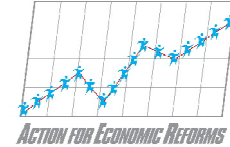


Philippine Democracy Assessment

Rule of Law and
Access to Justice



Philippine Democracy Assessment

Rule of Law and Access to Justice

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1.1 The Democracy Assessment Project

The Democracy Assessment Project attempts to assess the performance of the Philippines in building a democratic society, that is, a society that promotes rights and allows popular participation in public affairs. This is part of an international effort of evaluating different societies that consider themselves democratic. It uses a common assessment method developed by the International Institute for Democracy and Electoral Assistance (International IDEA).

This is the fourth in a series of evaluations. Previous assessments dealt with the issues of free and fair elections and the democratic role of political parties, corruption and the ways of minimizing it, and economic and social rights. The present assessment concerns the rule of law and access to justice.

1.2 Definitions

The concept of rule of law is not an easy one to define. Definitions across countries differ due to varying historical circumstances, cultural experiences and legal traditions. In 2006, the Hague Institute for the Internationalisation of Law (HiIL), convening a panel of international experts, put together an inventory of these different meanings in order to try to patch together a commonly acceptable definition (HiIL 2007).

Generally, rule of law refers to the existence of laws and rules on how society should function so that there is predictability in the way that things work, particularly in the realm of political governance. This implies that government behaves in a way that is prescribed in a fundamental law such as a constitution, that it promotes and protects the rights of citizens, and that government officials do not exercise their power indiscriminately and are held accountable for their actions. While it is entirely possible that rule of law may formally exist where human rights—civil, political, economic, social or cultural—are not upheld or respected, this assessment considers those rights to be vital components of a fully functioning democracy. This audit includes an examination of the government's adherence to those rights that are guaranteed in various international covenants to which the Philippines has formally subscribed.

On the other hand, access to justice means the ability of ordinary citizens to avail themselves of the instruments of the law and the institutions of government, that is, the system of justice, in their pursuit of fairness and what is right in their affairs. This accessibility can be measured by a number of benchmarks, including:

- Judicial proceedings should be affordable to all including the poor, and the court should quickly resolve cases so that the parties involved do not become weary of the proceedings and do not lose their resources because of lengthy delays.
- The language used in court and judicial proceedings should be easily understood and free from legal jargon and technically difficult terms.
- Information should be made widely available to citizens at little or no cost.
- An indigenous justice system should be respected and integrated into the mainstream.
- An easily accessible system of appeal and reconsideration should be in place.

The rule of law and access to justice go hand in hand as necessary conditions for a working democracy. In a

developing society such as the Philippines, access to justice is essential in alleviating some of the hardships of the poor and those shunted out of the mainstream (Buendia 2001).

This assessment focuses on the rule of law as embodied in institutions. It regards 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, as significant factors for the law to have real meaning in people's lives. In the Philippines, institutions are formally present yet are substantially weak. In taking into account both institutions (and their performance) and citizens' access to their rights to the rule of law and justice, the assessors are able to capture both the form and the substance of the rule of law and its essence, which is democracy. The assessment also acknowledges the existence of a system that operates in indigenous communities and that allows indigenous groups to gain access to justice based on customary laws and tradition. Furthermore, it must deal with the political and cultural context in which rule of law is supposed to exist and in which public confidence and trust in institutions are important elements of the milieu.

This study assumes the presence of:

1. Laws that are made known to the public through popular publications and information campaigns, that are not contradictory and in conflict with other laws, that are easily implemented and understood by enforcers and those they affect, and that cannot be easily changed or implemented arbitrarily.
2. A judiciary that is independent and free of the influence of any of the possible parties in a dispute. A fair trial means that there must be an open hearing free of bias, and that is heard and resolved within a reasonable period. There must be an independent legal profession that is empowered and willing to provide legal service. The financial costs involved (in terms of court fees and lawyer fees) must be within the reach of ordinary people. Prosecutors must also be free from government influence.

3. Conditions that refer 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. They include shared values and beliefs as to how rules and institutions function.

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. This is often based on their perception of whether such institutions have performed in accordance with their expectations. Such perceptions may be subjective but they reflect a certain reality based on people's observations and experiences, and must be taken into account in any audit of these institutions.

1.3 More on 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. A range of questions was asked regarding poor people's perceptions about the justice system. The survey results were validated by several focus group discussions held later. The details of this study are discussed in the section on public perceptions on the judicial and other justice institutions.

