be followed. If that procedure fully protects life, liberty, and property of the citizens in the State, then it will be held to be due process of the law.'

The rights of an accused in criminal prosecutions are likewise constitutionally guaranteed. Article II, section 14 (2) of constitution says:

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

Flowing separately from the due process clause earlier cited, the rights of a person under custodial investigation are also constitutionally guaranteed. In addition, a citizen's

free access to the courts, quasi-judicial bodies and adequate legal services, as well as the right to a speedy disposition of the case, are given constitutional protection. The right to bail of all persons, except those charged with offences punishable by *reclusión perpetua* (a form of life sentence) when evidence of guilt is strong, is also a constitutional guarantee. From these rights are derived the provisions in the Rules of Court on bail and the rights of an accused in criminal proceedings.

Pursuant also to these constitutional mandates, Republic Act No. 7438 of 1992 details the rights of persons arrested, detained or under custodial investigation and enumerates the duties of public officers in these instances. Significantly, the law penalizes 'any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his rights' enumerated under the law. It also punishes 'any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs at any hour of the day or, in urgent cases, of the night.'

There are, therefore, ample constitutional, statutory and procedural guidelines that protect the rights of a person accused of a criminal offence. This notwithstanding, criticisms abound that the Philippine criminal justice system does not work equally for rich and poor alike. Problems such as racial or ethnic bias, access to affordable services of attorneys and prohibitive costs of litigation seriously erode in reality the rights guaranteed in law.

Global Integrity (2009) describes itself as an independent non-profit provider of information on corruption and governance. It puts out an annual report or indicator that rates national-level efforts to implement anti-corruption and improve governance. Each country report is put together by an in-country team of researchers and

journalists that generates 'quantitative data and qualitative reporting on the health of a country's anti-corruption framework' (Global Integrity 2009: <<http://report.globalintegrity.org/methodology.cfm>>). Each country assessment includes two components, a Reporter's Notebook that tells a qualitative story about a country's attempts at arresting corruption, and a quantitative Integrity Indicators scorecard that 'assesses the existence, effectiveness, and citizen access to key governance and anti-corruption mechanisms through more than 300 actionable indicators' (Global Integrity 2009: <<http://report.globalintegrity.org/methodology.cfm>>).

The 2008 scorecard for the Philippines rated the country's anti-corruption and rule of law overall framework as moderate. While the country's anti-corruption law was considered to be very strong, the agency established to implement it was characterized as being only moderate. What brought the general indicator down was the fact that rule of law and law enforcement were graded as very weak and weak, respectively (Global Integrity 2008: 10-11). These ratings are calculated from the responses to factual questions that are posed to the research team which are then subjected to a peer review process.

The above discussion leads the assessment to conclude that while laws exist that seek to improve the access of the poor and other marginalized groups to justice, the implementation of these laws has been a big disappointment to the groups that they seek to benefit. What is more, the institutions established to enable these target groups to improve their access to justice have performed poorly, hobbled perhaps by the skimpiness of resources assigned to them but also by the institutions' own shortcomings, lack of resolve, and an inability to really understand the needs of the groups that they are supposed to serve. The Supreme Court's program to improve access to justice for the poor is one attempt to remedy this weakness but more needs to be done.

### 3.6 Recommendations

In sum, it can be said that there are sufficient laws that ensure, on paper, the access of citizens to justice in the Philippines. However, the implementation of such laws leaves much to be desired. To address this, the following measures are proposed:

- Ensure the full and effective implementation of laws that seek to improve access of citizens to justice. Invoke the oversight function of Congress through the various committees in order to monitor the implementation of these laws. Specific attention must be given to laws addressing the needs of vulnerable sectors such as labour, farmers and fishers, women and children, migrant workers, indigenous people, the urban poor, and those detained in prison. Involve civil society advocates and other interest groups in order to achieve a balanced assessment of the implementation of these laws and a truthful identification of policy gaps that need to be addressed.
- Strengthen the institutions tasked with responsibility of making justice accessible to the citizens. Specifically, ensure that sufficient resources are allotted to such government agencies and that such resources are judiciously used. For example, despite the significant role that the Public Attorney's Office fulfils within the justice delivery system, it does not receive substantial support in terms of budget allocation and capacity building for its personnel. Similarly, prosecutors in various parts of the country continuously complain not only of lack of resources but also of lack of security for their lives since they regularly file cases against dangerous elements of society such as drug lords.
- Promote and increase awareness of the barangay justice system and the different forms of alternative dispute resolution (ADR). The barangay captain and members of the *Lupon Tagapamayapa* (Peace Council) play a crucial role in resolving disputes at the first instance of occurrence. By settling disputes at the

community level, parties no longer need to litigate and further clog court dockets. On the other hand, different ADR mechanisms, such as arbitration and mediation, are already in place under Republic Act No. 9285 (2004). By increasing the knowledge of people regarding the different ADR mechanisms, they are provided with alternatives to litigation, thereby increasing their access to justice.

- Revisit the recommendations made in the Action Program for Judicial Reform.
- Undertake capacity building trainings and seminars for public officers engaged in the delivery of justice. For example, judges and court personnel must be introduced to fundamental issues faced by vulnerable sectors to appreciate the various nuances involved. Law enforcers, on the other hand, must continuously be trained in human rights promotion.
- Increase the awareness of the poor and vulnerable sectors in order for them to assert their rights and articulate their interests. A continuing education program must be established in order to integrate in the minds of the people the value of rule of law and the different mechanisms that citizens can use to access justice.
- Decrease the price tag of justice. Measures must be made to cut down the costs of accessing justice especially for poor litigants. This would entail reviewing the current policy on indigent parties or pauper litigants and the strengthening of the PAO. In terms of decreasing the time it would take to resolve a dispute thereby decreasing costs, mechanisms such as the small claims court and summary proceedings must be promoted together with ADR.

## Endnote

1. Details of the consultation conferences were published in the book, *From the Grassroots: The Justice Reform Agenda of the Poor and Marginalized*, and is available online at the Alternative Law Groups website, <<http://www.alternativelawgroups.org/upimages/from%20the%20grassroots.pdf>>

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## Emerging Challenges Facing the Rule of Law: From the Global to the Local

# 4

### 4.1 Counter-terrorism and Insurgency

**How is local counter-terrorism and anti-insurgency practice conditioning the rule of law and to what extent has the global war on terror influenced local laws and practices?**

One feature of life in the Philippines is the presence of persistent political violence. Such violence comes in various forms and emanates from various sources. Among the sources are: ad hoc violence in response to specific events, private armed groups backed by politically powerful individuals or families (and often used to intimidate voters or candidates during electoral exercises), Marxist insurgents and Muslim secessionists. Among the Muslim secessionists is the Abu Sayyaf Group (ASG), a network of groups with various clan connections and a history that goes back to the mujahedeen in Afghanistan in the 1980s.

The New People's Army (NPA) of the Communist Party of the Philippines (CPP) claims to operate in 9,000 *barangay* (villages) across 128 fronts with an expanding strength of 13,000 fighters (Communist Party of the Philippines 2009). The Armed Forces of the Philippines (AFP) estimates that they are active in only 62 barangay with the number of fighters falling from 7,000 fighters in

2008 to a little over 6,000 now. In terms of the effects upon civilians, an Ibon Foundation report (2006: 5) for the United Nations International Children's Fund (UNICEF) stated: 'The ratio of civilian casualties to armed confrontations was lowest in the case of the NPA (one in eight) followed by the Moro Islamic Liberation Front (MILF) (one in five), the Moro National Liberation Front (MNLF) (one in two) and the ASG (one to one). Likewise, the ratio of civilian to combatant casualties is lowest in the case of the NPA (one in twenty-eight), followed by the MILF (one in eleven), the MNLF (one in five) and the ASG (one in eight).' IDMC reported that in 2007, clashes between the NPA and the AFP resulted in the displacement of 3,000 Ata-Manobo (an indigenous peoples group in Mindanao) from eleven communities and of more than 30,000 in Region 4-A of which 9,000 were children (Internal Displacement Monitoring Centre 2007). However, national figures for displacement are difficult to ascertain because of the widespread and sporadic nature of these encounters. Communities may find themselves displaced on a number of occasions as the opposing forces advance and retreat as is the case with guerrilla warfare.

In the case of the MILF, and even of the ASG, the areas of influence are more confined and the nature of the conflict is more positional, hence figures for civilian displacement are easier to determine. Last 2008 saw more than 300,000 displaced following the breakdown of peace talks with the MILF. To date, many of them have not returned home for fear of their safety, despite attempts by government agencies to persuade them to do so.

Aside from causing physical destruction and human displacement, such conflicts have also inhibited economic activities, deprived hundreds of thousands of their livelihoods and left children unable to pursue their education. Health services have also been interrupted and infrastructure destroyed. At the same time, the conflicts have seen local government personnel, and even staff from national government agencies, also fleeing the conflict zones. Those most frequently affected are the rural poor. The effects of these armed conflicts, in turn, impact upon

the ability of civilians to exercise their democratic rights, either because they are coerced or intimidated from interacting with government, or because government is unable to access civilians or is ineffectual in doing so. In addition, the provision of compensation for damages and injuries incurred as a result of these clashes is usually arbitrary; more commonly, compensation is not available at all as armed perpetrators are not properly subjected to the regular rule of law.

The persistence of such groups already belies the claims of full rule of law throughout the territory of the Philippines. Also, some Muslim groups maintain that the Philippine state is the direct descendent of both Spanish and American colonisations of Mindanao to which they did not succumb, and thereby dispute their status as Philippine citizens.

Aside from the fact that these claims lie within the local discourse on citizenship and territoriality, there is the need to consider the wider discourse on terrorism that has emerged globally. This is especially relevant within the context of a long-term insurgency that is regarded with a degree of legitimacy by significant sections of the population. It is particularly important, therefore, to distinguish between insurgency and terrorism, not just at the conceptual level but also at the operational level at which laws are passed and implemented. This is important not solely due to the need to respect the human rights of the accused or because of international obligations to respect the rights of all peoples to self-determination but also because it makes sense in the construction of a functioning democracy.

A distinction between insurgency and terrorism is necessary for the two have become conflated under the previous US administration, just as they appear to have been long conflated in the Philippines. Terrorism is also being described as a 'threat to democracy' but it is not aimed at democracies alone. Countries that may not be fully democratic have also been subjected to terrorist attacks.

This gives lie to the view that the war on terror is simply about the protection of democracy, even if terrorism is the product of ideological conflict with ruling establishments. Essentially then, for the purposes of this study, we define terrorism as the use of mass attacks on civilians for ideological, but not necessarily negotiable, ends. The term describes methods and tactics rather than ultimate goals.

In today's world, counter-terrorism, because it comes under the rubric of a 'global war against terror' with its attempts to establish a broad ideological 'them versus us' world view, has become a much broader and more vicious process affecting all institutions. Counter-insurgency, on the other hand, is generally localized with an immediate impact on, and may be the consequence of, military tactics and the performance of the regular functions of the civilian executing agencies of government. In many respects, the failure to appreciate this distinction has been a major problem among US strategists in years past in Iraq. By conflating counter-terrorism with counter-insurgency, they found that their tactics and strategy encouraged not only an anti-occupation insurgency but also led to increasing support for terrorism in its ideological and tactical senses among insurgents with a popular base who opposed foreign occupation. In many senses this failure contributed to the further breakdown of the rule of law rather than its reconstruction following the controversial removal of Saddam Hussein's regime.

These are all important considerations for the Philippines, which is not only host to the longest running Marxist insurgency in Southeast Asia but also to a number of UN, US and European Union listed terrorist organisations and individuals. Listed as a terrorist organisation is the Communist Party of the Philippines and its National Democratic Front (NDF), an inclusion that constitutes a major barrier to peace negotiations. This is perhaps ironic since consistent allegations of ideological, logistical, training and financial links with listed terrorist groups have been alleged to have occurred with the MILF, the main organ of an armed movement for Muslim autonomy

in the south, with whom negotiations have falteringly proceeded until late 2008 when a settlement opposed by Mindanao settlers and Manila elites was hastily aborted.

Negotiations with both organisations have not prospered except for an unimplemented agreement on human rights with the NDF and a junked agreement with the MILF. While terrorism is now defined in Philippine law, it is a loose definition and seems to make little difference to the Philippine government's choice of who to add to the list of proscribed organisations as determined by the USA, Europe and the UN. This is evidence of the legal and strategic inconsistencies of the government.

Nevertheless, it is important to be realistic about the threats facing the Philippines. Human Rights Watch, in its 2007 report, *Lives Destroyed: Attacks on Civilians in the Philippines*, estimated that 400 civilians were killed in Mindanao, Basilan, Jolo and other southern islands as a result of 40 bombings and similar attacks on civilian targets. A total of 1,700 civilian have died between 2001 and 2007, all victims of direct acts of terrorism, according to the same report.

There also exist links to international terrorism. Jemaah Islamyah (JI), responsible for the Bali bombings in 2002, and KOMPAK (*Komite Aksi Penanggulangan Akibat Krisis* or Crisis Management/Prevention Committee), a splinter group of JI, both groups of Indonesian origin, are reported to have linked with the MILF and with remnants of the MNLF. There is also indication of a direct link to Al-Qaeda in the form of the Bojinka plot. The plot called for simultaneously blowing up twelve airliners as they travelled to the USA from Asia. A co-conspirator in the plot was Khalid Sheikh Mohammed, one of the alleged masterminds of the 9/11 attacks. The plot also supposedly called for the assassination of Pope John Paul II. The whole scheme was reportedly financed by Al-Qaeda.<sup>1</sup>

These links imply that the Philippines is affected by international terrorism, which may well be exacerbating domestic attacks. These external groups may also be encouraging continuing local resistance related to

historical grievances over sovereignty, land rights, and political and cultural marginalisation, making it nigh impossible to obtain domestic settlement using peaceful political means. Furthermore, these links provide a rationale for the continued presence of US forces and may drive the state to take more repressive measures and to further erode the distinction between civilians and combatants in the Muslim areas. The reality is that Muslims are already ravaged by arbitrary electoral processes consisting of large-scale disenfranchisement, vote-buying, intimidation and fraud conducted at the will of local elites and often in conjunction with national officials,<sup>2</sup> discrimination in employment and the delivery of basic social services, house-to-house searches, torture (for example, the suspected torture of 28 people in Basilan in June-July 2001 as reported by Amnesty International (2003)), and the constant presence of checkpoints.

Both the Muslim and communist insurgencies have affected large numbers of civilians. As of 27 January 2009, the National Disaster Coordinating Council estimated the number of internally displaced people (IDP) in Regions X, XII and the Autonomous Region of Muslim Mindanao as a result of hostilities to be 314,047 persons (National Disaster Coordinating Council 2009: 6). This figure does not include IDPs in Sulu or those displaced by clashes with the NPA. According to the website NationMaster.com, the Philippines ranked tenth in the number of most IDPs in 2007.

The apparent inability or refusal of military and political strategists to distinguish between terrorism and insurgency is a major issue. It represents an obstacle in the resolution of these conflicts. It is also the reason why the warring parties have failed their duty to protect the civilian population. The result is the deterioration of democratic processes and life in many communities, which creates a popular base for armed dissent, and the diminution of the rule of law and trust in governing institutions.

The dire consequences of conflating terrorism and insurgency are pointed out by the International Crisis Group (ICG 2008) in a well-researched paper. The ICG is made up of eminent statespersons, including Nobel peace prize winner Martti Ahtisaari as chair emeritus. The ICG paper makes a useful distinction between terrorist and insurgent groups and says that 'the crux of counter-terrorism in the Philippines is to separate terrorists from insurgents' (International Crisis Group 2008: 2). Failure to do so, it warns, may push the MILF and elements of the MNLF, groups that the paper characterizes as being at the insurgent end of the spectrum, toward closer ties with the Abu Sayyaf, a group that is at the other (terrorist) end. The paper cites the example of the Ad-Hoc Joint Action Group (AHJAG), a coordinating mechanism between the MILF and the government for sharing intelligence on terrorist groups and other lawless elements and avoiding accidental encounters between government forces and the MILF as the former pursued those groups. This allowed the government to successfully remove the Abu Sayyaf from much of Basilan and Southwestern Mindanao. The AHJAG, however, was allowed to lapse in June 2007 without being renewed.

As Sidney Jones of The Asian Wall Street Journal put it, 'terrorists don't create conflicts, they exploit them. Ultimately, a jihad at home serves the interests of terrorists far more than one abroad because defense of fellow Muslims becomes defense of family and friends. Not only recruitment, but also fund-raising becomes much easier.' (Jones 2004). What must be addressed in order to combat terrorism is the nexus between terrorist networks and domestic insurgency more than the nexus between insurgency and the populace. Failure to attack the former nexus allows extremists to exploit local grievances and create for themselves local bases within which to move and operate freely according to no law but their own. Effective conflict resolution, including the necessary political and economic settlements, which must also include agreements on achieving substantive rule of law, will resolve the causes of insurgency. However, it is necessary

to ensure that the path to these settlements provides neither hiding places for terrorist groups nor stalling points for entrenched political elites as happened with the failed Government of the Republic of the Philippines (GRP)-MILF agreement.

A clear conceptual distinction between terrorists and insurgents should be reflected in appropriate legal statutes governing the political and military responses to these two forms of dissidence. This should go as far as specifying the rules of conduct, which include the absolute imperative to protect and defend civilians. It should also mean avoiding populist or knee-jerk legislative measures.

#### **4.1.1 Laws on Counter-terrorism and Insurgency**

**Are the same laws applied to both counter-terrorism and insurgency, or are there different laws associated with each or is existing criminal legislation simply applied?**

The Human Security Act of 2007 (HSA, Republic Act No. 9372) was designed to address the specific problem of terrorism. Critics have called it a knee-jerk reaction by the state and have expressed anxiety concerning many of its provisions, not the least of which is its broad definition of terrorist acts that consist of crimes already defined as such by the Revised Penal Code, including rebellion or insurrection. The sole qualifying element for defining existing offences as terrorist acts is that they should also have the effect of 'sowing widespread and extraordinary fear and panic' in pursuit of 'an unlawful demand' which involves coercing the government. Detractors of the law therefore say that it is unnecessary, on the one hand, and, on the other, that it has too many catch-all provisions that make it applicable to any number of groups opposing the government of the day.

Aside from a broad definition of terrorism, the act contains a number of other provisions of import. One is that as well as making perpetrators of the acts listed above guilty of terrorism, subject to the conditions of widespread fear and coercion of the government to give into unlawful

demands, it also makes conspiracy to conduct those acts punishable by 40 years imprisonment. Other punishments are 17 to 20 years imprisonment for those who are accomplices by virtue of cooperation with principals in the act and 10 to 12 years imprisonment for those who profit from the acts or help the principals to profit, or who conceal the crime or its effects, or harbour or conceal perpetrators. In addition, the HSA provides for proscription not only of organisations, associations or groups of people specifically coming together for the purpose of terrorism but also of any group which, although not organized for that purpose, actually engages in the activities mentioned in the law. However, proscription is subject to due notice and can be challenged in the courts.

The HSA also contains six invasive provisions:

1. Section 7 – Surveillance of Suspects and Interception and Recording of Communications;
2. Section 18 – Detention without Judicial Warrant of Arrest
3. Section 19 – Detention without Judicial Warrant in case of Imminent Terror Attack
4. Section 27 – Examination of Bank Deposits, Trust Accounts, Etc.
5. Section 39 – Seizure and Sequestration of Bank Deposits and other Properties
6. Section 57 – Extraordinary Rendition

However, interception of communications is subject to order of the court of appeals and forbids it in communications of:

1. Lawyers and clients
2. Doctors and patients
3. Journalists and sources
4. Confidential business correspondence.

The act also allows for arrest without warrant for a period of three days based on surveillance and/or examination of bank deposits ordered by the Court of Appeals. It allows for the same at the time of an actual attack or

where one is imminent. In the former, the suspect must be presented to a judge, and in the latter, the suspect can also be presented to a municipal, provincial or regional member of the Commission on Human Rights (CHR). This is the only instance in which officers of the CHR are expected to perform such a judicial function.

The law affirms the right of the person arrested to be informed of the nature and cause of the arrest, the right to remain silent and the right to counsel. It also provides for free communication with both counsel and members of the family or nearest relatives and for access to a physician. The act also provides for a custodial logbook recording the physical and mental condition of the detainee and all visits to the detainee. The logbook is open to all family members, counsel and physician of the detainee.

The act allows for the examination, sequestration and seizure of properties and assets of anyone suspected or charged with a crime, with suspects allowed to withdraw money only in the amount that is 'reasonably needed' for family living and medical expenses. The act also permits extraordinary rendition to another country for trial, testimony or investigation subject to assurances with regard to torture, rights to counsel and other rights of suspects. This is akin to the failed assurance provisions in laws passed by countries such as the United Kingdom.

The law also allows for suspects on bail to be restricted to house arrest and to be deprived the means of communication with people outside their residence.

The Commission on Human Rights is given the power to prosecute violations committed in the implementation of the act. This is ironic since the CHR is only permitted to investigate and recommend prosecution for general human rights cases and to forward these to prosecutors of the Department of Justice (DOJ) or the Ombudsman. The CHR has no prosecutorial experience and is not equipped for this purpose. In another confusing element, the act also provides for a grievance committee consisting of members of the Office of the Ombudsman, the Solicitor-General and an under-secretary of the Department of

Justice. The committee is charged with receiving, investigating and evaluating complaints against law enforcement officers with regard to the implementation of the act. Thus, the CHR now prosecutes while the Ombudsman appears to investigate but not prosecute.

The HSA is also extra-territorial in its coverage and can be applied where acts occur against citizens, embassies or assets of the country abroad.

The act also has a joint oversight committee made up of members of the House and Senate with the chair rotating between the chairs of their respective committees on public order. Five members of the twelve-person oversight committee must come from members not affiliated with the majority in the House and Senate. The committee is charged with reviewing the act within a period of one year after its passage. The committee is also supposed to provide a semi-annual report to both houses of Congress on the prevailing circumstances that may impact upon the act, including conclusions from reports submitted to it by the courts, and to make recommendations of review or amendment. To date, no such semi-annual report is believed to have been submitted by the committee.

The act does contain a number of extraordinary penalties for its misuse. One is that anyone acquitted under the act is automatically entitled, within 15 days, to receive PHP500,000 for each day that the person is detained or deprived of liberty. He or she is also entitled to the same amount for each day his or her assets are seized. The funds are to come from the budget of the agency responsible for the arrest. It also provides for imprisonment of between six to ten years for law enforcers who either fail to turn over surveillance materials to the safe-keeping of the courts or who misuse such materials, as well as for failing to report detention or arrest under the act of a suspect to a judge within the requisite period. Law enforcers are also supposed to notify all those who are subjected to bank examination where no case is filed. Malicious use of the act to gain access to bank records is also punishable by imprisonment of ten to twelve years.

Jose Manuel Diokno of the Free Legal Assistance Group (FLAG) strongly criticized the Human Security Act (HAS) as being incoherent and, worse, dangerous because 'it authorizes preventive detention, expands the power of warrantless arrest, and allows for unchecked invasion of our privacy, liberty and other basic rights' (Diokno 2007: [http://opinion.inquirer.net/inquireropinion/talkofthetown/view/20070715-76703/FAQs\\_on\\_the\\_Human\\_Security\\_Act](http://opinion.inquirer.net/inquireropinion/talkofthetown/view/20070715-76703/FAQs_on_the_Human_Security_Act)).

Martin Scheinin, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, urged the government to change the law, describing its definition of terrorism as 'an overly broad definition which is seen to be at variance with the principle of legality and thus incompatible with Article 15 of the International Covenant on Civil and Political Rights' (Scheinin 2007: <http://www.unhchr.ch/hurricane/hurricane.nsf/0/33A881E349623E3CC125729C0075E6FB?opendocument>).

Interestingly, and perhaps as a signal of the legal profession's doubts about the law, the Supreme Court has refused to nominate the special regional courts for terrorism trials.

Two other points are worth mentioning. The first is that the law's oversight committee has not been visibly functioning. The second is that the law has been used sparingly, one time in the case of three alleged members of the ASG arrested for the bombing of bus terminals and the other time in the October 2008 seizure of the assets of the Rajah Solaiman Movement. The reason for this may be gleaned from comments made by police officials regarding the law. The acting Cebu Provincial Police Office Director, Carmelo Valmorla, and Criminal Investigation and Detection Group (CIDG) 7 Chief Superintendent, Jose Jorge Corpuz, were both critical of the law, claiming that safeguards against wrongful arrest and mistreatment of suspects overly constrained police activity (Sun-Star Cebu 2007). According to the article, Valmorla said that the law should have given police a month to gather

information on a suspected terrorist rather than a mere 72 hours. Furthermore, Supt. Anthony Obenza of the PRO 7 Police Community Relations Division suggested amending the law so that it would conform to international standards (Sun-Star Cebu 2007). The superintendent was, in all probability, referring to emerging international standards for anti-terrorism legislation rather than prevailing and prior international human rights standards. In any case, the public criticism of the Act and the doubts expressed by opposition politicians and activists from all across the political spectrum show a deep concern over the potential to use the legislation to silence political dissent. They also reflect the prevailing public perception regarding police treatment of suspects.

The International Institute for Democracy and Electoral Assistance (International IDEA) publication, *Democracy, Conflict and Human Security, Policy Summary: Key Findings and Recommendations*, noted that violent conflicts were rooted in the diminution of democracy and that human insecurity was manifested in people's lack of rights to access resources and power (International IDEA 2006). It also specifies several strategies and approaches for advancing democracy for human security including putting emphasis on human rights, broadening the sharing of power and enabling people to participate in political processes by providing them access to basic services and resources such as health and education (International IDEA 2006: 7).

Clearly such strategies have implications for the rule of law but are also dependent on prioritizing the rule of law as a critical means of assuring human security. Human security is most effectively established when people's rights are respected and where the rule of law forms the basis on which those rights are made accessible and defensible. An implication of this approach which bears consideration is that it also encourages stakeholders to view rights as essential to a functioning democracy and not merely as being of value in themselves. Also, a major element of the rights in question is access to basic social and economic rights, such as health, education and

employment opportunities, to name but a few, the absence of which may preclude the participation of those in conflict with the state. It is perhaps hardly surprising then that the foremost areas of terrorist recruitment lie adjacent to the most significant regions of secessionist sentiment. These same regions also tend to suffer the most violent electoral exercises and are represented nationally by individuals and political dynasties that most enjoy the patronage of the national executive while also suffering from some of the lowest levels of fulfilment of social and economic rights in the Philippines.<sup>3</sup>

In other words, the failure to respect, protect and enhance human rights through the lack of effective rule of law access to mechanisms of proper redress has not only inflicted suffering on those affected regions but also diminished the national substance of democracy for the whole country. International IDEA warns that unconstrained exuberance in responding to terrorism may boomerang against the state itself. However the state chooses to respond to threats of terrorist violence, it must continue to protect human rights and uphold the rule of law (International IDEA 2006: 14-15).

#### ***4.1.2 Implications of Terrorism and Insurgency for Territorial Coverage of the Law***

##### **What are the implications of terrorism and insurgency for territorial coverage of the law?**

There would appear to be three possibilities:

1. Distinctive laws for specific ethnic (sub-national) territories recognized by the national state;
2. Areas in which the rule of law does not really operate according to nationally recognized norms; and
3. Secession – creation of a separate nation-state.

To some extent, the first possibility has been envisaged in provisions of the Indigenous Peoples Rights Act (IPRA) of 1997 that allow for governance according to customary law and tradition. But those provisions remain unclear

and were inserted as an afterthought into a piece of legislation aimed more at offering some recognition of indigenous land claims. IPRA is widely regarded as a progressive legislative landmark for countries with a significant proportion of indigenous peoples, but its implementation has been stymied in the Philippines due to conflicts with other laws, corruption in the National Commission on Indigenous Peoples (NCIP), a miniscule budget allocation and the low stature the commission is given within the executive branch of government (it has been placed under three different mother agencies since its creation in 1997). The failure of the NCIP and the courts to raise the stature of customary law as envisaged in IPRA is one reason the MILF refuses to concur with the idea that existing legal frameworks, including the constitution, will provide them with the autonomy they seek.

The second possibility already largely exists in areas of insurgent control, such as areas under the control of revolutionary forces of the left, or in areas such as Sulu and Tawi-tawi where even the currency of the Philippines is deemed second-best to that of neighbouring Malaysia's with which much economic activity is linked. An expanded discussion on the rule of law under areas controlled by the armed revolutionary left is given below.

The third possibility, secession, remains on the table as a point of departure for negotiations but looks unwinnable and probably untenable.

The real question then is what variation or compromise between the first and third possibilities is likely to emerge? Just such a compromise was attempted with the controversial Memorandum of Agreement on Ancestral Domain (MOA-AD) between the MILF and the government, which provoked great controversy and was ultimately junked by the latter.

**Box 4.1 The Memorandum of Agreement on Ancestral Domain (MOA-AD)**

The MOA-AD was to be the third and final element of the peace process between the MILF and the GRP. The previous two elements constituted: 1) security aspects—including ceasefire arrangements such as the Committee on the Cessation of Hostilities and was later to lead to the presence of an International Monitoring Team led by the Malaysians and the formation of the AHJAG (discussed above); and 2) rehabilitation and development of conflicted areas—an agreement to form the Bangsa Moro Development Agency and the creation of a World Bank-led Mindanao Development Trust Fund with international support from the USA, Japan and the EU.

The third element, the Ancestral Domain Aspect, which resulted in the junking of the MOA-AD, was the most contentious. The outcry against the MOA among Christian leaders in local government units was intense and they whipped up fears of land seizures among Christian residents. Resistance also came from national opposition figures, especially those with presidential ambitions, who declared that the agreement was a betrayal of Filipino sovereignty and would lead to the break-up of the Republic. It did not sit well with Lumad leaders who, while stating support of the Bangsa Moros' right to self-determination, did not want villages that they claimed were part of their ancestral domain to be subject to the plebiscites on accession. The Supreme Court finally declared the agreement to be unconstitutional, to have exceeded mandates provided by the constitution, and to have been concluded without proper consultations with affected parties.

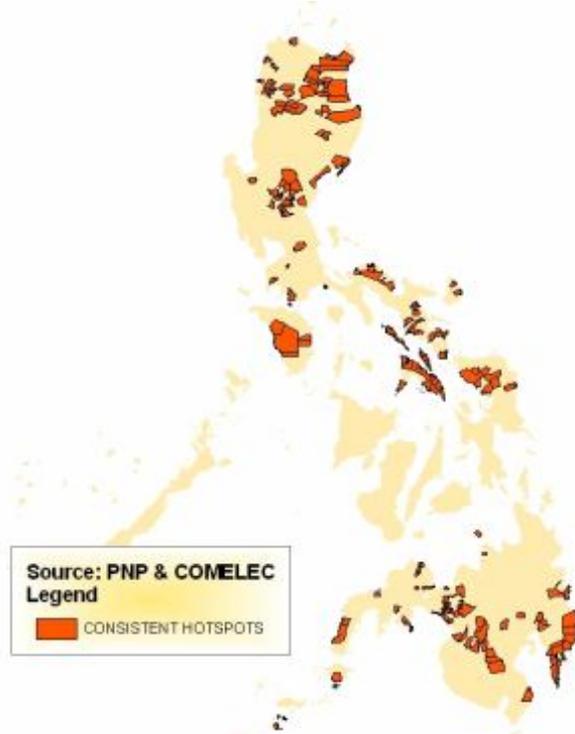
**4.1.3 Implications of the Presence of Active Armed/Violent Groups for Local Officials**

**What are the implications of the active presence of active armed/violent groups for local officials and their accountabilities to citizens?**

Local state officials are faced with the many difficulties and dilemmas that the presence of armed groups imposes. Aside from having to cope with the severe impacts of internal displacements, local officials and politicians must tread a fine line in dealing with both insurgents and security forces in contested areas. A particular case is how to handle demands for payments from armed groups. During election periods, this demand takes the form of payment for a 'permit to campaign' that is extorted from politicians wishing to campaign in these contested areas. While, ironically, the new anti-terrorism legislation is suspended for 40 days prior to elections, it is possible to imagine local candidates being punished for violating it if they pay for the aforementioned permit. It is also possible that local officials may become the targets of both insurgents and terrorists if they do not enter into long-term accommodations with those insurgents and terrorists.

In the current situation in which the president's legitimacy is in question due to electoral fraud, political support is required from those who can most easily wield power and authority with minimal accountability to their constituencies. These powerful people tend to be those in areas worst affected by insurgency and terrorism, the very same areas that returned the anomalous electoral results that undermined the president's position. During the local elections of 2007, the Philippine National Police reportedly had a list of 93 private armed groups, with most of them (56) located in the Autonomous Region in Muslim Mindanao (ARMM) (Palacio 2007). These areas are indicated in the map of consistent electoral hotspots below. They also generally coincide with those locations where political warlords, entrenched political dynasties and insurgency exist, further affirming the political nature of the insurgency problem and its link with the failure of the rule of law.

Figure 4.1. Consistent election hotspots (2001, 2004 &amp; 2007)



(Source: Map reproduced from <<http://www.gmanews.tv/sona2007/story/43437/181-rp-towns-consistent-election-hotspots> using PNP and Comelec sources>)

#### **4.1.4 Implications for the Protection of Citizens' Rights to Life, Property, Basic Needs and Social Services**

##### **What are the implications for the protection of citizens' rights to life, property, basic needs and social services using the rule of law?**

The security forces tend to deny any distinction between open, legal and unarmed dissidence and armed insurgency. They argue that armed insurgent groups have created political fronts as part of their strategy to seize power. They allege that these groups take advantage of civil and political protections while recruiting for and conducting armed attacks. This allegation, whether true or not, ignores the fact that problems of insurgency are

fundamentally political in nature and require political solutions. And a political solution means that the state is able to identify those with whom it can enter into dialogue. Successful peace processes, from Northern Ireland to South Africa, and nearer home, the island of Aceh, have proceeded in this way. Peace negotiations are undertaken with political movements with close ties to insurgent groups and that have the will and the skills to engage in forms of politics that do not resort to the use of armed force. This was the case with both Sinn Fein in the North of Ireland and the African National Congress in South Africa. In the Philippines, the failure to recognize that military victory is, if at all possible, likely to be too costly for society to bear and damaging to state institutions and the rule of law, has led to the security forces targeting suspected sympathizers of insurgent groups. This has led to an extra-legal definition of the insurgent and has resulted in large-scale extrajudicial killings. The government loudly protests that extrajudicial killings are not part of the policy of the state. However, the failure to apprehend and convict the perpetrators of all but a minority of these killings not only underline the shortcomings of the rule of law but also perpetuate a climate of impunity that erodes public trust in the rule of law.