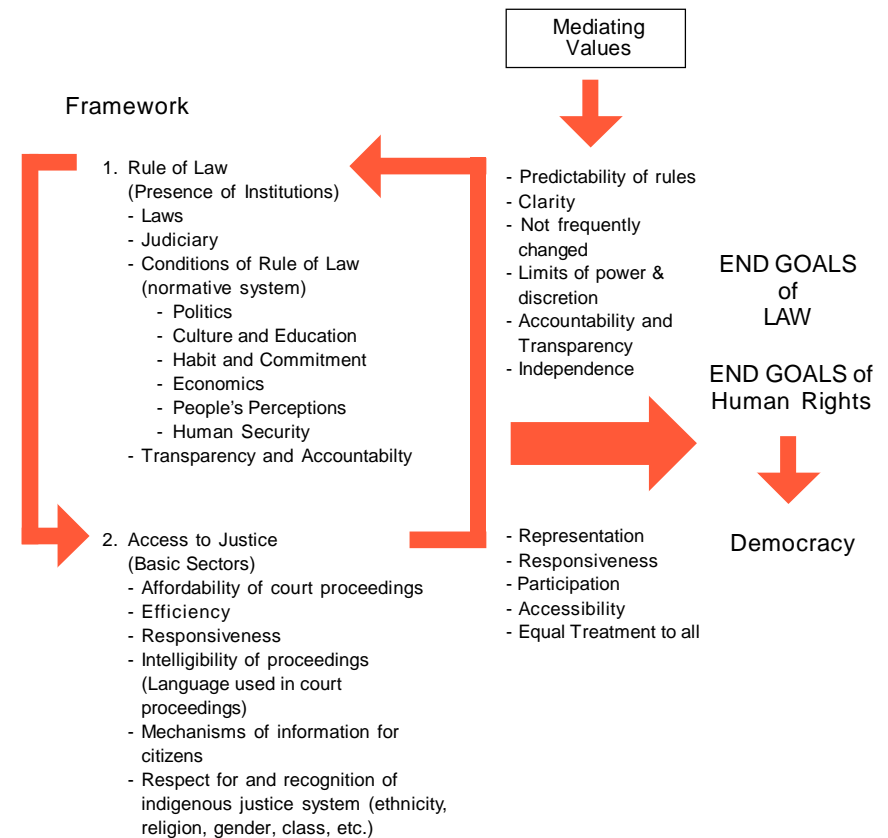
For this assessment, SWS was asked to run a small survey on people's perceptions on the rule of law and access to justice. The questions asked centred on people's perceptions and experience in the performance of the justice institutions, the accessibility of people to justice, and what measures might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

1.4 Parameters of the Assessment and Methodology

The assessment's reference period is 1986, or since the time of the people power revolution. 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.

The assessment reviewed documents, agency records, historical notes and case studies related to the rule of law and access to justice. Interviews were conducted with legal experts, justices, law enforcers as well as legal advocates from the non-governmental sector. The initial findings were then validated in a series of focus group discussions among expert actors and representatives of organizations and networks with experience in rule of law and access to justice issues. The diagram in figure 1.1 is a representation of how the assessment was conducted.

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



Institutions

2

2.1 Public Officials and the Rule of Law

The government employs almost a million-and-a-half officials and employees at all levels of government as well as in government-owned and controlled corporations (GOCCs). 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 provision or a law that fixes the public official's right, authority, and duty in carrying out his or her function. The law should also establish the mechanisms to prevent abuses and to exact accountability. The assessment will look at how effective these are in practice.

The way the government is set up is based on the traditional democratic principles of separation of powers and of checks and balance. These serve to distribute power among three co-equal branches: the executive, the legislature and the judiciary. Acting independently but needing the others to function properly, each branch then serves to check any other branch from abusing its authority.

2.2 System of Checks and Balance

Among the major checks and balance provided by the constitution are the following:

The president's veto power. Every bill passed by Congress needs to be presented to the president for his or her approval before it becomes law. A presidential veto may be

overturned a two-thirds vote of both houses of Congress voting separately.

Checks on martial law powers. The 1987 constitution was designed by its framers to prevent a repeat of the abuse of authority that allowed former president Ferdinand Marcos to stay in power for so long. First, the grounds for the suspension of the writ of habeas corpus or the declaration of martial law are now limited to actual invasion and rebellion, not just to a perceived threat. Second, the initial suspension or declaration cannot exceed a period of 60 days. Congress can revoke that by a joint majority vote. Third, only Congress can extend the proclamation or suspension beyond the initial 60-day period. Fourth, any citizen can ask the Supreme Court to review the basis for that suspension or proclamation and rule on whether the reasons given are in fact true. Fifth, even in a state of martial law, the constitution continues to be in effect and the civil courts and the legislative assemblies continue to operate where they are able. Finally, the writ is suspended only for those who are judicially charged for rebellion and other offences directly related to invasion or rebellion.

Budget proposal, appropriation and execution. The executive branch spends the biggest proportion of the government's budget but the budget itself has to be passed by Congress as a law. In turn, this congressional power to appropriate funds is itself subject to check-and-balance by the president. The constitution also created an independent Commission on Audit to examine all revenues and expenditures of the government.

Senate concurrence on treaties and international agreements. Any international treaty or agreement needs the concurrence of the Senate to be valid. The Supreme Court can declare a treaty or executive agreement unconstitutional.

Checks on presidential power to appoint. Congress creates public offices through law but it is the president who fills those positions. However, such appointments must be confirmed by Congress through its Commission on Appointments. Judicial appointments, on the other hand,

must come from a list of nominees prepared by a Judicial and Bar Council supervised by the Supreme Court.

Legislative inquiry and question hour. Congress, as part of its oversight function, can request the heads of executive offices to appear before its members for questioning. If the questioning is part of the process of making a law, appearance can be compelled.