#### **4.1.5 Implications for the Conduct of Judicial Processes**

##### **What are the implications of terrorism and insurgency for the conduct of judicial processes?**

In examining this question it is important to consider some of the realities of the Philippine judicial system versus the ideals to which it claims to aspire. For instance, the Philippines accepts the need for an independent judiciary free from the direct influence of political and economic elites. It also sees the need for speedy and openly conducted trials in which evidence is properly shared between prosecution and defence counsels.

The reality of Philippine judicial processes is, however, far from the ideal. There are frequent delays in both pre-trial and trial processes. There are, for instance, cases of

those accused of petty theft having been held on remand for up to twelve years before disposition of their cases. As of 2005, there was a reported backlog of 800,000 cases (Transparency International 2007: 206). There are lengthy delays at every step of the judicial process.<sup>4</sup> In addition, almost every stage of the judicial process can be subjected to appeal, with a further 15-day period in which to seek reversal of prior decisions on the part of any party that feels aggrieved. Meanwhile, there are frequent allegations of speedy dismissals for those with access to resources or influence.

It is well known that the judiciary is subjected to political pressures. The most recent is the initiative within Congress to consider the impeachment of the Chief Justice for decisions that have harmed the interest of influential political groups. The president has issued executive orders to curb the investigative powers of the legislature and to provide summary powers of detention and seizure to security forces.<sup>5</sup> The Supreme Court has resisted these encroachments. Such attempts, however, create pressures on the lower courts and on members of the judiciary who are, after all, appointed by the president.

Where terrorism is allegedly involved, questions regarding the circumstances surrounding apprehensions often crop up. There are issues regarding shortcuts taken in the process of obtaining warrants of arrest, shortcomings in the collection of evidence, the non-appearance of witnesses and the lack of public attorneys for the defence. Not surprisingly, where legal representation is poor or public pressure for redress is high, conviction is likely; where they are not, conviction is unlikely. In the lower courts unsuccessful prosecutions of between 54 and 78 per cent occur while it is 29 per cent for the Regional Trial Courts in which terrorist-related offences are likely to be tried.

Overall then, we conclude that the shortcomings in the judicial processes for terrorism and insurgency related cases are likely to be similar to those for other criminal cases. Perhaps of equal significance should be the judicial processes followed by insurgent groups in their areas of control. This topic will be examined in the section below

in relation to the comments of the UN Special Rapporteur on Extrajudicial Killings concerning the National Democratic Front's people's courts.

#### **4.1.6 International Rules on the Conduct of Counter-Insurgency and Counter-terrorism Operations**

**What role do international rules on the conduct of war play in the conduct of counter-insurgency and counter-terrorism operations? Are such rules legally enforced and consistently applied? What mechanisms exist for their application?**

With regard to the left-wing insurgency, on 5 July 1996 the NDF addressed the "NDFP Declaration of Understanding to Apply the Geneva Conventions on 1949 and Protocol I of 1977" to the Swiss Federal Council (the depositary for the Geneva Conventions) and to the International Committee of the Red Cross (ICRC). In its declaration, the NDF 'solemnly declare in good faith to undertake to apply the Geneva Conventions and Protocol I to the armed conflict' and also affirmed that it was 'bound by international customary law pertaining to humanitarian principles, norms and rules in armed conflict' (United Nations 2008: 27, notes 3 and 4).

This was followed up when the government and the NDF signed the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) on 16 March 1998. The articles of the agreement affirm prohibitions on summary executions, involuntary disappearances, massacres, indiscriminate bombardments, and the targeting of civilians or those taking no active part in the hostilities, persons who have surrendered and those placed *hors de combat* by sickness, wounds or any other cause (Government of the Philippines and National Democratic Front of the Philippines 1998). CARHRIHL also provided for the establishment of a Joint Monitoring Committee (JMC) that would be composed of three members chosen by the government's negotiating panel and three by the NDF's negotiating panel. The JMC was to 'receive complaints of violations of human rights and international

humanitarian law and all pertinent information and shall initiate requests or recommendations for the implementation' of the agreement. The members have been chosen by both sides so that there are now government and NDF 'sections' of the JMC, but the JMC itself has only ever met once and never again following the breakdown of talks in 2004.

Robert Francis B. Garcia, Secretary General of PATH (Peace Advocates for Truth, Healing and Justice), has even more to say on the matter:

What powers does the JMC actually wield? The most disconcerting feature of the agreement is "the failure of the CARHRIHL to vest the JMC with executory power." Indeed, all the JMC can do is deliberate on a filed complaint, try to reach a consensus, and then throw it to the "Party concerned" for further investigation. Nothing in the agreement indicates that either Party can be compelled to investigate. Much less are they compelled to provide reparation for the aggrieved. Indeed, till this day not one of the cases filed with the JMC, whether against government or the CPP/NPA/NDF, has moved an inch beyond their respective filing cabinets. In short, we have an official "agreement" to respect HR and IHL, with a body to "monitor" compliance, but no teeth to enforce it. All we have is their word, which, going by experience, does not amount to much. (Garcia 2006: 5-6).

So for grievances against the NDF forces, the JMC is supposed to take up the case, while for the MILF, issues of lawlessness are supposed to be addressed through the AHJAG. However, what is missing is the necessary transparency to assure aggrieved parties, or those accused, of any sort of due process as investigation and penalties lie solely within the purview of the protagonist party.

In his report on extrajudicial killings in the Philippines, Philip Alston, the UN Special Rapporteur, was scathing of the judicial processes followed by the CPP/NPA/NDF when he stated:

(There are) several practices that are inconsistent with international human rights and humanitarian law. First, the CPP/NPA/NDF considers "intelligence personnel" of the AFP, PNP, and paramilitary groups to be legitimate targets for military attack. Some such persons no doubt are combatants or civilians directly participating in hostilities; however, the CPP/NPA/NDF defines the category so broadly as to encompass even casual Government informers, such as peasants who answer when asked by AFP soldiers to identify local CPP members or someone who calls the police when faced with NPA extortion. Killing such individuals violates international law.

Second, the CPP/NPA/NDF's system of "people's courts" is either deeply flawed or simply a sham . . . international humanitarian law (IHL) unambiguously requires it to ensure respect for due process rights. One telling due process violation is that, while a people's court purportedly requires "specification of charges . . . prior to trial", the CPP/NPA/NDF lacks anything that could reasonably be characterized as a penal code. It is apparent that the CPP/NPA/NDF does impose punishments for both ordinary and counterrevolutionary crimes in areas of the country that it controls. But NDF representatives were unable to provide me with any concrete details on the operation of the people's court system. This suggests that little or no judicial process is involved. In some cases, the use of people's courts would appear to amount to little more than an end run around the principle of non-combatant immunity. In other words, it seeks to add a veneer of legality to what would better be termed vigilantism or murder. Failure to respect due process norms constitutes a violation of IHL for the NPA/ CPP/NDF and may constitute a war crime for participating cadres.

Third, public statements by CPP/NPA/NDF representatives that opponents owe "blood debts", have "accountabilities to the people", or are subject to prosecution before a people's court, are tantamount to

death threats. Issuing such threats under the guise of revolutionary justice is utterly inappropriate and must be decisively repudiated.” (United Nations 2008: 14).

In further annexes, Alston explained his concerns about due process, saying:

The basic procedure of the people’s courts is provided in the “Guide for Establishing the People’s Democratic Government” (1972), Chapter III, but this does not explain what law the courts apply. Representatives of the NDF claimed that, while the process of codification was ongoing, several existing documents constituted a penal code.<sup>6</sup>

Alston concluded that none of the documents ‘nor any other instrument cited actually defines the elements of any criminal offence’ (United Nations 2008: 40, note 44).

Despite these apprehensions concerning the revolutionary movement’s rule-of-law shortcomings, Sol Santos (2005: 20) suggests that one of the features that continue to attract support for the NPA is their function as ‘a “social police” in the countryside where the state has no presence’.

So while the NDF claims to abide by international humanitarian law (IHL) and other international laws, and while agreement on the observation of IHL has been arrived at between the government and the NDF, the mechanisms for implementation have never been put into operation. The reason, in part, is because of the listing of the NPA as a terrorist organisation, largely at the behest of the Philippine government, resulting in the NDF ceasing to engage with the government.

With regard to the MILF insurgency, the government and the MILF entered into the Agreement on Peace between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front on 22 June 2001 and agreed to ‘[t]he observance of international humanitarian law and respect for internationally recognized human rights instruments’. This commitment was further elaborated in the Implementing Guidelines

on the Humanitarian, Rehabilitation and Development Aspects of the GRP-MILF Tripoli Agreement on Peace of 2001 signed on 7 May 2002.

What is clear, therefore, is that the GRP, NDF and the MILF have all agreed to be subject to IHL. However, the means by which all sides are to be bound by such laws are absent. The GRP and MILF have no effective mechanism in place at all although they have been able to coordinate their disposition of forces through AHJAG. In addition, Local Monitoring Teams, backed by the International Monitoring Team lead by the recently departed Malaysian forces, were able to successfully intervene in ceasefire violations between the GRP and the MILF. These interventions no doubt reduced the conflict’s effects upon civilians, thereby gaining significant plaudits from civilian groups, local government units and affected communities. Nevertheless, following the breakdown of the MOA-AD, hundreds of thousands were again displaced, and remain so to this day. On the other hand, the CARHRIHL between the GRP and the NDF, and its JMC, has never been made fully operational. It takes on a particular importance at this juncture when the anti-insurgency campaign has encompassed the killings of non-combatants, akin to what happened in the 1970s and 80s.

The international team monitoring the MILF-GRP ceasefire notwithstanding, there is no significant third-party presence that can call the warring parties to account for the failure to observe IHL. There is little to ensure that IHL violations are prevented other than the local political losses that the parties may suffer as a consequence.

Meanwhile, and in relation to the provisions of IHL on the protection of civilians, many activists of the left claim that the rapid rise in extrajudicial killings commenced around the time that the military strategy to finally defeat the communists, called Oplan Bantay Laya, came into force. The plan, and other documents disseminated within the military such as *Knowing the Enemy* and the Northern Luzon Command’s hastily withdrawn *Trinity of War*, all put great weight on the need to dismantle the CPP front

organisations. These two documents contained the names of suspected front organisations and alleged sympathizers. Even party-list groups with representation in Congress have been labelled by the National Security Adviser as communist fronts.

#### 4.1.7 Extrajudicial Killings

Table 4.1 presents data pertaining to extrajudicial killings, enforced disappearances and displacements.

**Table 4.1** Victims of extrajudicial killings, enforced disappearance and displacements

Victims of Extrajudicial, Summary or Arbitrary Execution under the Arroyo Government				Victims of Enforced or Involuntary Disappearance under the Arroyo Government			
Annual Totals: January 21, 2001 to September 30, 2008				Annual Totals: January 21, 2001 to September 30, 2008			
Year	Total	Organized	Women	Year	Total	Organized	Women
2001	99	35	11	2001	7	1	2
2002	118	44	13	2002	9	3	2
2003	123	32	14	2003	11	2	1
2004	83	41	9	2004	26	10	5
2005	187	101	14	2005	28	6	0
2006	210	108	25	2006	78	26	16
2007	70	35	12	2007	33	13	4
2008 (Jan-Sep)	43	8	5	2008 (Jan-Sep)	7	5	1
<b>Total</b>	<b>933</b>	<b>404</b>	<b>107</b>	<b>Total</b>	<b>199</b>	<b>67</b>	<b>31</b>

Source: Table reproduced from *Karapatan Monitor*, July-September 2008, available online at <[http://www.karapatan.org/files/KarapatanMonitor\\_3rd\\_08.pdf](http://www.karapatan.org/files/KarapatanMonitor_3rd_08.pdf)>

The Task Force Against Political Violence, also known as Task Force 211, was created by virtue of Administrative Order 211 signed by President Macapagal Arroyo on 26 November 2007. While the Task Force is supposed to be monitoring 235 cases of extrajudicial killings, it has only achieved one conviction so far, as table 4.2 shows.

**Table 4.2** Accomplishments of Task Force 211 from 27 November 2007 to 17 March 2009

<b>Cases Activated:</b>	
1. Cases Previously Archived (Warrant of Arrest was not served) but the accused voluntarily surrendered	1
2. Dismissed cases (filed before the Prosecutor's Office but was dismissed for lack of evidence or witnesses) but was subsequently re-filed in court	2
<b>Accused was located</b> : The Armed Forces of the Philippines surrendered Roderick de la Cruz to the National Bureau of Investigation today, May 16, 2008.	1
<b>Accused finally Arrested:</b>	
Nanding Bitinol (TF 4025) Rafael Cardeno (TF 4051)	2
<b>Cases adjudicated by Courts: (Acquittals)</b>	
(Conviction)	1
<b>Cases filed in Court:</b>	
1. Cold case (case without any evidence or witnesses) that was subsequently filed with the Prosecutor's Office for preliminary investigation. It is now filed for prosecution at Court Level	1
2. Case previously under police investigation and was subsequently filed with the Prosecutor's Office for preliminary investigation. It is now filed for prosecution at Court Level	5
3. Cases pending at Prosecutor's level finally filed for prosecution at Court level	11

<b>Cases Dismissed:</b>	
1. From cold case (cases without any evidence or witnesses) it was filed for preliminary investigation but was eventually dismissed	3
2. Previously under preliminary investigation but was dismissed for insufficiency of evidence	9
3. Formerly undergoing trial but was later on dismissed for lack of witness/es	2
4. Formerly undergoing trial but was later on dismissed for failure to prosecute	2
<b>Total</b>	<b>45</b>

Source: Task Force 211 website at <[http://www.taskforce211.com.ph/tf211\\_sub/accomplishment/accomrep\\_tf211.htm](http://www.taskforce211.com.ph/tf211_sub/accomplishment/accomrep_tf211.htm)>, accessed on 26 March 2009

The Alston report went on to criticize the use of orders of battle assembled by intelligence operatives, which name hundreds of organisations and individuals that the military considers subversive and, therefore, enemies of the state. Because such materials, although in widespread use by the security forces, are by their nature secret, they cannot be subjected to any legal challenge. The report also described the role of the Interagency Legal Action Group (IALAG), made up of 'various criminal justice, intelligence, and military organs' but whose operations was controlled by the Office of the National Security Adviser. (United Nations 2008: 19). The report offered a likely rationale for the creation of such a group:

The reason that such an *ad hoc* mechanism was established for bringing charges against members of these civil society organisations and party list groups is that they have seldom committed any obvious criminal offence. Congress has never reversed its decision to legalize membership in the CPP or to facilitate the entry of leftist groups into the democratic political system. But the executive branch, through

IALAG, has worked resolutely to circumvent the spirit of these legislative decisions and use prosecutions to impede the work of these groups and put in question their right to operate freely. (United Nations 2008: 19)

Alston speculated that the composition of the group made it tempting to those of its members with the means to do so to conduct summary executions of individuals that can not be reached through legal means. He also stated that by making prosecutors into team players with the AFP and the Philippine National Police (PNP), they (the prosecutors) were less likely to prosecute members of those agencies in cases involving the deaths of leftist activists. One of Alston's recommendations was the disbandment of the IALAG.

Alston also criticized the reluctance of the PNP to pursue cases against the AFP and cited the deep-rooted lack of cooperation between prosecutors and police as an abetting factor in the impunity that prevails. He characterized the operations of the police as being hampered by a low quality witness protection program and limited forensic resources.

Lack of police capacity to prepare cases for prosecution was also cited in one of our focus group discussions by a participant who was a state prosecutor. He described how prosecutors try to assist the police and how they are frustrated at the poor quality of evidence with which they had to work. Amidst such problems, it would be less than surprising if some over-zealous or frustrated officers did not take the law into their own hands – an observation affirmed in informal interviews with graduates of the Philippine Military Academy and members of the PNP.

The Alston report was also highly critical of the lack of legislative oversight and investigation of the killings. He not only criticized the president's Memorandum Circular 108 that prohibits Cabinet members from appearing before Congressional hearings and stymied attempts by the legislature to subject the Armed Forces to proper scrutiny

but also reported that a senior government official had expressed 'genuine puzzlement' that Congress might wish to conduct such scrutiny, saying that this was 'successfully avoided' (United Nations 2008: 22). Alston went on to say that 'the then Chair of the Senate Committee on Justice and Human Rights , , , could not recall having held any hearing relevant to the ongoing extrajudicial killings but maintained that this was not a problem, because killing was already a punishable offence, so there was no need for further legislation' (United Nations 2008: 22).