Judicial review. The judiciary has the power to check the other branches by its power of judicial review.

Despite this system of checks and balance, the president has vast discretion in making appointments and spending, powers that can be abused. The 1987 constitution seeks to limit such possibility but there are ways to circumvent those limits.

2.3 System of Accountability

2.3.1 Constitutional Mechanisms

The 1987 constitution has many provisions on government accountability with article XI dealing exclusively with that concern. It seeks to uphold the principle that public office is a public trust.

Impeachment. Certain high ranking public officials—the president, vice-president, members of the Supreme Court, members of constitutional commissions and the Ombudsman—can be removed from office by impeachment.

Office of the Ombudsman. The Office of the Ombudsman has the power to investigate any act or omission by any public official, employee, office or agency that appears to be illegal, unjust, improper or inefficient. It can then recommend or seek the removal, suspension, demotion, fine, censure or prosecution of the guilty.

The Sandiganbayan. The Sandiganbayan is a special court that has jurisdiction over criminal and civil cases involving graft and corrupt practices and other offences committed by public officials and employees.

The Civil Service Commission. The Commission has the power to administratively discipline government personnel.

The Commission on Human Rights. The Commission has the power to investigate all violations of civil and political rights; visit jails, prisons or detention facilities; and monitor the government's compliance with international treaty obligations on human rights.

2.3.2 Crimes Committed by Public Officers

There are a number of laws that define certain acts of public officials and employees as criminal and prescribe penalties for them. Among them are the Revised Penal Code (1932), the Anti-Graft and Corrupt Practices Act (1960), and the Code of Conduct and Ethical Standards for Public Officials and Employees (1989).

2.3.3 People's Right to Information

Public access to government information is an important mechanism for accountability. Recognizing this, the constitution includes in the Bill of Rights a specific right to information access and declares it a state policy that all transactions involving the public interest is subject to full public disclosure.

2.3.4 Accountability in Local Government and the Police

The national accountability mechanisms apply equally to officials at all local government levels. In addition, the Local Government Code (1991) prescribes administrative disciplinary actions against elected local government officials who engage in wrong doing. Citizens can also recall elected officials, forcing them to step down from their positions.

The National Police Commission, attached to the Department of the Interior and Local Government, exercises administrative control over the Philippine National Police (PNP). The discussion above on crimes by public officers applies to the police as well. Citizens

can file administrative complaints against the police with the chiefs of police, city or municipal mayors or the People's Law Enforcement Board (PLEB). An Internal Affairs Service, with inspection, audit and investigatory powers, can file criminal cases against police personnel before the courts, and assist in the prosecution of PNP personnel, including by the Office of the Ombudsman.

2.3.5 Accountability in the Military

The Armed Forces of the Philippines (AFP) has its own military justice system under Commonwealth Act 408, commonly known as the Articles of War. However, offences penalized under the Revised Penal Code, other special penal laws or local government ordinances are under the jurisdiction of civil courts.

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 investigates graft cases against active military personnel and regular civilian employees of the AFP.

The principle of command responsibility means that a commander is administratively liable if he or she fails to take appropriate disciplinary action against subordinates who commit illegal acts.

2.4 Effectiveness of the System of Checks and Balances and Mechanisms of Accountability

In general, this system of checks and balance together with the mechanisms for accountability allow government to work in an effective way. However, the outcome is not perfect and there are shortcomings.

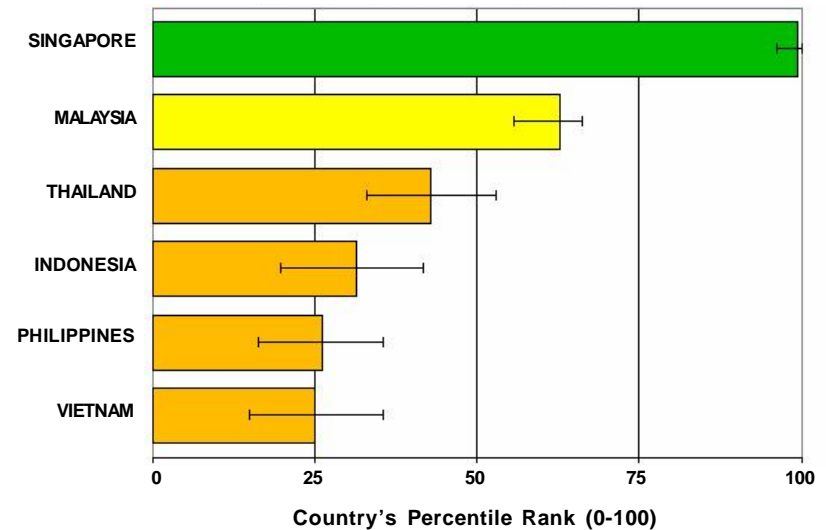
2.4.1 Graft and Corruption

A high degree of graft and corruption persists in the country as shown by various measures. In the Transparency International's Corruption Perceptions Index for 2009 (Transparency International 2009), the Philippines scored 2.4 in degree of corruption according

to business people and analysts. A score of zero means "highly corrupt" while a ten means "highly clean". This placed the country at 139th among the 180 countries ranked from least corrupt to most corrupt. 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).

The World Bank's Control of Corruption Indicator (World Bank 2009) is a percentile ranking of each country in relation to all other countries ranked. Higher values indicate better control of corruption. The Philippines registered a low percentile rank of 26.1 with only Vietnam being ranked lower among Southeast Asian countries, 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>

One major source of corruption is government procurement. The World Bank (2008) identified key corruption risks in government procurement in the road sector, as shown in table 2.1.

Table 2.1 Key corruption risks in government procurement

Risks	Risk Description and Examples	Inherent Risk
Procurement		
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. 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.	H
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 and 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	H

Risks	Risk Description and Examples	Inherent Risk
	key offices, e.g., legal services, construction, executive, project management office.	
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

Surveys show that the public has a low regard of the government's efforts to contain corruption. Corruption leads to huge financial losses for the government, with the money going into the pockets of various government officials and private suppliers and contractors.

The Office of the Ombudsman has increased the number of convictions it has won before the Sandiganbayan graft court over the years 2003 and 2007. However, it has been unable or unwilling to go after the highest government officials implicated in corruption cases.

2.4.2 Human Rights Violations

The government's record with regard to human rights is a second negative outcome. The indicator for this is the increasing incidence of reported extrajudicial killings beginning in 2001, with even the United Nations taking notice of the fact. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Phillip Alston, was sent here in February 2007 to investigate. Before that, an independent commission created by the president, the Melo Commission, published a report on the killings after conducting an investigation. The Melo report stated that those killed were mostly either activists or members of the media gunned down by masked assailants who appeared to be part of a group or groups that deliberately planned the killings (Republic of the Philippines 2007: 5-6). The Alston report (United Nations 2008) classified the extrajudicial killings into five categories:

- Killings of leftist activists
- Killings related to the armed conflict in Mindanao
- Killings related to agrarian reform disputes
- Killings of journalists
- Killings by the so-called Davao death squads

Both the Melo and the Alston reports pointed to the military and the police as possibly involved in some of these killings.

Despite these investigations, no one has been charged with the murders. The Committee to Protect Journalists, in its recently released impunity index, ranked the Philippines sixth

of fourteen countries for which it calculated the ratio of unsolved journalist murders per one million inhabitants (Committee to Protect Journalists 2009). Iraq had the most number of unsolved cases with eighty-eight. The Philippines' count of twenty-four was second only to that of Iraq's.

2.4.3 Abuse of Powers

Despite the constitutional mechanisms for checking the exercise of political power and seeking to establish some balance among the three government branches, political observers consider Gloria Macapagal Arroyo's presidency to have gone beyond such limits in her exercise of power. Some of her proclamations and orders have raised controversies and have been questioned on constitutional or legal grounds. She has abused her appointing powers by placing unqualified persons in various government offices, prompting the former chair of the Civil Service Commission to claim that this hampered the government's ability to function in a competent manner (David 2008; Lorenzo and Mangahas 2008).

2.5 Reasons for Failure

2.5.1 Weakening of the Independence of Congress

Three reasons can be cited for this failure in upholding accountability among government officials. One is the weakening of the independence of Congress. This is the result of the president successfully enticing its members, particularly of the lower house, to ally with her on crucial legislative matters. In addition, the immunity traditionally enjoyed by the members of the legislature who expose wrongdoing in high places has been considerably watered down, making it difficult for critics to speak out.

The absence of mature political parties as well as the system of incentives within Congress makes it easy for the president to capture the allegiance of a majority of its members. Because of the prestige and power of the president, he or she is able to build a majority coalition of the elected members from various parties and party-list groups. The influence starts with the determination of the Speaker of the House and the

makeup of the majority. There is a significant political advantage to being part of the majority—it becomes 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. The majority in each house then gets to choose the leaders who, in turn, make sure that Congress backs the president's agenda.

This control of Congress makes it almost impossible to remove an erring president by impeachment, thereby further weakening its role as a check on the president. Repeated attempts to impeach President Macapagal Arroyo were all foiled by members loyal to the president.

Aside from a weakened Congress, the independence of other agencies may have been compromised as well. Congress' Commission on Appointments has been accused of taking bribes from nominees of the president. The Commission on Elections was supposedly influenced to ensure that the 2004 election results favoured the president.

2.5.2 The Office of the Ombudsman

The Office of the Ombudsman, a constitutionally mandated agency to ensure government compliance with rules and to secure accountability, is a crucial component of the rule of law. However, for a time, the office lacked well-trained prosecutors and investigators resulting in a low rate of success in cases brought to the anti-graft court. Moreover, the current Ombudsman, Ma. Merceditas Navarro-Gutierrez, has been slow to investigate cases involving high government officials. For example, two Senate investigations on the alleged diversion of government funds that were supposed to be used to buy fertilizers for farmers have already been completed, but the Ombudsman still has to complete its own investigation into the matter. Another case accused the former Commission on Elections (Comelec) Chairman, Benjamin Abalos, five other commission officials, and executives of the Mega Pacific eSolutions Inc. of anomalies in a billion peso contract that was disallowed by the Supreme Court. All of the accused were cleared by the Ombudsman of any criminal and administrative liability.