Meanwhile the reaction of senior government officials seemed to reveal just how seriously or otherwise they considered international opinion. The Secretary of Justice called Alston a *muchacho* (servant boy) of the UN and then Defense Secretary Hermogenes Ebdane said, 'Alston won't pay attention. He is blind, mute, and deaf. We can't do anything about that.' (Uy 2007: <[http://newsinfo.inquirer.net/breakingnews/nation/view/20070328-57541/Alston%3A\\_Govt\\_reaction\\_to\\_visit\\_%91deeply\\_schizophrenic%92](http://newsinfo.inquirer.net/breakingnews/nation/view/20070328-57541/Alston%3A_Govt_reaction_to_visit_%91deeply_schizophrenic%92)). These comments came in spite of a prior investigation conducted by a presidential commission, headed by retired Justice Melo which, while denying the existence a strategy or policy of eliminating leftwing activists, did conclude that rogue elements of the military and police may be involved, right up to the level of divisional commander, and made some similar recommendations to the Alston report, particularly regarding investigations and witness protection.

In July 2007 the Supreme Court convened a summit on extrajudicial killings. A result of that summit was the Court's subsequent release of the writs of amparo and habeas data. The writ of amparo, if granted, requires state authorities to protect those whose lives are believed by the courts to be under threat. The writ can include inspection orders and require the production of documents. With the writ of habeas data, the courts can order the release, destruction or correction of records held on persons believed to be under threat of death.

Aside from the killings of leftists, the Alston report also covered the large number of extrajudicial killings in

Davao. What is interesting from a rule of law perspective is that these Davao killings are a perfect example of the drift from a national security endeavor (the fight against insurgency) into a common law enforcement function against criminality. Alston says that 553 people were summarily killed for alleged criminal activities such as drug pushing and theft by the shadowy Davao death squad. Human Rights Watch (2009) released a more recent report citing a further 124 killings in 2008 and 33 in the month of January 2009, with eight executions in one day alone.

Both the mayor of Davao City and the Davao police deny the existence of the death squads but that they are tolerated by the police and local government is undeniable. In a telling interview with Time magazine in 2002, Mayor Duterte said, 'If you sell drugs to destroy other people's lives, I can be brutal.' (Zabriskei 2002: <http://www.time.com/time/magazine/article/0,9171,265480-2,00.html>) Duterte has been reported as saying that criminals are legitimate targets of assassinations (Asian Human Rights Commission 2008).

Kenneth Roth, the executive director of Human Rights Watch, has called on the national government to move beyond their belated words of condemnation and bring a halt to such killings (Roth 2009). Only on 30 March this year (2009) did the Commission on Human Rights finally begin a process of public inquiry into the killings.

This vigilantism seems to have spread to other areas, notably to the cities of Digos, General Santos and Cebu in the Central Visayas where similar tactics to fight crime are being emulated. Only in Davao, however, has the phenomenon taken such a terrible and prolonged regularity with such widespread impact. What is really worrying is the apparent public tolerance of such killings, which continue unabated. Such public acceptance illustrates only too well the extent to which the rule of law is failing the citizens of Davao and other cities.

While the figures for displacement, extrajudicial killings and vigilante activities are often debated, the impacts upon

civilians are undoubtedly widespread. These include not only loss of life but also loss of property and livelihoods. Perhaps just as damaging to the democratic future of the Philippines is the abiding psychological damage that is induced and the cultural damage to the social fabric that is the foundation of a functioning democracy. Amidst a climate of conflict, displacement, killings and wanton disregard for rights, it is difficult for people to retain their belief in peacefully and constructively expressing their views and standing up against injustices, whether real or perceived.

On 29 April 2009 Professor Alston submitted an addendum to his report based on his 2007 visit. Praising the reduction in the killings of leftwing activists, the issuance of the writs of amparo and habeas data by the Supreme Court and the CHR's steps to investigate unlawful killings, he nevertheless decried the continuation of extrajudicial killings (United Nations 2009: 2).

In addition, Alston went through each one of the recommendations in his original report and revealed the progress on each. On 23 occasions he found either that a particular recommendation had not been implemented or that there was no evidence of implementation. Alston was particularly unsparing over the government's failure to institutionalize a single policy measure aimed at combating extrajudicial killings, whether effectively institutionalizing command-responsibility in the Armed Forces or ensuring effective congressional oversight or embedding capable, competent, efficient and impartial investigation capacity in the police, prosecutorial and human rights bodies of the country. Alston (2009: 5) said 'most of the Government's formal actions in response to the Special Rapporteur's recommendations have been symbolic, and lack the substantive and preventive dimensions necessary to end the culture of impunity.'

Perhaps predictably, given his previous statements, Justice Secretary Raul Gonzalez's response to this report was churlish and acerbic, saying, 'We better just ignore it' and 'We cannot keep on stopping every time a dog barks' (Esguerra 2009: <http://newsinfo.inquirer.net/>

[inquirerheadlines/nation/view/20090512-204482/Just-Ignore-Alston-says-Gonzalez](http://newsinfo.inquirer.net/nation/view/20090512-204482/Just-Ignore-Alston-says-Gonzalez)). Such statements do little but affirm Alston's conclusions, quite aside from leaving the public asking where the canine demeanour really lies!

The absence or failure of effective domestic mechanisms to bring together warring parties and the failing instruments of rule of law to bring perpetrators to account has led affected civilians to turn to international instruments by bringing the matter of extrajudicial killings to the UN Human Rights mechanisms. However, serious concerns are raised about the effectiveness of such instruments when they consist of recommendations which are then ignored or, worse, brusquely dismissed out of hand by senior officials. The observations and recommendations made by various UN committees, and the circumstances and national government responses surrounding these will be examined below.

## 4.2 International Obligations Protecting the Rights of Citizens and Guaranteeing the Rule of Law

### **What international instruments has the Philippines signed up to that uphold the rule of law and guarantee citizens' access to justice?**

The Philippines has ratified or acceded to a number of international conventions and protocols, as shown in Appendix 1. Significantly, the Philippines has failed to sign the International Convention for the Protection of All Persons from Enforced Disappearance. President Macapagal Arroyo did, however, sign the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in mid-2007, just as the Philippines was undergoing its Universal Periodic Review by the Human Rights Council of the UN, where it was subject to specific pressures regarding the extrajudicial killings of late. The Senate has still to ratify the protocol and, in September 2008, the executive said it was now seeking a deferment of up to five years in its implementation. Executive Secretary Eduardo Ermita (2008) said the Philippines should

'rather err on the side of prudence and thoroughness if only to assert our capability to deliver on the longer-term (and not be pushed into) early, yet flawed compliance'. Clearly, one of the first requirements is to fulfil its pre-existing obligation to provide legal remedy for the crime of torture. Although torture is expressly forbidden in the constitution, there is no crime of torture in the statute books. The one law that does define it is the Human Security Act. However, cases of torture can only be brought if the victims are apprehended or charged under that same law.

The Philippines signed but did not ratify the Rome Statute of the International Criminal Court (among the recommendations made to the Supreme Court at the summit on extrajudicial killings in 2007). This means that, while the Philippines is obliged to refrain from 'acts which would defeat the object and purpose' of the ICC, the government of the Philippines has not agreed to allow its subjects or those of foreign personnel operating within its territory to be subject to the rulings of the court except where the latter are nationals of a state that has accepted the jurisdiction of the court. Importantly this includes the United States, which withdrew its signature to the Rome Statute in 2002. There are calls from a range of groups for the Philippines to ratify the Statute, and also from the Chief Justice of the Supreme Court. On the other hand, then AFP Chief of Staff, Lieutenant General Alexander Yano, openly came out against ratification saying it might only serve as a convenient venue for filing partisan and politically-motivated cases of rights violations against uniformed men. He added that it could hamper security efforts against terrorists and lawless elements and groups (GMANews.TV 2008). This either indicates that the AFP does not understand that the ICC's role is to prosecute when state mechanisms are unable to do so effectively or it is an admission that the state can not effectively prosecute crimes against humanity. It is also an ironic stance in the face of the perception that many of the victims were killed because of their politics.

The failure to fully accede to these international agreements can be seen in the context of a national

security apparatus that views itself as being at war on multiple fronts. In the meantime, the Philippines is engaging the support of allies, such as the US and Australia, that until all too recently have made clear the view that the war against terror will dictate the pattern of law enforcement and the observation of human rights norms rather than the other way around.

The evidence for this perspective is the large number of disappearances, of extrajudicial executions of activists and of those forced to flee their homes following an upsurge in hostilities between the AFP and the Moro Islamic Liberation Front (MILF) forces in Southern Mindanao. The question then arises as to what use has been made of these international agreements by citizens? What have been the most common complaints filed? How accessible have these instruments been to citizens? How has the government reacted to citizens' use of these instruments?

In 2008 the Philippines underwent its first Universal Periodic Review at the Council on Human Rights of the UN. A plethora of NGO submissions was received from many organisations, both Philippine and international. While many of the organisations were international NGOs, they received most of their information from local groups and formations active in the Philippines.

#### ***4.2.1 Adherence to International Obligations***

**Does the Philippines adhere to these obligations in practice in terms of: 1) processes and procedures applicable to citizens 2) reporting requirements and 3) monitoring by government of compliance with these agreements?**

Predictably the Philippines received rough sailing for its record on extrajudicial killings. Each NGO submission detailed cases of extrajudicial killing affecting the submitting organisation's sector of interest. Interestingly, in the period between the Alston report and the review, there was a reduction in the incidents of summary executions. However, since the beginning of 2009, the number has risen again.

In addition to submissions on these killings, a host of other issues was raised by the submitting NGOs including enforced disappearances; the use of torture; the effects of neo-liberal economic policies on producer prices of food; issues with regard to access to education, health and other basic social services; and the impact of international mining ventures on livelihoods and ancestral domains of indigenous peoples. Concerns were also expressed regarding reproductive health rights highlighted by the withdrawal of artificial contraception services by the City of Manila, the trafficking of women and children, forced demolitions and relocations, violations of labour rights including the right to organize into unions and the impact of automatic debt appropriations on social service provision. The Centre on Housing Rights and Evictions (2007: 22) complained of the effect of the automatic debt appropriations on social services spending, saying, 'Current data indicates that almost half of the government spending goes to debt servicing (interest and principal payments). Only a meagre amount is allocated to the social services and other budget items that are supposed to pave the way to authentic development.' The government clearly has priorities other than education, health and rural development as shown by its lack of long-term strategies. Its expenditures on social services pale in comparison with those of its neighbouring states.<sup>7</sup>

The Philippine government was also questioned concerning delays in fulfilling its reporting requirements on many of the agreements it has signed. We examine the record of the government in relation to a number of these agreements in the following sections.

### *The Rights of Women*

The Philippines ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 3 August 1981. The UN Committee on the Elimination of Discrimination Against Women (2006), in its comments on the Philippine government's fifth and sixth combined periodic report, expressed appreciation for the measures taken in support of the Convention. The

specific measures mentioned were the adoption of laws (the Anti-Trafficking in Persons Act of 2003, the Anti-Violence against Women and Their Children Act of 2004, the Family Courts Act of 1997, the Rape Victims Assistance Act of 1998, the Indigenous People's Rights Act of 1997 and the Social Reform and Poverty Alleviation Act of 1997), the plan for gender-responsive development and the institution of pre-departure briefings for migrant workers.

However, the Committee also raised a number of concerns including the status of the Convention in the country's legal system. Article II, section 2 of the Philippine constitution says that the Philippines 'adopts the generally accepted principles of international law as part of the law of the land'. However, lawyer Clara Rita A. Padilla (2008), executive director of EnGendeRights, an advocacy NGO for women's rights, noted that CEDAW has only been cited in a very small number of cases in the Philippines.

Padilla (2008) described how discrimination against women is perpetuated in the Philippines. She commenced with a discussion of violence against women and then looked into the topics of rape, sexual harassment, prostitution and violence against women in intimate relationships. She cited the progress on rape, particularly the enactment of the Anti-Rape Law of 1997 and the Rape Victim Assistance and Protection Act of 1998. The Anti-Rape Law defines rape as a crime against the person (rather than against chastity as was previously the case) and prohibits admissibility into evidence of past sexual behaviour, although it is a prohibition that can be overturned by the court at its discretion. Its shortcomings are that lesser penalties are provided for sexual assault by use of an object (meaning the insertion of things like pieces of wood or broom handles). Padilla also echoed the concerns expressed in the 2006 CEDAW Committee Concluding Comments on the Philippines about the law's provision extinguishing the criminal action upon subsequent forgiveness by the wife. Article 266-C of the law reads: 'In case it is the legal husband who is the

offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: Provided, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void *ab initio*.'

Padilla (2008), however, reserved her major criticism for the judiciary. She pointed to cases where judges seemed unaware that not all victims may openly resist rape. In addition, even though the Supreme Court has ruled that the lack of lacerations in the hymen is not evidence that rape did not take place, Padilla said that many judges and prosecutors took the absence of lacerations as an indication of consent. She also pointed out that many judges were unaware that it may take some time before rape victims can recount details of the attack to another party or that victims may be reluctant to report the crime. These attitudes are supposedly being addressed by the National Commission on the Role of Filipino Women as well as by the Supreme Court through its committee on gender responsive planning.

The comments of the CEDAW Committee took note of the 'patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society' (UN Committee on the Elimination of Discrimination Against Women 2006: 4).

On the issue of sexual harassment, Padilla (2008) pointed to the passage of the Anti-Sexual Harassment Act of 1995 as a positive step. She observed, however, that the law defined sexual harassment only in the context of a relationship involving a person in a superior position harassing someone in a subordinate position, thereby excluding cases involving peers or harassment perpetrated by subordinates. This is one of the laws most clearly in need of review, especially since the impact on targets or victims can be to force them into silence or to compel them to comply with unsavoury requests for fear that seeking redress would cost them lost jobs or damaged reputations.

With regard to prostitution, article 202 of the Revised Penal Code is still used to round up working women and

charge them with vagrancy. However, the Anti-Trafficking in Persons Act of 2003 considers trafficked persons as victims who should be afforded protection. Padilla (2008) cited the case in Quezon City of Judge Bautista of the Regional Trial Court who declared article 202 to be unconstitutional. She quoted the judge as saying, '[T]he very thought of punishment of a person because of poverty smacks of elitism and a violation of the equal protection of the law clause.' (Padilla 2008: 14) A Quezon City ordinance now recognizes persons in prostitution as requiring health services, crisis interventions and socio-economic assistance, and penalizes pimps and clients. Unfortunately, this is the only city in the country to have adopted this view.

Regarding violence against women in intimate relationships, the law provides for the issuance of protection orders for the victims of such violence and contempt orders to those who violate the protection orders. However, many judges are reportedly loath to issue such orders. The law also does little to prevent conjugal properties from being dissipated or women from being evicted from their homes.

#### *Divorce and Annulment*

EngendeRights, the organisation that Padilla founded, has joined with other groups to call for a divorce law. Currently, Muslims can divorce under the Sharia family code while Christians and peoples of other faiths are not permitted to do so. Divorce by a foreigner married to a Filipino is recognized so long as it is the foreigner who initiates the divorce. In fact, it is perhaps surprising that the Philippines has not been forced to confront this issue under the provisions of the Convention on the Elimination of Racial Discrimination since it would clearly appear to discriminate by virtue of ethnicity, nationality and religion.

The alternative for non-Muslims is annulment. One commonly employed basis for such is "psychological incapacity" as provided in article 36 of the country's Family Code. The grounds for annulment are generally strict and,

despite the constitutional provision on the separation of Church and state, reflect Roman Catholic rules on the matter. The Supreme Court (1997) has directed the courts to treat with 'great respect' the interpretations of psychological incapacity of the National Appellate Matrimonial Tribunal of the Catholic Church. The Office of the Solicitor General has made it clear that it will challenge every court decision in favour of annulment on these grounds. Furthermore, pursuing annulment is an expensive process, making it unavailable to most people, with lawyers asking for an initial fee of PHP50,000 and a fee of PHP3,000 per hearing, plus the cost of expert witnesses such as psychologists. A lower cost option is legal separation but this does not permit remarriage. The poor, on the other hand, simply choose to separate informally. The law is out of tune with social realities and has particular consequences for the rights of women and children to property and their use of family names.

The last known survey on divorce in the Philippines was undertaken in 2003 by the Social Weather Stations polling agency with 36 per cent of those surveyed in favour of divorce. In addition, 65 per cent of the respondents also said that one parent could raise children just as well as two parents together, a sharp contrast to the usual sanctity of family life arguments against divorce. While there are proposals for a divorce law, the influence of the Catholic Church remains strong and it lobbies intensively against divorce. The Philippines is the only country in the world, aside from Malta, not to have a universally applicable divorce law.

Another discriminatory aspect of family law picked up by the CEDAW Committee is the differentiation that the Family Code makes between concubinage and adultery. Both are considered criminal, rather than civil, offences. The requirement of proof for concubinage is considerably more stringent than for adultery. Article 334 of the Revised Penal Code requires proof that a married man and his concubine are living together as though man and wife, or that the husband has had 'sexual intercourse in scandalous circumstances with a woman who is not his wife'. Proof

of an adulterous relationship, on the other hand, only requires that a married woman has had sexual intercourse with someone other than her husband. There are proposals in Congress to replace these with one marital infidelity law applicable to both husbands and wives.