This apparent inability or unwillingness of the Ombudsman to prosecute persons in high political office or those linked to powerful politicians has led to frustration among the public. Various citizen and civil society groups have organized into a Coalition Against Corruption to express their dismay at Ombudsman Gutierrez, while others have called for her to be impeached.

2.5.3 Lack of Enabling Law on Right to Information

Congress has not yet enacted an enabling law for the constitutional guarantee on access to public information. Because of this, government officials can deny access to information by the public through one subterfuge or another. A Freedom of Information Act has already been proposed and will be instrumental in addressing this source of failure of the rule of law.

2.6 Conclusion

- 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.
- The accountability mechanisms and system of checks and balance instituted by the constitution have failed to check the persistent graft and corruption that plagues the nation, arrest mounting violations of human rights, particularly extrajudicial killings, and stop the supposed abuse of power by high officials, in particular, the president.
- This failure is attributed to several factors:
 - A Congress that has partly surrendered its independence to the president
 - Constitutional bodies such as the Commission on Elections and the Ombudsman have been compromised by entrenched political interests
- Continued denial of the public's right to access government information

Access to Justice



3.1 Laws on Due Process and Equal Protection

Equality is a revered principle in the 1987 constitution, one of the core values of the desired independent and democratic government. The very first provision under the constitution's article III, the Bill of Rights, guarantees both 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. 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 regardless of personal, social, economic, cultural and political differences. Furthermore, the constitution mandates the fundamental equality before the law of women and men, thereby affirming gender equality.

In addition, there are special provisions and laws protecting vulnerable groups—labour, farmer, fisherfolk, the urban poor, disabled person and working women. These are, in turn, backed by procedural rules that prescribe remedies when these special rights are violated.

3.2 Laws and Rules Providing Legal Remedies to All Citizens

The 1987 constitution guarantees that the poor should have free access to the courts and quasi-judicial bodies and adequate legal assistance. It is an application of the provision of the Universal Declaration of Human Rights stating the right of everyone to 'an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'.

There are no specific rules that discriminate against a particular group of litigants seeking redress or remedy. On the contrary, there are laws and rules that seek to give special treatment to the poor. 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 out-of-pocket expenses when attending hearings. 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.

3.3 Access to the Justice System

The Supreme Court's Action Program for Judicial Reform (APJR) of 2001 is a package of reform projects and activities to improve the 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 program identified several factors that often hindered the poor from availing of the services of the judicial system: (1) delays in judicial proceedings, (2) erroneous decisions by lower courts, (3) prohibitive costs and (4) inadequacy or lack of information about the judicial system. It blamed

the delays in proceedings on the dependence of poor litigants on public defenders whose services are overstretched. Such delays worsen the situation for the poor who have to take time off from their livelihood activities to attend hearings.

Erroneous court decisions increase the burden on poor victims, a situation that is not made any better even when such decisions are later reversed. Even when public defenders are available, court proceedings can still impose significant costs on the poor. And often, poor people have a poor understanding or are ignorant of the law. Poor schooling and the government’s lack of effort in disseminating information were cited as the reasons for this ignorance (Supreme Court 2001b).

An earlier document of the Supreme Court called the Blueprint of Action for the Judiciary (Supreme Court no date) had identified two other factors that effectively made it difficult for the poor to use the courts to exercise their rights. These were the foreign values and culture that the laws, often copied from other countries, promote, and the foreign language (English) in which laws are written and court proceedings are conducted. A third report by the Supreme Court, *Strengthening the Other Pillars of Justice through Reforms in the Department of Justice* in June 2003, added inadequate knowledge of the law and judicial institutions as a further obstacle to the poor’s quest for justice (Supreme Court 2004a: 173). The report has a major section on the role of the Public Attorney’s Office (PAO) as a leading institution in the effort to enhance the poor’s access to justice, a role that is hampered by inadequate information about the PAO and its services. The PAO also lacks adequate resources to meet the tremendous demand on its services from those unable to provide for their own legal defence.

The 2008 Statistical Indicators on Philippine Development (National Statistical Coordinating Board 2008) noted the need to improve legal services to the poor. Table 3.1 below shows the number of indigent persons served by PAO between 2004 and 2007. While the number of persons

served decreased, the sheer number of people seeking PAO assistance strains the agency’s resources to breaking point. The Supreme Court believes that the PAO is at the limit of its capacity and is unable to expand further its services due to its limited budget (Supreme Court 2004b: 31-32).

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 style="text-align: center;">NUMBER OF INDIGENT PERSONS SERVED BY PAO (in thousands)</p> <table border="1"> <tr> <th>Year</th> <th>Number of indigent persons served (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 (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 decreased from 2006 to 2007
Year	Number of indigent persons served (in thousands)												
2004	5,324,487												
2005	4,495,634												
2006	4,609,627												
2007	4,382,611												

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>

3.4 Confirmation of Findings

In 2003, the Alternative Law Groups (ALG), a coalition of legal resource NGOs that are engaged in grassroots empowerment and judicial and policy reform, organized a series of regional consultation conferences with representatives of grassroots organizations and communities.¹ These consultations confirmed the findings cited above. Three years after the regional consultations, the same issues were restated by representatives of the poor and marginalized groups in the biggest gathering of grassroots paralegals organized by ALG in June 2006 (Alternative Law Groups, Inc. 2006). These same problems were also identified by respondents in several surveys conducted by the Social Weather Stations in the 90s and the following decade as well as by follow-up surveys in 2007 by the ALG and in 2009 by Democracy Assessment. The survey results are shown in Chapter Five.