The Philippines has also come under attack in CEDAW Committee hearings at the UN for the discriminatory character of its family law (Padilla 2008). CEDAW's concern was over Muslim marriage laws which permit marriage as young as the age of 15.

#### *Abortion*

The CEDAW hearings have also criticized the Philippine's anti-abortion position, which brooks no exception for rape victims, foetal impairment or danger to a woman's life. This anti-abortion stance forces women with unwanted pregnancies to resort to unsafe backstreet abortions. Current estimates are that there are roughly half a million attempts to abort fetuses every year. In 2004 the National Commission on the Role of Filipino Women (NCRFW) reported that 55 per cent of all pregnancies were unintended. Unwanted pregnancies are common because the government has no effective reproductive health and family planning program and little formal sex education. And because the law requires physicians who treat women who are injured in such procedures to report the matter to the police, women's lives are doubly threatened. This is why the Committee has urged the government to review its abortion laws and to remove their punitive provisions on women who seek abortion. The Committee also recommended that the state should provide health services to women who suffer from abortion related injuries (UN Committee on the Elimination of Discrimination Against Women 2006: 6). While this may not be a call to legalize abortion, it is clearly a call to decriminalize it.

#### *Convention on the Rights of the Child*

The UN Committee on the Rights of the Child (CRC), in its 2005 consideration of the second periodic report of the Philippines regarding its implementation of the

Convention on the Rights of the Child, favourably observed the positive steps taken by the government, particularly with the passing of several laws seeking to protect children and promote their rights (UN Committee on the Rights of the Child 2005). However, it also noted that these laws were not effectively being implemented as the government has not made available sufficient resources for such a purpose. For instance, each town and city is supposed to provide its own juvenile detention facility with adequate social and educational services, yet many local government units cited the lack of funds for their failure to build or maintain such facilities. The non-governmental organisation Preda Foundation (2008: 9-10) has lamented the poor quality of facilities for children in conflict with the law.

The Committee also offered critical observations concerning the high school drop-out rate in the Philippines and called for both formal and non-formal educational opportunities for children to be expanded. In addition, the Committee made a number of observations and recommendations concerning economic exploitation of children, with a specific call to improve the labour inspection system. The Committee also expressed deep concern at the impact of the narcotics trade on children, the number of street children and the way law enforcers treated them.

#### *Convention on the Elimination of Racial Discrimination*

In 2008, the Philippines reported against its obligations under the Convention on the Elimination of Racial Discrimination (CERD). The report was a consolidation of the 15th, 16th, 17th, 18th, 19th and 20th reports, indicating a problem by the government in issuing reports on its progress with regard to the CERD (UN Committee on the Elimination of Racial Discrimination 2008).

The government's report commences by saying that 'racial discrimination, as defined under paragraph 1, article 1 of the Convention, is alien to the prevailing mores and culture of the Filipino people. The type of racial discrimination, similar to what was practiced in South Africa when the

policy of apartheid was not yet dismantled, has never officially or factually existed in the Philippines, neither in a systemic nor formal nor intermittent nor isolated manner' (UN Committee on the Elimination of Racial Discrimination 2008: 6). Strictly speaking this is inaccurate as under Spanish rule there was a clear distinction made between *Indios* (native Filipinos), Chinese and those of Spanish descent born in the Philippines versus those born in Spain. Under the colonial rule of the United States, the predominant policy was one of co-optation after initial subjugation of even those communities that the Spanish had been unable to conquer. Laws were passed by the US colonial administration defining 'non-Christians' and forcing some into reservations and forbidding them from the consumption of alcohol on the grounds that they were savage and uncivilized. However, racism was generally more thoroughly incorporated as a psychology that encouraged many Filipinos to consider their own culture as second-rate. This was accomplished through an American-style education system, one that, to a large extent, remains to this day.

#### *Observance of ILO Conventions*

In general, the Philippine observance of ILO conventions parallels that of the human rights instruments under the Human Rights Council. The Philippines currently has numerous outstanding reports that are overdue, including responses to and updates on comments made on previous submissions.

In 2007 the Philippines came under severe criticism from the Committee of Experts of the ILO with regard to the wave of extrajudicial killings and its impact on the country's adherence with Convention 87 (Freedom of Association and Protection of the Right to Organise). The Committee said it was 'deeply concerned at the allegations of murders of trade unionists', noted the absence of convictions and stated that any evidence of impunity should be 'firmly combated' (International Labour Organization 2007: < <http://www.ilo.org/ilolex/cgi-lex/>

pdconv.pl?host=status01&textbase=iloeng& document=781&chapter=13&query= Philippines%40ref&highlight=&querytype=bool&context=0>). During the committee discussions, the ILO made a request for the conduct of a high level mission to the Philippines to determine the situation and offer advice.

Government officials tend then to dwell on the level of stated policy and legalisms reflecting a “pro-forma” response to international obligations rather than a focus on substantive implementation of the conventions and true fulfilment of the rights they convey. It would seem, therefore, that hopes of substantive institutionalized change are unlikely to be forthcoming as a direct result of appeals to international bodies. However, as discussions between the US government and representatives of the Philippine government concerning a proposed ILO visit have revealed, and as has been illustrated by the response of some sections of the business community and of foreign investors, the neglect of basic rights and a climate of impunity leave some investors worried about long-term prospects. The defensive posturing and the constant surrender to specific interests are revealing of the prevailing attitudes to both economic as well as political democratization. Belatedly, political leaders may be starting to realize that the country's international reputation is at stake and that the international standing of the Philippines does make a real difference and has real economic consequences for the country. A damaged reputation leaves the country less able to exert its influence in international affairs.

### 4.3 Recommendations

- Actions for armed protagonists
  1. Both military and legislative approaches should seek to distinguish between terrorism and insurgency and to weaken the bonds between terrorists and insurgents.
  2. IHL agreements between the GRP and insurgent groups should be independently monitored with

the assistance of third parties agreed upon by protagonists and by facilitating partners. Complaint mechanisms should be strengthened to allow such independent scrutiny. Progress and results of such scrutiny should be made publicly available at all times.

3. Armed groups engaged in quasi-judicial processes should release clear rules of court that meet internationally accepted definitions of due process, or they should cease such activities.
- Actions for the Legislature
    1. In relation to armed conflict and displacement
      - a. Torture and coercion should be explicitly forbidden for all members of the security forces, and training on non-coercive interrogation techniques should be given to them.
      - b. A fixed but index-linked scheme of compensation for civilians displaced, wounded, or killed during armed operations should be put in place.
      - c. The Congressional oversight committee on the Human Security Act should meet regularly and publish its recommendations on the websites of both houses of Congress and in official bulletins.
      - d. The Senate should immediately ratify the ICC at the request of the president.
    2. Legislative measures in relation to women, children, and family welfare
      - a. The offences of concubinage and adultery should be abolished. Marital infidelity should be made a civil rather than a criminal offence.
      - b. The law on sexual harassment should be changed to reflect the fact that harassment can come from subordinates and peers as well as from those in authority.
      - c. Charges of marital rape should not be allowed to be extinguished in the light of forgiveness

- by a spouse; failure to do so will simply continue to belittle the offence.
- d. Article 202 on vagrancy of the Revised Penal Code should be declared unconstitutional by the Supreme Court or repealed by Congress. The ordinance passed by Quezon City should be adopted instead as the national law.
  - e. The Reproductive Health Act should be passed by Congress.
  - f. The Juvenile Justice and Welfare Act of 2006 should be amended to ensure that all children in detention are safe from harm and have mandatory access to education, rehabilitation measures, and access to family or community members. Violent young offenders should be separated from those who are not violent.
3. Fiscal measures in relation to anti-corruption and judicial effectiveness measures
    - a. There should be mandatory and separate funding for the provisions of the Juvenile Justice and Welfare Act of 2006 sufficient to ensure that every province and city has and maintains at least one detention facility of adequate quality to fulfil the provisions of the act. The national government should, in addition, assist municipalities in determining, funding, and responding to the needs of children in violation of the law in accordance with the Act.
    - b. Funding for the judiciary as a whole, for the Sandiganbayan, and for the Office of the Ombudsman should all be depoliticized by fixing the allocation for each at a specific proportion of the General Appropriations Act.
    - c. State prosecutors' offices should have significantly greater fiscal autonomy.
    - d. The CHR's budget should be fixed by statute as a proportion of the defence and PNP budgets.

- Executive actions
  1. The implementing rules and regulations for the anti-torture bill should be developed in conjunction with local and international human rights groups, the Integrated Bar of the Philippines, Philippine Medical Association, psychologists and the judiciary.
  2. The process of appointing the Ombudsman should be similar to that of appointing justices of the Supreme Court.
  3. The executive and the peace panels should provide regular briefings to members of both houses of Congress and arrange for the committees on defence and on human rights to regularly meet with members of populations affected by armed conflict.
  4. The Philippines should immediately ratify the Convention on Enforced Disappearances. The executive, in line with the government's declaration of commitment as a member of the UN Council on Human Rights, should issue open invitations to all UN Special Rapporteurs. Similar invitations should be undertaken with regard to ILO inspections.
  5. The president should immediately endorse ratification of the ICC to the Senate.
- Law enforcement investigation capacities
  1. PNP personnel should receive much greater training on the rules of evidence and on techniques for gathering and presenting evidence. Access to legal support within the PNP should be of significantly higher quality and be much more widespread, including allowing the PNP to access the pro-bono services of lawyers in the preparation of high profile cases.
  2. The PNP should properly resource its forensic capabilities in a range of centres around the country and make much greater use of DNA evidence and much less use of gunpowder tests and lie detector tests, both of which are known to be unreliable.

- Judicial actions
    1. The gender committee of the Supreme Court should resolve upon a new five-year plan in the light of the CEDAW recommendations and consultations with NCRFW, the academe and civil society groups. Protection orders, in particular, should be made much more accessible, and a nationwide information campaign should be undertaken on options for women and children subjected to domestic violence. Courts should be sensitized to the vulnerabilities of women with regard to conjugal property during periods covered by protection orders.
    2. The Supreme Court should sponsor studies and trainings on customary laws pertinent to the indigenous groups with which judges are likely to come into contact.
  - Independent oversight bodies
    1. The Commission on Human Rights' (CHR) investigatory capacities should be upgraded.
    2. The CHR should be given the power to visit any facility in which it believes people may be detained; that power should be respected without exception by force of legal statute and backed by judicial prerogative, including automatic use of contempt powers, if necessary.
    3. The ICC should develop a regional presence in Southeast Asia and work actively with governments and civil societies within the region.
2. See, for example, <<http://pcij.org/stories/did-mike-arroyo-fund-postelection-special-operations-in-lanao/>>; <<http://verafiles.org/index.php/trackback/108-working-miracles-in-mindanao>> and <[http://newsbreak.com.ph/index.php?option=com\\_jcs&task=add&Itemid=88889164](http://newsbreak.com.ph/index.php?option=com_jcs&task=add&Itemid=88889164)>
  3. For more discussion on these rights, see *Philippine Democracy Assessment: Economic and Social Rights* by Edna E.A. Co, Ramon L. Fernan III, and Filomeno Sta. Ana III published by Anvil Publishing Inc 2007. See also the Human Development Index across provinces published by the Philippine Human Development Network and available at <[http://hdn.org.ph/wp-content/uploads/2005\\_PHDR/Stat\\_annex.xls](http://hdn.org.ph/wp-content/uploads/2005_PHDR/Stat_annex.xls)>
  4. For details, see *Philippines Case Decongestion and Delay Reduction Project*, a presentation by Professor Rosemary Hunter, Griffith University, 2002, available at <[http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CDDRP\\_presentation.ppt](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CDDRP_presentation.ppt)>
  5. Executive Order 464, Executive Order on the Calibrated Pre-emptive Response and Presidential Proclamation 1017
  6. These were the "Guide for Establishing the People's Democratic Government", "Basic Rules of the New People's Army" (1969), "Rules in the Investigation and Prosecution of Suspected Enemy Spies" (1989), and the "NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977" (1996). While the "Basic Rules of the New People's Army" includes a list of offences that are to be punished by expulsion and death when committed by members of the NPA — "treachery, capitulation, abandonment of post, espionage, sabotage, mutiny, inciting for rebellion, murder, theft, rape, arson and severe malversation of people's funds" (Principle IV, Point 8)
  7. For further details, see Edna Co, Ramon L. Fernan III and Filomeno Sta. Ana III, *Philippine Democracy Assessment: Economic and Social Rights* (Pasig City: Anvil Publishing Inc., 2007)

## Endnotes

1. More information on the plot is available at the following sources: <[http://web.archive.org/web/20020614124327/http://www.thestar.com/NASApp/cs/ContentServer?pagename=thestar/Layout/Article\\_PrintFriendly&c=Article&cid=1009926464027](http://web.archive.org/web/20020614124327/http://www.thestar.com/NASApp/cs/ContentServer?pagename=thestar/Layout/Article_PrintFriendly&c=Article&cid=1009926464027)>; 'September 11: The Asian blueprint' by Maria Ressa, at <<http://edition.cnn.com/2002/WORLD/asiapcf/southeast/03/11/gen.phil.terror.blueprint/?related>>; and <[http://www.knowledgerush.com/kr/encyclopedia/Bojinka\\_Plot/](http://www.knowledgerush.com/kr/encyclopedia/Bojinka_Plot/)>

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### 5.1 Public Perception on Judicial and Other Institutions

**What is the public perception on the judicial and other institutions? To what extent do the people trust the judicial and other institutions such as the courts, the police and other judicial authorities?**

It is difficult and complex to ask people's opinions about the rule of law because measuring the rule of law is an intricate task. The closest measure of the rule of law is probably the institutions that closely serve the purpose of law and the protection of citizens' rights. These institutions include the Supreme Court, the trial courts, the Ombudsman (and the Sandiganbayan), and other pillars of justice such as the police and the Department of Justice. The other institutions with which people might associate the rule of law are institutions of governance such as the local government units, especially the barangay, which by Philippine law, are mandated some quasi-judicial powers and which are the most visible governance institutions to ordinary citizens.

Several poll surveys were conducted by the Social Weather Stations (SWS) on various aspects of the rule of law and access to justice over the years 1993, 1995, 1999, 2003 and 2007. The questions were directed at legal experts and practitioners, such as judges and lawyers, who were

asked about their perceptions of the rule of law and the performance of institutions and legal experts. Surveys were also conducted among the public at large.

The Alternative Law Groups, Inc. (ALG), an organisation of legal practitioners in the Philippines and a coalition of 18 non-governmental organisations on developmental legal services, commissioned a survey in 2007 which addressed the problems of the poor in accessing justice and the extent to which the ALG assisted the poor in solving these problems. The ALG study is a rich source of data on legal experts' perceptions and, to some extent, public perceptions on the rule of law and access to justice.

The democracy assessment on rule of law commissioned SWS to do a survey in 2009. The survey asked similar questions as those raised by SWS and ALG in their survey of 2007 and by earlier SWS surveys prior to 2007. The different surveys allow a comparison of the responses over several time periods. New questions were included in the democracy assessment survey in 2009. The various results are discussed in this section. All survey data from 1993 to 2003 are from SWS surveys. The 2007 data come from the SWS-ALG study. The 2009 data are from the survey commissioned by the democracy assessment.

## 5.2 Findings of Various Surveys

### 5.2.1 Equal Treatment by the Courts

People's attitude toward equal treatment by the courts was assessed by asking respondents to agree or disagree with the following proposition: 'Whether rich or poor, people who have cases in court generally receive equal treatment.' This was first posed in a 1985 poll, and subsequently in polls conducted in 1993, 1997, 1999, 2003 and 2007. In 1985, 49 per cent agreed that people generally received equal treatment in court and only 26 per cent disagreed. In subsequent survey years, however, the answers varied significantly, as table 5.1 shows.

**Table 5.1** Respondents who agree or disagree with the proposition of equal treatment by the courts for rich or poor people (in per cent)

Year	Agree	Disagree	Undecided
1993	43	39	18
1997	41	40	19
1999	36	44	20
2003	40	36	24
2007	38	45	16

Sources: Social Weather Stations national surveys conducted in 1993, 1997, 1999, 2003 and 2007 (with Alternative Law Groups)

In the 2003 national survey a series of questions were asked regarding people's trust in institutions, such as the courts, and in judges and lawyers. Questions were also asked about the problems that people encountered in trying to get the proper services they sought from the courts. The results are presented and analyzed below.

### 5.2.2 People's Confidence in Institutions

#### *Level of Trust in Institutions*

In general, people placed a higher level of trust in the church, media and non-governmental organisations compared to all other institutions, as table 5.2 shows. Among public institutions, people tended to put their trust on the city or town government probably because this is the unit of government they are most familiar with and that is most visible and accessible to them. The Supreme Court also seems to rate a high level of trust probably because it is the people's ultimate resort and hope for obtaining justice.

**Table 5.2** People's level of trust in institutions (in per cent)

Institutions	Very little	Little	Neither much nor little	Much	Very much	Doesn't know institution
Supreme Court	6	14	33	34	11	0.5
Trial courts	6	16	41	30	6	0.7
Sandiganbayan	6	12	39	33	8	1.0
National government	4	13	36	38	9	0.4
Legislature	4	14	37	37	7	0.6
City/Town govt	3	11	29	42	15	0.1
Military	8	17	30	35	10	0.1
Police	9	20	31	32	7	0.0
Catholic Church	5	7	14	37	36	0.3
Television	2	8	30	44	15	0.2
Newspapers	4	11	35	37	11	0.3
Non-govt. organisations (NGOs)	5	13	40	32	8	2.0

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

#### *Present Performance of the Courts and Compared to Five Years Ago*

Most respondents seemed to have a middle-of-the-road attitude regarding court performance with 47 per cent saying it was neither good nor bad, as shown in table 5.3. However, 29 per cent did deem performance to be good. Table 5.4 shows that more than half of the respondents (56 per cent) said they thought that there was no change in the courts' performance in the last five years.

**Table 5.3** Opinion on present performance of courts (in per cent)

Very good	4
Good	29
Neither good nor poor	47
Poor	14
Very poor	3

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

**Table 5.4** Opinion on current performance of the courts compared to five years ago (in per cent)

Much better	4
Somewhat better	21
The same	56
Somewhat worse	13
Much worse	3

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

#### *Public Perception of Judges and Lawyers Regarding Certain Characteristics*

A small majority (54 per cent) of the respondents said that many judges, if not most, tended to be trustworthy and good at work, as shown in table 5.5. However, this also means that quite a few people believed that few judges were trustworthy. This could be why 56 per cent thought that judges could be bribed. Even more people were of the same opinion about lawyers.

The public's opinion on lawyers was worse as half implied that they were less than trustful of lawyers and 64 per cent thought that many lawyers could be bribed, as shown in table 5.6. However, 62 per cent also said that many, if

not most, lawyers were good at their work. This, as with the similar result for judge's competence, may mean that professional competence does not preclude being susceptible to bribery.

**Table 5.5** Public perception of judges in terms of specific characteristics (in per cent)

	Most	Many	Few	None
Trustworthy	14	40	44	1
Good at work	13	49	37	1
Can be bought/bribed	17	39	39	4

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

**Table 5.6** Public perception of lawyers in terms of specific characteristics (in per cent)

	Most	Many	Few	None
Trustworthy	12	37	48	2
Good at work	15	47	36	2
Can be bought/bribed	23	41	34	3

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

### *Public Confidence in Court Decisions in Specific Kinds of Cases*

Almost two of every five persons expressed little or very little confidence that the court would issue a decision quickly in a case like murder where an important person is accused, as shown in table 5.7. One in three respondents said that they had little or very little confidence that the court would decide on the merits of the case rather than on the quality of the legal representation, about the same as those who had much or very much confidence in the court's behaviour in this matter. This was about the same outcome regarding the question of the fairness of the court's decision in this matter.

In contrast, somewhat more people expressed confidence in the court's fairness and timeliness with regard to decision-making in cases involving police or military personnel, as shown in table 5.8. Among those who have been directly involved in court cases, a significantly high number (65 per cent) expressed confidence in the court's fairness, as shown in table 5.9. However, there were some who doubted the court's fairness and promptness in handing down decisions.

**Table 5.7** Confidence in court decisions where victim is an ordinary person and accused is an important person (in per cent)

	Very little	Little	Neither	Much	Very much
Decision will be issued within a reasonable amount of time	9	29	30	25	7
The court will consider the merits of the case more than the quality of the lawyers arguing the case	5	27	36	26	5
The decision of the court will be fair	7	26	33	26	7

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

**Table 5.8** Confidence in court decisions where police and military are accused of violating human rights (in per cent)

	Very little	Little	Neither	Much	Very much
Decision will be issued within a reasonable amount of time	5	23	38	26	8
The court will consider the merits of the case more than the quality of the lawyers arguing the case	4	22	41	27	6
The decision of the court will be fair	4	18	40	29	8

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

**Table 5.9** Opinion on court's fairness by complainant or defendant (in per cent)

Fair	65
Neither fair nor unfair	12
Unfair	20

Source: Social Weather Stations, *May 28-June 14, 2003 National Survey* (Quezon City: Social Weather Stations, 2003)

Although there are no further explanations as to the court's promptness and fairness, it is important that the administrative procedures of the court are based on rule of law principles. This means that citizens who are involved should have the right to be regarded, to be heard, to have access to information, and so on. The promptness of the court in deciding on cases also says much about the efficiency of the court, of its having a sense of urgency or at least of its having a timetable within which decisions are delivered. Such promptness is central to citizens' access to justice. In other words, the promptness with which courts make decisions says something about rules and the rule of law in the public sector system.

### 5.2.3 Influence and Pressure on the Courts

Table 5.10 below shows that people believe that the courts get pressure from important offices and high officials, and very few believe that the courts do not get serious pressure from any of the entities mentioned. The common belief that one of the biggest challenges facing the courts is their independence seems to be validated by this poll result. When the courts' independence is challenged, the confidence and trust of the people in them are diminished. People perceive that pressure on the courts is applied primarily by business and political authorities.

**Table 5.10** Entities that pressure the courts and the courts' resistance to them (in per cent)

	Courts almost always resist	Courts usually resist	Courts seldom resist	Courts almost never resist	No serious pressure from this entity
Office of the President	15	31	31	17	3
Congress	12	33	35	15	3
Local authorities	9	32	40	13	3
Big business	10	32	35	18	3
Military	10	34	35	16	3
Civil Society advocacy groups	10	39	33	11	3
Organized					
Crime	14	35	29	15	5

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

### 5.2.3 Access to Courts and to Justice

Access to justice is here understood to be and equated with access to the courts. Such access may be measured by: firstly, the monetary cost involved in bringing and pursuing a case in court; secondly, the time needed to do so; thirdly, the ease with which an ordinary person (whether complainant or defendant) understands what is going on in court and the procedures involved in following the case through; and, finally, the general fairness with which the court arrives at its decision. These factors are among the benchmarks of accessibility to the courts and of the access to justice by ordinary people. Prior to the 2007 ALG survey, SWS polls had shown that '70 per cent of the public believed that taking a case to court costs more money and time than they can afford' (Inroads ALG Study Series 4, Research on the Poor Accessing Justice

and the ALG as Justice Reform Advocate. 2008). The costs of engaging the court are a factor that bears upon access to justice especially by the poor.

**Table 5.11** Ranking of problems encountered when taking a case to court (in per cent)

	Strongly agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Strongly disagree
It is hard for me to understand English	12	37 (49)	17	26	11
It is hard for me to understand what the judge & other lawyers say, even when they use my language	8	32 (40)	26	27	8
To take a case to courts cost more money than I can afford	28	42 (70)	16	10	3
To take a case to courts takes more time than I can afford	27	42 (69)	19	10	2
My opponent would probably resort to bribery in order to win the case	25	37 (62)	21	12	6
The judge would probably not understand the problems of someone like me	13	40 (53)	28	15	4
If the court decision is in my favour, I cannot be sure that it will be enforced	13	43 (56)	28	13	3
It is difficult for me to find a trustworthy lawyer to help me	22	38 (60)	24	13	3

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

Access to the courts importantly means access to the language used in court proceedings, as shown in table 5.11 above. The inaccessibility of the proceedings due to the language used exacerbates the alienation that ordinary people feel in relation to the technical and legal procedures involved in court cases. Another accessibility benchmark is trust in the rule of law and the courts.

It is essential that the parties concerned have access to official documents. Court transcripts are available upon payment of a fee but for the poor, such a cost may be prohibitive. Other options to access such information should be provided.

Many people think that the cost of pursuing one's case in court is a serious expense, as shown in table 5.12 below. Based on the poll among ALG targeted areas (the geographical areas where ALG operates), the expenses involved in engaging the courts constitute a crucial factor in accessing justice. Hiring a lawyer, acquiring documentation, travelling to and from the courts for hearings all require the expenditure of money. In the *Inroads ALG Study* (2008: 45), respondents commented that the 'rich get better treatment because they can easily pay the costs', and that 'justice is practically inaccessible for the poor'. Great dissatisfaction is often expressed on the administration of justice in this country with the attendant costs and the considerable delays ranking high among the barriers in obtaining justice. Improving access to justice will mean decisive changes by the courts and the justice system itself.

**Table 5.12** Opinion on the cost of pursuing case in court (in per cent)

Expensive	47
Moderate	39
Cheap	12
No expenses	1

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

### 5.2.4 Lawyers and Judges' Opinions on the State of the Judiciary

Judges differ from lawyers in their opinion on whether poor people can get justice under the judicial system. From table 5.13 below, it appears that judges, more than lawyers, have a higher degree of confidence that the poor can obtain justice. That opinion had improved in 2003-04 from that expressed in 1995.

**Table 5.13.** Judges' and lawyers' opinion on whether the poor can access justice (in per cent)

	Lawyers		Judges	
	1995	2003-04	1995	2003-04
Agree	50	53	61	75
Disagree	42	35	34	20
Can't decide	8	12	3	3
No answer	0	0	2	2

*Source:* Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

The same survey showed 49 per cent of lawyers saying they were satisfied with the judicial procedure, while 48 per cent said they were dissatisfied. The level of satisfaction was slightly higher than in 1995 when 51 per cent of lawyers said they were dissatisfied. Judges, on the other hand, had a slightly more positive view of judicial procedures in 2003 as 82 per cent said they were satisfied compared to only 80 per cent in 1995.

Lawyers had a lower level of satisfaction with regard to the pace of court cases, with 57 per cent saying that it was too slow, as opposed to only 23 per cent of the judges with the same opinion. About a quarter (26 per cent) of the lawyers said that the pace was reasonable, while 71 per cent of judges had this opinion.

Judges' perception of corruption among judicial professionals and personnel in 2003 is presented in table 5.14 below. Judicial personnel perceived law enforcers such as the police and the sheriffs as being the most corrupt. Prosecutors and lawyers were also seen as involved in corruption.

**Table 5.14.** Perception of corruption among judicial professionals and personnel by judges, 2003 (in per cent)

	Very Many	Many	Some	A Few	Very few	Don't Know
Police	25	34	18	8	5	8
Sheriffs	9	27	22	20	10	9
Prosecutors	8	20	30	20	10	10
Lawyers	5	22	31	21	8	11
Justices	1	4	25	25	15	26
Clerks of court	2	8	29	31	16	12
Judges	1	6	31	31	18	11
Secretaries	1	4	16	27	20	22
Stenographers	0.3	3	16	31	30	15

*Source:* Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

Among legal practitioners, particularly lawyers, the perception on the performance of the Philippine National Police (PNP) had the highest level of net dissatisfaction, as table 5.15 below shows. Ironically, the police, as the basic enforcement unit of justice, plays a fundamental role in the progress of succeeding proceedings.

**Table 5.15.** Lawyers' ranking of performance by judicial institutions (in per cent)

	Very satisfied	Somewhat satisfied	Not too satisfied	Not at all satisfied	Don't Know
Supreme Court	18	59	19	4	0.2
Integrated Bar of the Philippines	8	57	28	6	1.0
Court of Appeals	4	52	34	6	4.0
Public Attorney's Office	6	46	36	8	2.0
Philippine Judges Association	2	32	28	8	31.0
Prosecution Service	2	35	53	9	2.0
PNP	1	10	48	40	2.0

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

One can only surmise the reasons for this perception. Among the possible reasons is the vulnerability of the police to bribery, corruption and abuse of authority sometimes resulting in violations of human rights. This is perhaps made worse by the inadequacy of skills and training among the police in the handling of justice enforcement. In one focus group discussion, a policewoman confirmed that, generally, the police are not cognizant whether their actions do have consequences on citizens' human rights. This fact says something about the skills and training of the police on justice enforcement.

Table 5.16 below shows judges' rating of the performance of certain judicial institutions. The judges rated the Philippine Judicial Association's performance with the highest level of satisfaction. They placed the police at the bottom of the ratings. This is a perception shared by many ordinary citizens when randomly asked about their views on the performance of the police. Incidentally, citizens have more and frequent direct experience with the police.

**Table 5.16.** Judges' rating of the performance of judicial institutions (in per cent)

	Very satisfied	Somewhat satisfied	Not too satisfied	Not at all satisfied	Don't Know
Phil. Judicial Association	30	55	9	2	2
Supreme Court	27	54	14	2	1
Phil. Judges Association	11	49	24	7	6
Court of Appeals	9	48	28	4	7
IBP	7	48	32	7	3
PAO	8	46	37	6	1
Prosecution Service	3	41	44	9	1
PNP	1	18	42	34	1

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

In 2007 the Alternative Law Groups, Inc. and the Social Weather Stations survey asked, among other things, the extent to which the poor gain access to justice under the judicial system. The results shown below compare the answers of respondents who were recipients of ALG services with those outside the ALG targeted areas (shown under the 'national' column).

Table 5.17 shows that poor respondents generally consider the cost of going to court as the first obstacle or difficulty in accessing justice. The next problem appears to be securing a lawyer, followed by other factors such as the perception that the courts may not be fair, the time spent in going to judicial proceedings, the risk and danger that a court case may bring upon a person and, lastly, the intelligibility of the court's procedures to the ordinary person.

**Table 5.17.** Perceptions by the poor regarding their access to justice, ALG versus National areas (in per cent)

	ALG Target Area	National
Someone like me will have a problem with the expenses	78	79
It will be hard for someone like me to get a lawyer to help me	40	37
Someone like me lacks knowledge about laws and legal procedures	41	33
The courts will not be fair to someone like me	32	30
It will be hard for someone like me to wait for a long period for the end of this case	30	25
This will be dangerous for someone like me and my family	32	15
It will be hard for someone like me to understand what the judge and lawyers say	15	10

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

Table 5.18 below shows the awareness of people in the barangay on what agencies are able to assist them with legal problems. People in both ALG and non-ALG areas were most aware of the Department of Social Welfare and Development (DSWD) as an agency that is able to provide them with legal assistance. This was followed by the Public Attorney's Office (PAO), barangay officials and barangay captains, and town mayors and councillors. This result says that the poor first look up to the DSWD and the PAO for assistance with their legal problems, and then to their local governments and officials.

**Table 5.18** Awareness of government agencies that can provide legal assistance (in per cent)

	ALG Target Area	Non-ALG Area
Dept. of Social Welfare & Devt.	37.0	34.0
Public Attorney's Office	34.0	25.0
Barangay officials	23.0	25.0
Barangay Captain	15.0	20.0
City/Municipal Mayor or Councillor	18.0	22.0
Police/Police station	7.0	6.0
Governor	3.0	6.0
NGOs	3.0	2.0
Fiscals	4.0	1.0
ALG	2.0	1.0
Courts	1.0	2.0
Private lawyers	2.0	0.4
Own congressman	1.0	1.0
Church-based organisation	0.3	1.0
Others	8.0	10.0

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

With regard to changes in the court system during the last five years applicable to the poor, as shown in table 5.19 below, a number of people believed that there have been improvements made. They said that these improvements included substantive legal rights, services in availing and enforcement of these rights, and in the procedures of accessing justice.

**Table 5.19** Perception of changes applicable to the poor in the last five years (in per cent)

	Better Now	No Change	Worse Now
Substantive legal rights	86	9	3
Services to avail of or enforce legal rights	73	19	1
Procedures for access to justice	67	20	9

*Source:* Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

The perception of most significant improvements in the last five years concerned the passage of key laws, as shown in table 5.20. Passing such laws, however, is one thing, while putting them in operation is another matter. The operationalization of the laws probably has to do with efficient and effective administration of these laws. Thus, it is important to re-examine the manner in which the courts, and the personnel and staff of the courts, including justices and lawyers, carry out the rules based on justice principles. The common challenge to Philippine democracy (as in fair elections, reduction of democracy or citizens' access to social and economic rights) is not so much the presence or absence of laws but the manner in which public administration personnel carry out the rule of law.

**Table 5.20** Perception of most significant improvements in the last five years (in per cent)

	FGD areas	NCR	Luz	Vis	Min
Passage of key laws	26	11	31	21	32
More NGOs providing legal assistance	16	11	28	28	9
Strengthening ADR/ Mediation	9	11	15	3	9
Improvements in the judiciary	8	33	0	7	9
Empowerment of abused women & children	3	11	0	3	5
Empowerment of Indigenous Peoples	3	11	8	0	0
Barangay Justice System	2	0	0	0	5
Recognition of NCIP Adjudication	2	0	8	0	0
Less corruption in judiciary	2	11	0	3	0
Others	23	11	8	38	27

Notes: ADR - alternative dispute resolution  
 NCIP – National Commission for Indigenous Peoples  
 NCR – National Capital Region  
 Luz – Luzon  
 Vis – Visayas  
 Min – Mindanao

*Source:* Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

It was mainly in the National Capital Region (NCR) where there was a high perception about improvements in the judiciary (33 per cent). The efforts of non-governmental organisations to provide legal assistance were noted as well.