3.5 Criminal Justice System

The rights of an accused in criminal prosecutions and of those under investigation are constitutionally guaranteed. The enabling law for this, 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 such cases.

Despite this stated equality before the law, the Philippine criminal justice system seems to treat rich and poor differently. The problems mentioned above seriously erode in reality the rights, particularly of the poor, that are guaranteed in law.

3.6 Conclusion

Global Integrity (2009), an independent non-profit provider of information on corruption and governance, puts out an annual report or indicator that rates national-level efforts to implement anti-corruption procedures and improve governance. The 2008 Global Integrity scorecard for the Philippines rated the country's anti-corruption and rule of law overall framework as moderate. While the Philippines' anti-corruption law was considered to be very strong, the agency established to implement it was described as being only of moderate effectiveness. What brought the general indicator down was the fact that rule of law and law enforcement were considered as very weak and weak, respectively (Global Integrity 2008: 10-11).

Based on the above considerations, the assessment concludes the following:

- Laws exist that are supposed to make it easier for the poor and other marginalized groups to obtain justice but the implementation of these laws has been a big disappointment to the groups that they seek to benefit.
- Institutions established to enable these target groups to improve their access to justice have performed poorly, due both to lack of resources as well as the

institutions' own shortcomings, lack of resolve and an inability to fully 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.

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>>

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

4

4.1 Counter-terrorism and Insurgency

Political violence is a continuing feature of life in the country. It can come from a variety of sources—as a response to some specific event, from private militias put up by politically powerful individuals or families, from communist insurgents and from Muslim secessionists.

Insurgency is being waged by communist groups but primarily by the New People's Army (NPA) while the secessionist struggle is carried out by three Muslim rebel groups, the Moro National Liberation Front (MNLF), the Moro Islamic Liberation Front (MILF) and the Abu Sayaa Group (ASG). These armed conflicts have displaced many thousands of people from their homes, farms and livelihoods, and even government workers have fled to safer areas. This has made the rule of law ineffective in conflict areas. Consequently, some people have resorted to imposing their own rules when the rule of law breaks down.

When terrorism and the war against it intensified after the events of 11 September 2001, it was easy for governments to lump together terrorism and insurgency and to pursue the struggle against them in essentially the same way. This view has serious implications for issues of

human rights, including the right of people to self-determination, and for how democracy functions.

In the name of fighting terrorism, nations have allowed their political leaders to assume extraordinary powers, to conduct many activities in secrecy and to lessen their accountabilities. This is illustrated in the use of illegal rendition and of torture in interrogations. Such treatment of suspected terrorists has raised debates on the appropriateness of these measures and their implications for the rule of law.

With the Philippine government listing some insurgent groups as terrorist organisations, little progress in peace negotiations can be made as officials refuse to negotiate with terrorists. On the other hand, local insurgent groups may be tempted to tie up with international terrorist organisations,¹ which leads to escalating local violence and draw in the security apparatus of other countries, particularly the United States.

The International Crisis Group (ICG) (2008) says that dealing with insurgency should be accomplished in a manner completely different from counter-terrorism, using tools that include political and economic settlements and agreements on achieving substantive rule of law. If the root causes of the insurgencies are not addressed and insurgency and terrorism are dealt with in common through brute military force, local extremists may then be able to exploit long-standing grievances, gain popular support and create for themselves safe havens within which to move and operate freely.

4.1.1 The Laws Dealing with Terrorism and Insurgency

The Human Security Act of 2007 (HSA, Republic Act No. 9372) was designed to address terrorism. It defines terrorist acts broadly and includes crimes such as rebellion and insurrection that are already covered by the Revised Penal Code. That would make many groups that oppose government to be labelled terrorist. The HSA has provisions that are invasive, such as interceptions of communications, detention without warrants, seizure of

bank deposits and property, and extraordinary rendition. However, it does contain extraordinary safeguards against abuse, such as substantial monetary compensation for those arrested wrongly and imprisonment for the law enforcers involved in such arrests. Nevertheless, critics say that the law may have the effect of curtailing free speech and peaceful protest actions (Diokno 2007). Martin Scheinin, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has 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>).