Even among the focus groups that the ALG conducted, the participants observed some improvements in the access to justice by the poor and marginalized although the degree of improvement still differed according to sector. For example, some changes in procedural aspects made it easier for the poor to access justice, thanks to the presence of NGOs and local governments that assist the poor and marginalized. In general, however, the government still seems unable to effectively administer justice thereby hindering the poor's full access to it. Table 5.21 below shows that the clamour for more and better education on the laws is strong across all geographical areas. Other factors that would need to be improved in order to positively affect the poor's access to justice have to do with the administration of the rules of law, in the form of better training for judges, court personnel and police; reform in substantive and procedural laws; reduction of corruption; and increased budget for the judiciary, among others. In other words, the demand for better rule of law and access to justice requires a better system of administration of the rule of law. The effective and efficient administration of the rules is key to the delivery of justice.

**Table 5.21** Recommendations regarding the most effective way to improve the system of justice in next five years (in per cent)

	FGD areas	NCR	Luz	Vis	Min
More education on laws	22	33	23	21	18
Increased training for judges, PNP, court personnel, etc.	13	11	4	14	22
Better selection of lawyers and judges	13	22	12	10	14
More ALGs/ mainstreaming ALG	10	11	8	3	23
Strengthen ADR/JS	7	11	8	10	0
Independent Judiciary	7	22	4	7	5

	FGD areas	NCR	Luz	Vis	Min
Reform in substantive and procedural laws	6	11	8	7	0
Reduce corruption	6	11	8	0	9
Hire more lawyers & judges	6	11	4	10	0
Speedy trial of cases	6	0	8	10	0
Increased cooperation of the five pillars of justice	6	0	4	10	5
Improvements in IPs' access to justice	5	11	8	0	5
Increase budget for the judiciary	5	0	4	7	5
More lawyers for the poor	3	0	0	3	9
More paralegal trainings	3	0	8	0	5
Accessibility & affordability	3	0	8	3	0
Creation of quasi-judicial bodies	3	0	0	10	0
Livelihood support for litigants	3	11	0	7	0
Empowerment of the poor	3	0	0	7	5
Others	22	33	12	34	14

Notes: ALG – Alternative Law Groups  
 ADR – alternative dispute resolution  
 JS – judicial system  
 NCR – National Capital Region  
 Luz – Luzon  
 Vis – Visayas  
 Min – Mindanao

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

### 5.3 2009 Survey on People's Perceptions on the Rule of Law and Access to Justice

In February 2009 the Democracy Assessment on Rule of Law and Access to Justice Project asked the Social Weather Stations polling organisation to conduct a survey on people's perceptions regarding the rule of law and access to justice in the Philippines. The respondents in the survey were equally divided between male and female. Some 13 per cent of respondents came from the National Capital Region, 43 per cent from Luzon, 20 per cent from the Visayas region and 22 per cent from Mindanao. By income class categories, 71 per cent of the respondents were from the D bracket, 23 per cent from the E bracket and 6 per cent from the ABC brackets. The A bracket refers to the highest income group, the B and C to the middle income groups, the D bracket to the low income group, and bracket E to the lowest income group.

#### 5.3.1 *On Equal Treatment of the Rich and Poor in the Courts*

Most respondents believed that rich and poor people were not equally treated in court, with 45 per cent disagreeing and 37 per cent agreeing with the statement 'whether rich or poor, people with cases in court generally receive equal treatment'. The response rate was similar to the September 2007 survey when 45 per cent agreed and 38 per cent disagreed with the statement. Past surveys had consistently shown that the rich and the poor do not get equal treatment in court.

In Metro Manila 50 per cent of the respondents expressed this opinion. In Mindanao, slightly more people (41 per cent) said that rich and poor people generally receive equal treatment. Half of the respondents in the lowest income bracket (class E) disagreed that rich and poor people are equally treated in court.

#### 5.3.2 *On the Independence of the Supreme Court*

Slightly more people said they thought that the Supreme Court behaved independently of the President (Gloria Macapagal Arroyo) than said otherwise. Thirty-eight per cent agreed that 'the Supreme Court decides only according to the law and not according to the wishes of President Arroyo', while 33 per cent disagreed with the statement.

The view that the Supreme Court's decisions are independent of the wishes of President Macapagal Arroyo was more pronounced among respondents from income classes ABC than those among the lower income classes D and E.

#### 5.3.3 *On Knowledge of the System of Justice*

The study informed the respondents that 'the system of justice refers to the entire governmental machinery for the enforcement of laws and the resolution of disputes. Included in the system are the police, barangay justice, the courts, and other agencies of government'. The respondents were then asked how much they knew about the system of justice. Only 33 per cent thought that they had 'adequate' (24 per cent) to 'extensive' (9 per cent) knowledge of the system of justice while a larger proportion of respondents (67 per cent) knew 'only a little' (48 per cent) or 'very little' (18 per cent).

Knowledge of the system of justice is higher among those in income classes ABC (49 per cent) than those in class D (34 per cent) and class E (34 per cent). Seventy-five per cent of respondents from class E had 'little knowledge of the system of justice'. Knowledge of the system of justice was also higher among those with more education, particularly among college graduates (46 per cent), while among non-elementary graduates, 81 per cent claimed 'little knowledge'.

When asked how they learned about the system of justice, 67 per cent said they learned this through the mass media such as the radio, newspapers and television. Some 28 per cent said they learned about it from 'people with experience in a case' and 20 per cent obtained their

knowledge 'from relatives and friends'. Other sources of knowledge about the system of justice were non-governmental organisations (13 per cent), school (12 per cent) and personal experience in a case (11 per cent). Mass media is a common source of knowledge in all areas and across socio-demographic groups. The proportion of those who responded that they learned about the system of justice from 'people with experience in a case' was highest among those from income classes ABC (42 per cent) and those from Metro Manila (45 per cent).

### 5.3.4 On Access to Justice

To ascertain the factors that may impede access to justice, the survey asked the respondents a hypothetical question regarding their ownership of a piece of land to which someone else had made a claim and had filed a case in court on this regard. The respondents were then asked how hard it would be for them to fight for their rights in this situation and what they would do in pursuit of their rights. Table 5.22a shows the responses from a 2007 survey at which a similar question had been raised, while table 5.22b presents the results for the 2009 survey.

**Table 5.22a** Respondents' determination to fight for their rights, September 2007, by region and income class (in per cent)

	RP	NCR	Luz	Vis	Min	ABC	D	E
Not hard	26	32	25	23	27	40	27	20
Somewhat hard	26	25	30	20	27	20	29	22
Very hard	47	43	45	57	47	39	44	57

Notes: NCR – National Capital Region  
Luz – Luzon  
Vis – Visayas  
Min – Mindanao

Source: Alternative Law Groups, Inc. 'Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate', *Inroads ALG Study Series 4* (Quezon City: Alternative Law Groups, Inc. and Social Weather Stations, 2008)

**Table 5.22b.** Respondents' determination to fight for their rights, February 2009, by region and income class (in per cent)

	RP	NCR	Luz	Vis	Min	ABC	D	E
Not hard	20	21	21	13	25	35	21	15
Somewhat hard	28	32	32	22	24	20	30	26
Very hard	51	47	46	65	51	45	49	58

Notes: NCR – National Capital Region  
Luz – Luzon  
Vis – Visayas  
Min – Mindanao

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

The above results show that the proportion of those who said they would have difficulty in fighting such a case was highest among respondents from income classes D (79 per cent) and E (84 per cent). Even respondents from income classes ABC (65 per cent) said the case would present at least some difficulty for them. The proportion of those who said it would be hard for them was high in all geographic areas.

Those who said they would have a hard time fighting for their rights in the hypothetical case presented were highest among those who admitted to 'very little knowledge' about the system of justice, as shown in table 5.23 below.

**Table 5.23** Respondents' determination to fight for their rights, by extent of knowledge of the justice system (in per cent)

	Extensive	Adequate	Only a little	Very little
Not hard	25	30	18	14
Somewhat hard	21	32	34	12
Very hard	53	39	48	73

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

Respondents were asked about important reasons why it will be hard to fight for their rights in a property dispute case. Tables 5.24a through 5.24e below give the reasons offered in the context of the different criteria already used above.

**Table 5.24a** Reasons given for the difficulty in fighting the hypothetical case, 2007 and 2009, multiple responses (in per cent)

	Sep 2007	Feb 2009
Someone like me will have a problem with the expenses	79	71
It will be hard for someone like me to get a lawyer to help me	37	34
Someone like me lacks knowledge about laws and legal procedures	33	32
The courts will not be fair to someone like me	30	30
This will be dangerous for someone like me and my family	32	25
It will be hard for someone like me to wait for a long period For the end of this case	25	21
It will be hard for someone like me to understand what the judge and lawyers say	10	13

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

**Table 5.24b** Reasons given for the difficulty in fighting the hypothetical case, by region, multiple responses (in per cent)

	RP	NCR	Luz	Vis	Min
Problem with the expenses	71	73	77	69	63
It will be hard to get a lawyer	34	41	35	32	29
Lacks knowledge about laws & legal procedures	32	23	39	31	25

	RP	NCR	Luz	Vis	Min
The courts will not be fair	30	37	29	34	27
This will be dangerous	25	32	24	33	17
It will be hard for me to wait for the end of this case	21	33	18	25	16
It will be hard to understand what the judge and lawyers say	13	11	11	17	12

Notes: RP – Philippines  
 NCR – National Capital Region  
 Luz – Luzon  
 Vis – Visayas  
 Min - Mindanao

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

**Table 5.24c** Reasons given for the difficulty in fighting the hypothetical case, by income class, multiple responses (in per cent)

	All classes	ABC	D	E
Problem with the expenses	71	68	73	68
It will be hard to get a lawyer	34	25	33	38
Lacks knowledge about laws & legal procedures	32	34	31	34
The courts will not be fair	30	28	30	31
This will be dangerous	25	33	26	23
It will be hard for me to wait for the end of this case	21	39	22	17
It will be hard to understand what the judge and lawyers say	13	19	12	14

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

**Table 5.24d** Reasons given for the difficulty in fighting the hypothetical case, by educational attainment, multiple responses (in per cent)

	All	Non-elementary graduate	Elementary graduate	High school graduate	College graduate+
Problem with the expenses	71	67	72	73	68
It will be hard to get a lawyer	34	28	40	34	28
Lacks knowledge about laws & legal procedures	32	38	35	32	20
The courts will not be fair	30	26	29	33	28
This will be dangerous	25	20	26	26	27
It will be hard for me to wait for the end of this case	21	16	14	25	29
It will be hard to understand what the judge & lawyers say	13	21	15	9	14

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

**Table 5.24e** Reasons given for the difficulty in fighting the hypothetical case, by extent of knowledge of justice system, multiple responses (in per cent)

	Extensive	Adequate	Only a little	Very little
Problem with the expenses	61	72	73	71
It will be hard to get a lawyer	29	27	38	32

	Extensive	Adequate	Only a little	Very little
Lacks knowledge about laws & legal procedures	30	25	33	39
The courts will not be fair	35	27	33	27
This will be dangerous	30	28	24	23
It will be hard for me to wait For the end of this case	18	27	21	16
It will be hard to understand what the judge & lawyers say	25	11	10	16

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

Many respondents felt that they would have difficulty in meeting the associated expenses in fighting a court case. This was the top reason given across all areas and socio-economic classes. Difficulty in finding a lawyer who could help them was also among the top responses by respondents from Metro Manila and from income class E. The problem with expenses was high among respondents from all educational attainment levels, regardless of how extensive their knowledge of the system of justice was.

For a country that has so many lawyers, the difficulty of finding one to fight the case is probably related to prohibitive lawyers' fees and related expenses rather than actually finding a qualified person to represent the litigant. The perceptions that the courts will not be fair and that respondents think they lack knowledge on laws and legal procedures also appear to be common.

The respondents were also asked what they would do if a case were filed against them over a property dispute. The respondents gave multiple answers and the top responses are shown in table 5.25 below.

**Table 5.25** What respondents would do when faced with a lawsuit, multiple responses (in per cent)

Consult a lawyer	71
Consult a very respected person in community	29
Consult someone in community with experience in Settling disputes	27
File a case in court	23
Ask help from TV/radio programs that give free legal advice	19
Talk to the relatives of the other person claiming the land	17
Go to the police	15
Get help from a powerful person	12
Consult a priest or minister	6
Just wait and see what happens	5

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

Most respondents would consult a lawyer as the most likely first course of action if they found themselves in a dispute regarding a property claim. Turning to a respected person in the community was offered as the likely choice for those who have little knowledge about legal matters and court procedures, while those who would file a case in court are more likely to have good knowledge on these matters.

This pattern of responses is similarly observed when responses are classified by area: most respondents said they would consult a lawyer (71 per cent), with NCR getting a high 78 per cent, followed by Mindanao (74 per cent), Visayas (73 per cent) and Luzon (68 per cent). By income class categories, 84 percent of those from classes ABC said they would consult a lawyer versus 71 per cent from those in class D and 70 per cent in class E. By educational attainment, 78 per cent of college graduates

said they would consult a lawyer while 73 percent of those with a high school diploma said they would do so. Sixty-eight per cent of those with an elementary education and 65 per cent of those with no elementary education answered similarly.

Table 5.26 below shows the pattern of responses from respondents according to the extent of their knowledge of the system of justice.

**Table 5.26** What respondents would do when faced with a lawsuit, by extent of knowledge of the justice system, multiple responses (in per cent)

	Extensive	Adequate	Only a little	Very little
Consult a lawyer	68	72	73	69
Consult a very respected Person in community	28	28	28	35
Consult someone in community With experience in Settling disputes	15	28	28	28
File a case in court	29	30	22	17
Ask help from TV/radio programs That give free advice	21	16	19	20
Talk to the relatives of the other Person claiming The land	12	17	18	15
Go to the police	15	16	13	17
Get help from a powerful person	10	13	12	12
Consult a priest or minister	6	4	6	6
Just wait and see what happens	3	6	3	7

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

Of those with only a little knowledge of the system of justice, 73 per cent said they would consult a lawyer. Only 68 per cent of those who said they would consult a lawyer were respondents who claimed to have extensive knowledge of the system. Thirty per cent of those respondents who have adequate knowledge of the justice system said they would file a case in court, followed by 29 per cent of those who have extensive knowledge, 22 per cent of those who have only a little knowledge and 17 per cent of those with very little knowledge. It is interesting that a number of those who have extensive knowledge of the system (21 per cent) would ask help from TV or radio programs that give free legal advice, followed by 20 per cent of those who have very little knowledge, 19 per cent of those with only a little knowledge. Only 16 per cent of those with adequate knowledge of the system said they would do the same.

The final set of questions had to do with people's perceptions on the improvements made in the system of justice. A little over a fifth, or 21 per cent, of the respondents claimed to have seen improvements in the system of justice during the last ten years, while a large number, 78 per cent, said they have not seen any improvements. By income class, 31 per cent of respondents from classes ABC said they have seen improvements, which is significantly higher than those from class D (22 per cent) and class E (16 per cent). The improvements claimed are listed in tables 5.27a to 5.27c below.

**Table 5.27a** Improvements in the justice system over the last ten years, by region (in per cent)

	RP	NCR	Luz	Vis	Min
Yes, I have seen improvements	21	19	23	19	20
Competency of courts, police & law enforcers	11	8	12	8	11
Less influence of politicians on judges	4	3	4	3	5

	RP	NCR	Luz	Vis	Min
Better protection for people with cases in courts	4	5	4	4	3
Reduced corruption	3	3	3	3	3
Speedier resolution of cases	3	3	3	5	3
More affordable costs of bringing a case in court	2	3	4	2	1
No, I have not seen any improvements	78	79	76	81	77

Notes: NCR – National Capital Region

Luz – Luzon

Vis – Visayas

Min – Mindanao

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

**Table 5.27b** Improvements in the justice system over the last ten years, by income class (in per cent)

	All	ABC	D	E
Yes, I have seen improvements	21	31	22	16
Competency of courts, police & law enforcers	11	13	12	7
Less influence of politicians on judges	4	6	5	2
Better protection for people with cases in courts	4	5	4	3
Reduced corruption	3	1	3	3
Speedier resolution of cases	3	4	4	3
More affordable costs of bringing a case in court	2	6	3	1
No, I have not seen any improvements	78	69	76	84

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

## By knowledge of system of justice:

**Table 5.27c** Improvements in the justice system over the last ten years, by extent of knowledge of justice system (in per cent)

	Extensive	Adequate	Only a little	Very little
Yes, I have seen improvements	25	35	20	10
Competency of courts, police & law enforcers	14	19	9	4
Less influence of politicians on judges	6	6	4	3
Better protection for people with cases in courts	5	6	3	2
Reduced corruption	3	5	2	2
Speedier resolution of cases	3	5	4	2
More affordable costs of bringing a case in court	3	4	2	2
No, haven't seen improvements	75	65	80	90

Source: Social Weather Stations, *National Survey Commissioned by the Philippine Democracy Assessment, February 2009* (Quezon City: Social Weather Stations, 2009)

Some people see that there have been adequate improvements in the performance of the courts during the last ten years. The observed improvements are particularly in the enhancement of the capacity of the courts and law enforcers such as the police. However, most people said they did not see improvements in the court system during the last ten years.