It is apparent that the centres of terrorist activity and recruitment also tend to be those areas where people have difficulty asserting their rights and availing of basic social and economic services, such as health, education and employment. These same regions also tend to be the bastions of political dynasties that do not hesitate to resort to violence during elections to ensure the victory of favoured candidates including those at the national level of government. Deprived of their basic rights, the people in these areas suffer from the worst kind of human insecurity.²

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

The Indigenous Peoples Rights Act (IPRA) of 1997 allows for a certain degree of autonomy under customary law and tradition in communities of indigenous peoples. However, the National Commission for Indigenous Peoples and the courts have so far failed to raise the stature of customary law and this autonomy is not yet realized. In territories under insurgent control, the rule of law does not operate according to nationally recognized norms. On the other hand, secession by separatist groups remains a

distant aspiration. Is a compromise between the limited autonomy and total secession possible? Just such a compromise was attempted with the controversial Memorandum of Agreement on Ancestral Domain (MOA-AD) between the MILF and the government, something which provoked great controversy and ultimately led to the junking of the agreement. This puts into question the government's ability to work out similar agreements with insurgent groups in the future as a way of peacefully resolving these conflicts.

4.1.3 The Implication of the Presence of Armed and Violent Groups for Local Officials and their Accountabilities to Citizens

Aside from having to cope with the uprooting of people from their homes and communities, local officials and politicians must try to find a balance in dealing with both insurgents and security forces in contested areas. Local officials are pressured into accommodating insurgents and terrorists lest they become targets, but doing so may incur the ire of the military. Moreover, it is in these areas of conflict where powerful political clans with little public accountability tend to hold sway with their own respective private armed groups. 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 (Palacio 2007).

4.1.4 Implications for Citizens' Rights

The security forces contend that insurgent groups, as part of their strategy to seize state power, have created political fronts that carry on their illegal activities under the protection of civil and political liberties. But such a strategy seems inherent in insurgencies and is a feature of their political nature. This means that pursuing a political solution is essential in settling such conflicts, as happened in Aceh, Northern Ireland and South Africa. The government's goal of all-out military victory seems counter-productive and may be responsible for the spate

of extrajudicial killings of activists and others engaged in dissident political movements. The military invariably regards these activists to be sympathizers, if not actual members, of insurgent groups. The failure to apprehend and convict the perpetrators of all but a minority of these summary executions 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

There are frequent delays in both pre-trial and trial processes.³ As of 2005, there was a reported backlog of 800,000 cases in the judicial system (Transparency International 2007: 206).

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 of the Supreme Court for decisions that harmed the interest of influential political groups.

Cases of alleged terrorism brought to the courts are often questioned with regard to the circumstances surrounding arrest, interrogation and investigation. They involve allegations of shortcuts taken in obtaining warrants of arrest, shortcomings in the collection of evidence, the non-appearance of witnesses and the lack of public attorneys for the defence.

The resolution of cases tend to follow a certain pattern: where legal representation is poor or public pressure is high, conviction is likely; where they are otherwise, conviction is unlikely. In the lower courts, unsuccessful prosecutions of all cases range between 54 and 78 per cent. The rate of convictions in the Regional Trial Courts, where terrorist-related offences are likely to be tried, is a high 71 per cent.

4.1.6 The Role of International Rules in the Conduct of Counter-Insurgency and Counter-Terrorism Operations

Both the government and the Communist Party's National Democratic Front are bound by the Geneva Conventions in their conduct of armed conflict. In addition, both parties signed a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) on 16 March 1998 declaring their adherence to human rights and humanitarian law and forming a Joint Monitoring Committee (JMC) to ensure compliance and receive complaints (Government of the Republic of the Philippines and National Democratic Front of the Philippines 1998). When peace talks broke down, the JMC operation was suspended as well.

Despite this joint agreement, the UN Special Rapporteur, Philip Alston, was critical of the left's judicial processes. He denounced certain practices of the left as violating international human rights and humanitarian law, in particular, the execution of casual government informers, the lack of due process in the proceedings of their people's courts, and the issuance of virtual death threats against opponents (United Nations 2008: 14).

The MILF had also entered into agreements with the government to adhere to international humanitarian law. However, mechanisms to monitor compliance were absent or were rendered inoperative when negotiations were suspended.

4.1.7 Extrajudicial Killings

There is no general agreement as to how many people have been summarily killed. Few have been convicted of these killings. Most victims, however, have come from one section of the political spectrum, as the Alston report stated: 'The victims have disproportionately belonged to organizations that are . . . associated with the "national democratic" ideology. These killings have eliminated civil society leaders, intimidated a vast number of civil society

actors and narrowed the country's political discourse' (United Nations 2008: 7-8).

Alston attributed the extrajudicial killings to the government's counterinsurgency strategy that included breaking up groups that are thought to be communist front organisations. He called the criminal justice deficient because it 'failed to arrest, convict, and imprison those responsible for extrajudicial executions' (United Nations 2008: 8).

In July 2007, the Supreme Court convened a summit on extrajudicial killings. The summit produced the writs of amparo and habeas data. The writ of amparo requires authorities to protect those individuals that the courts consider to be under threat of summary execution. With the writ of habeas data, the courts can order the release, destruction or correction of records held by the authorities on persons believed to be under threat of death.

Aside from the killings of leftists, the Alston report also investigated the 553 killings in Davao perpetrated by supposed death squads. Those killed in Davao, however, were mostly suspected drug pushers and thieves. Human Rights Watch (2009) said in a recent report that 124 were killed in 2008 and 33 in the month of January 2009, with eight executions in one day alone.