**5.4 Summary**

People's perceptions on certain features of the justice system were sought from different perspectives, from practitioners and people in judicial institutions such as judges and lawyers, and from ordinary citizens who either have direct experience with the workings of the justice institutions or are mere observers.

Judges and lawyers, more so the former, were perceived by people to be fair, particularly in relation to the police and similar enforcers. However, this did not spare the judges and lawyers from people's perception that they were also vulnerable to influence from powerful individuals or groups. The police received a low rating in terms of trust and confidence.

People tend to seek assistance from the Department of Social Welfare and Development or from the local government unit or local officials when they have to deal with legal problems. Even if these agencies and persons do not directly perform judicial functions, they appear to be closest to the people and are therefore relied on for help as a first resort.

Most people find the courts and the judicial processes inaccessible due to several reasons: the monetary costs related to accessing them, the difficulty of having to find a lawyer—probably related to the cost of hiring one, the difficulty of understanding the proceedings, and the extended period of time usually involved in the resolution of a case. These factors are all related to the effective and efficient administration of the rules of law.

It is remarkable that most people said that they saw no improvements in the system of justice over the last ten years.

## 5.5 Conclusion

It is important that the image of the justice system and the pillars involved in the administration and conduct of justice are improved. Confidence and trust in the institution is important if people are to continue to resort to these institutions and their enforcers in their (the people's) search for justice. The independence of the courts and their personnel has much to do with people's trust and confidence in these institutions.

It is equally important to consider administrative remedial measures such as improving the procedures of the courts to speed up the resolution of cases, making court proceedings intelligible to clients and ordinary citizens, and reconsidering the fees and other costs involved in the judicial process. It is also vital that enforcers of the law and justice, especially the police, are imbued with the values of justice and the skills related to the proper enforcement of rules and the law. The capability of the enforcers of the law should be addressed as well as the orientation of their institutions to make them responsive to the purposes of justice and human rights.

Moreover, it is crucial to make the pillars of justice visible, real and closer to the people. The fundamental agency in this regard is public administration—the efficient and effective ministering of functions based on the rule of law. Although educating people on the law can be performed by non-governmental organisations of lawyers and paralegals, or even by academic institutes, the power to reform the administration of the rules is nestled in the public sector, among the institutions and personnel in the public sector. Public administration institutions should ensure that the rule of law and access to justice are indeed in the mainstream of people's lives.

Education and information dissemination among the citizens on the role of the rules are essential in building familiarity and trust in the justice system. Non-governmental groups and legal and paralegal groups that work closely with communities should continue to provide a significant contribution to the rule of law and justice.

## 5.6 Recommendations

- The institutions of justice, which include the Supreme Court, the lower courts and the Department of Justice including the police, are challenged to take steps toward improving their image as the people's pillars of justice. Although public perceptions may not be the truth, nevertheless, perceptions mirror what the public think about these institutions. A positive image is not everything; however, it does help that people have a positive perception about the institutions. Such image contributes to the restoration of trust in the justice institutions. To improve its image, it will be necessary that the courts remain independent and that the people perceive the courts to be so.
- For ordinary citizens, contact with the court depends on its proceedings, how these proceedings are understood and appreciated by those who go through them, and how affordable the proceedings are to either complainants or defendants. Therefore, it is important that the justice system, particularly the courts, re-think the proceedings, the language used and the accessibility of the citizens to these legal proceedings and requirements. While court rules and procedures have their own reasons for being, the rules are not carved in stone, so to speak. Therefore, a re-examination of these proceedings is in order if people are to entrust their cases to the courts and regain confidence in the courts of law.
- Enforcers of justice and the law, such as the police, should be trained adequately and competently not only in the skills of enforcement but also in the values of justice. Competency in the enforcement of the law should likewise be enhanced not just as a matter of compliance to the rules and procedures but, more importantly, as a matter of fairness as well as of efficiency and effectiveness in the administration of justice. An appreciation of the universal human rights of citizens should be included in the training and capacity development of justice enforcers.

- The agents of justice, such as the police, the local government barangay justice system, legal practitioners, and justices, should as much as possible be visible to the citizens. Visibility will signal to citizens that the law is accessible and that justice is indeed in the mainstream of the people's lives.
- Education and information regarding the legal system, the rights to justice and the law, and the fundamentals of justice should continue to be a campaign among ordinary citizens, especially the vulnerable groups and those who have little or no access to the courts and public administration. In this regard, civil society organisations and the legal and paralegal groups play a vital role in reaching out to those who have less in law.

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## Concluding Statements

# 6

### 6.1 The Judiciary as the Principal Sanctuary of the Rule of Law

On 27 December 2009 former Supreme Court Chief Justice Artemio V. Panganiban wrote:

In times of turmoil and crisis, our people have learned to depend on the Supreme Court for direction and salvation. Normally, they should really look to their elected leaders, the president and the members of Congress. Ironically however, the abusive and illegal acts complained of by our people come mainly from executive officials. Under these circumstances, our people inevitably turn to the chief justice to lead the Supreme Court in protecting their rights. What are the CJ's functions?

1. Primus inter pares. Among the 15 members of our Supreme Court, the CJ is the primus inter pares (first among equals) who presides over its sessions, controls the flow of its proceedings, shapes its agenda, summarizes the discussions and influences the direction and pace of the Court's work. Nonetheless, the CJ has only one vote. Thus, the CJ relies on moral ascendancy and persuasive skill, not on a boss-subordinate relationship, to sway the Court.

2. Leader of the entire judiciary. The CJ is not just the primus in the highest court. He is also the chief executive officer (or CEO) of the entire judiciary composed of 2,000 lower court judges and 26,000 judicial employees nationwide. He is the leader who inspires, motivates and moves them to work unceasingly, to rise above their puny limitations, to excel beyond themselves and to achieve collectively their loftiest dreams and highest aspirations. While the jurist in him impels the CJ to follow tradition, to uphold precedents and stabilize judicial thought, the leader in him requires him to innovate, to re-engineer, and to invent new and better ways of moving forward the judicial branch.
3. Passionate reformer and action person. Because the judiciary, like the two other branches of government, must cope with the fast changing judicial, social, economic, and technological environment, the CJ must have a passion for reforms to assure speedy and equal justice for all. This mission requires not only knowledge of law but also interaction with other offices, agencies, persons – both public and private – and even with foreign governments and international institutions. Also, to keep up with the Information Age, the judiciary must automate and computerize. How to interact with officials and citizens, some of whom may have pending cases in the courts, without arousing public suspicion is a really sensitive balancing act. To be able to do this, the CJ, more than any other official, must rely on deep public trust in his personal integrity and independence.
4. Leader of the bar. Because supervision over the practice of laws is vested in the Supreme Court by the Constitution, all lawyers look up to the CJ for guidance in their profession. This is why all bar associations want to listen to the CJ, especially a new one, for direction and inspiration.
5. Academic and maestro. As ex-officio chair of the Philippine Judicial Academy, the CJ is viewed as a guru, who is expected to make the continuing education of judges a passion and vocation. For this reason and because of lack of government resources, the CJ, without compromising judicial independence and integrity, is often constrained to turn to outside assistance.
6. Mover and shaker. As chairperson of the Judicial and Bar Council (JBC), the CJ is expected to find new and better ways of searching for, screening and selecting applicants for judgeships. This job is critical. The need for quality judgments begins with quality judges. This imperative impels the CJ to move into nonjudicial endeavors, like working for better compensation, better security, and better working conditions and facilities for judges. Only by securing better pay, better security, and better facilities will the JBC be able to entice the best and the brightest attorneys to join the judiciary.
7. Administrator, manager and financial wizard. The Constitution vests in the Supreme Court “administrative supervision over all courts and the personnel thereof”, as well as the appointment of its officials and employees. This means that the CJ must be a visionary administrator, efficient manager and sensible financial wizard all at the same time. Several laws, like the Administrative Code and the General Appropriations Act, place on the CJ the responsibility of steering the entire judicial department. The Judiciary Development Fund Law (PD 1949) and the Special Allowance for the Judiciary (SAJ) Law (RA 9227) give the CJ the “exclusive sole power” to disburse the JDF and SAJ funds.
8. Role model and exemplar of public service. Our people, especially the young, look up to the CJ as an exemplar and role model. Because of our inquisitive media and open society, every public official is subjected to minute scrutiny. In their

search for heroes, our people often look up to the CJ as their choice of an upright public servant. Especially during these periods of political wrangling, civic groups and non-partisan organisations turn to the chief justice to grace their seminars and inductions. They find solace and peace in his quiet persona. In sum, the CJ is expected to lead our highest court in its critical role as the last bulwark of democracy. Beyond that, he attends to many sensitive, non-judicial leadership duties that take him to the farthest corners of the country. That is why he is more accurately addressed as the Chief Justice of the Philippines, not just the Chief Justice of the Supreme Court. (Panganiban 2009: A9)

Justice Panganiban fittingly describes the functions not just of the Chief Justice but also of the Supreme Court. One should read the subtext of the Panganiban treatise and interpret it as an articulation about the judiciary's role as the principal sanctuary of the rule of law. One should also understand that in the last ten years, the Supreme Court has taken on a special, busy role precisely because there are aberrations in the other institutions of society, namely the executive branch and the Congress.

In a democracy people look up to the Court and the justices in the resolution of issues related to the way that the executive branch enforces the rules and laws or that arise due to the way Congress articulated those laws, making them difficult to implement. It is therefore often necessary to get the Court to unravel these problems. People, especially the vulnerable groups, expect the justice system to help them gain access to justice through this maze of laws and rules. As such, the justice system, led by the Supreme Court, should be a source of inspiration, an exemplar of fairness and justice, and a reformer and leader in the face of institutional challenges to democracy.

The assessment shares the ideals articulated by Justice Panganiban, even as it exposes the reality of the justice system being as imperfect as the other institutions of

democracy are. While the judiciary appears to have a more significant role in upholding the rule of law and enhancing the people's access to justice, compared to the other two branches of government, organisational weaknesses remain serious obstacles to the judiciary's performance of this role. The allocation of a measly budget to the judiciary and the perennial problem of having to fill numerous vacancies in judicial positions are among the vulnerable points that should be addressed effectively and promptly.

## 6.2 Summary and Conclusions

Rule of law and access to justice have references to some fundamental principles, namely that there is predictability and clarity of rules, there is independence of the institutions that wield such rules, and that the institutions are transparent and accountable for their decisions and actions. Access to justice is founded on the values of responsiveness, which means that justice does act and does not ignore the demand for justice by those who need its protection. It is founded on the equal treatment of the laws and of the courts to everyone regardless of class, gender, ethnicity, and religion. In other words, rule of law and access to justice imply that there are two parts in the equation: there are reasonable and functioning institutions and that these institutions serve the purposes of those who seek justice.

In the Philippines there are formal institutions and rules of justice in place, thanks to the modern institutions influenced and shaped by western democracy. However, the performance of these institutions sometimes contradicts the fundamental principles and the purposes of justice and democracy. A number of reasons may explain the ineffectiveness of such institutions and rules, including: the grey areas in the letter of some laws and rules which make the implementation of such rules subject to the interpretation of legal practitioners and of the courts; inaccessibility of the procedures and the language of the court proceedings which alienate the legal experts from the common people who are subjected to these proceedings; and, in some instances, the incoherence of

the rules as defined by various institutions and agencies of justice.

Also notable is the wide latitude of discretion given to the president in the exercise of authority and power such as the appointments of justices of the Supreme Court and even the lower courts, the occasional subordination of Congress to the executive even though they are supposedly co- equal branches of government, and the weakening independence of constitutional bodies such as the Ombudsman and the Sandiganbayan.

A significant factor that explains the weakness of the rule of law has to do with the functioning of the public administrative institutions such as the insufficiency of budget allocation for the pillars of justice to enable these agencies to perform effectively and adequately, the constraints on resources including the lack of public attorneys that should respond to the legal needs of the poor, and the slow disposition of court cases which is partly linked to the vulnerability to corruption by legal practitioners, justices, and law enforcers.

The justice system remains challenged. The assessment implies that: 1) a review of the rules of law is in order to make the rules coherent and to make these in line with the spirit of justice and the ultimate goals of democracy; 2) public administration institutions, particularly the courts, the Department of Justice and the police, should seek reform and change in the manner by which authority, responsibility, and accountability are exercised; 3) citizen education on the justice system and the rule of law and justice is an imperative for rule of law and justice to be embedded in the hearts of people; and 4) the right to information is necessary not only for citizens and oversight agencies to participate in seeking justice and to fulfil their roles but also to make the public officeholders accountable.

There are various claims to violations of human rights, evidenced by national and international commissions and authorities. The anti-terrorism and counter-insurgency policies do not help to reduce conflict and

violence; on the contrary, these complicate the rule of law particularly on the observance of human rights, a principle that the Philippines openly adheres to. Moreover, there are various international agreements that the Philippines signed up to, but whose implementation is observed to be weak.

A recodification on the laws, policies and rules regarding terrorism and insurgency or counterinsurgency is in order so as to avoid a conflation of these two terms, namely 'terrorism' and 'insurgency'. The recodification of such rules should be an effort toward a clarification on the policies on and approaches to 'terrorists' and 'insurgents'. And again, some public administrative reforms are necessary to enable public agencies to carry out their obligations under the international covenants.

The assessment shows that, according to the opinions of experts as well as the perceptions of the public, substantive justice remains elusive and is, at best, difficult to obtain. At the core of this predicament are intertwining factors, basically a feeble public administration and a weak enforcement of rules and procedures that the laws themselves defined, aggravated by factors that alienate the system from the population. A subculture of the legal practice and profession insulates the system from clients who come to the courts of law for justice. High lawyer fees, the unintelligible language of the courts and overdrawn court proceedings wear out justice seekers, alienate them from the justice system and effectively weaken public trust in the institutions.

A redeeming value in Philippine democracy is civil society and the efforts of legal and paralegal advocates to boost the communities' trust in the legal institutions and educate them on the rule of law and justice. Visible and approachable agencies of public service are the people's allies in their endeavour to access justice.

Having said this, the assessment suggests that the way ahead to reform should include an effective administration of justice and efficient management of the courts, a vision that is truly possible when leaders of the courts and the

justice system have their hearts anchored on reform and when leaders themselves possess the integrity and enjoy the trust of the public. Moreover, the assessment recognizes the robust role of civil society in the pursuit of the rule of law through education and paralegal assistance, and in understanding the intricacies of the courts of law.

A continuing examination of the rule of law and access to justice challenges different stakeholders in the justice system to engage each other toward reform and the pursuit of public trust in the institutions of justice. An assessment of the rule of law should also reckon with an effective indigenous justice system and enhance this as necessary, alongside the augmentation of justice reforms and improvement of Philippine public administration.

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## Appendix 1

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2. Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Geneva, 27 July 1929
3. Convention Relative to the Treatment of Prisoners of War. Geneva, 27 July 1929
4. Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948
5. Geneva Conventions of 12 August 1949
6. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968
7. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Opened for Signature at London, Moscow and Washington. 10 April 1972
8. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977
9. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980

10. Protocol on Non-Detectable Fragments (Protocol I). Geneva, 10 October 1980
  11. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II). Geneva, 10 October 1980
  12. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III). Geneva, 10 October 1980
  13. Convention on the Rights of the Child, 20 November 1989
  14. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Paris 13 January 1993
  15. Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995
  16. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996)
  17. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997
  18. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000
  19. Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005
3. Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954
  4. Final Act of the Diplomatic Conference of Geneva of 1974-1977
  5. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
  6. Rome Statute of the International Criminal Court, 17 July 1998
  7. Convention on Cluster Munitions, 30 May 2008

The country has also signed on to the following international agreements:

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2. Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954

## Contributors

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**Edna Estifania A. Co** is a professor and dean of the University of the Philippines - National College of Public Administration and Governance. She initiated the Philippine democracy assessment and, in collaboration with the International Institute for Democracy and Electoral Assistance (International IDEA), an inter-governmental organisation based in Sweden, continues to work on other democracy-related projects. She serves as either consultant or trustee of government agencies in the Philippines and of non-governmental organisations, and is a member of the Movement for Good Governance. She dives occasionally.

**Nepomuceno Malaluan** is a lawyer with an academic background in economics. He is a trustee of the Action for Economic Reforms, co-director of the Institute for Freedom of Information, and one of the spokespersons of the Right to Know. Right Now! Coalition.

**Arthur Neame** has worked in the Philippines for 20 years. His primary work has been with NGOs specializing in rural and urban poverty issues with particular emphasis on local governance. He formerly managed the program of Christian Aid (UK) for the Philippines, China and Cambodia. He is currently an associate of the Socio-Pastoral Institute in the Philippines where he works with programs employing interfaith dialogues to engage with local governments.

**Marlon Manuel** is a lawyer. He is Executive Director of the Alternative Law Groups (ALG) and served as legal counsel for the celebrated Sumilao farmers' case that demanded the genuine implementation of agrarian reform in Bukidnon, Southern Philippines.

**Miguel Rafael V. Musngi** works as a program manager for the Konrad-Adenauer-Stiftung and is currently studying law at the UP College of Law. He is an advocate of farmers' rights and the recovery of the coconut levy funds for all small coconut farmers.

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