The summary killings in Davao and elsewhere appear to have done little to reduce criminality. What is really worrying is the failure of the rule of law in those areas where vigilantism appears to have spread.

In addition to the severe disruption of lives caused by these conflicts, perhaps just as damaging to the democratic future of the Philippines is the psychological trauma and the damage to the social fabric that is the foundation of a functioning democracy that have been perpetrated. In times of conflict, 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.

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

4.2.1 *International Obligations*

The Philippines has ratified or acceded to many international treaties, conventions and protocols that seek to protect the rights of citizens and to guarantee the rule of law. However, it has not agreed to the International Convention for the Protection of All Persons from Enforced Disappearance and has signed but not ratified the Rome Statute of the International Criminal Court. The former Armed Forces chief believed the statute would hamper the work of the security forces (GMANews.TV 2008).

In 2008, the Philippines underwent its first Universal Periodic Review (UPR) at the Council on Human Rights of the UN. Many NGOs submitted comments to the UN related to the review, a number of them on the extrajudicial killings.

4.2.2 *Adherence to International Obligations*

While the relevant UN Committees have generally acknowledged the positive steps that the government has taken to protect human rights, they have also pointed to the failure of government to fully integrate the provisions of the conventions into the country's legal system. The Committees also lamented the poor implementation of the laws, the insufficient resources allocated for this purpose, the poor quality of facilities provided for children in conflict with the law, and the prevalence of cultural and social attitudes that prevent full rights recognition and protection.

Overall then, the Philippines' adherence to its international obligations has been less than satisfactory. One shortcoming is the failure to incorporate fully the recommendations offered by the UN Committees into its laws or procedures.

The Philippines has one of the worst reporting records among state signatories to the human rights conventions. As of April 2009, the government had failed to submit eleven reports. Ironically, the Philippines is now a member of the UN Human Rights Council, and one of its voluntary commitments at the time of joining was to submit its reports on time.

The response of government to international criticism of its performance with regard to human rights has failed to impress rights advocates. Lilia de Lima, chair of the country's Commission on Human Rights, was reported to have said that human rights defence was just as dismal in 2009 as it was in 2008 (Adraneda 2010).

Appeals to international bodies do not seem to be an effective way to pressure government to reform its policies. However, continued violations of basic rights may be having an effect on investor confidence in the country. The country's international reputation is at stake and that could have real economic consequences.

4.3 Conclusion

- National and international commissions claim various violations of human rights by government, including summary executions of those suspected to be working against the government.
- The government's anti-terrorism and counterinsurgency policies do not help to reduce conflict and violence; on the contrary, these complicate the rule of law particularly with regard to human rights, a principle that the Philippines adheres to.
- The Philippines has signed on to international human rights conventions but has been weak in implementing their provisions. Public administrative reforms are necessary to enable public agencies to carry out their obligations under the international covenants.
- The laws on terrorism and counterinsurgency need to be reconsidered and possibly changed in order for government and its agencies to deal with these two

problems separately and independently. Only then can the root causes of these problems be addressed in a politically effective way, paving an end to these conflicts.

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>; 'September 11: The Asian blueprint' by Maria Ressa <<http://edition.cnn.com/2002/WORLD/asiapcf/southeast/03/11/gen.phil.terror.blueprint/?related>>; and <http://www.knowledgerush.com/kr/encyclopedia/Bojinka_Plot/>
2. For more discussion on these rights, see Philippine democracy assessment : economic and social rights by Edna E.A. Co, Ramon L. Fernan III, 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>
3. 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/CDDRPpresentation.ppt>>

Public Perception

5

5.1 Public Perception Surveys on Judicial and Other Institutions

Several 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 persons in the judicial system. Surveys were also conducted among the public at large.

The Alternative Law Groups, Inc. (ALG), an organization of legal practitioners in the Philippines and a coalition of 18 non-governmental organizations 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 those 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 results are discussed in this section.

5.1.1 Survey Findings on Equal Treatment by the Courts

Between 1993 and 2007, people's perception about equal treatment of the rich and the poor by the courts showed a general downward trend except in 2003. Forty-three per cent of respondents in 1993 agreed that the courts treated rich and poor equally but this declined to 38 per cent in 2007. The democracy assessment survey in 2009 showed a further percentage point fall to 37 per cent.

5.1.2 Trust in Institutions

In a 2003 SWS survey, 73 per cent of the respondents said that they trusted the Catholic Church much or very much. Only two other institutions drew a high level of public trust, television with 59 per cent of respondents saying they trusted it much or very much, and local government (town or city) with 57 per cent. The trial courts and the police were rated at the bottom of the list in terms of trust.

5.1.3 Public Perception of Performance by the Courts

In the same survey, only 33 per cent of the respondents were impressed by the performance of the courts, rating them either good or very good. Most (47 per cent) seemed to be indifferent. When asked how they would compare the courts' performance to five years ago, the majority (56 per cent) said it was the same. However, almost a quarter (24 per cent) saw some improvement.

Only about one in five respondents in the 2009 survey said they saw improvements in the justice system over the last ten years. This means that the vast majority saw no improvements. This was true across all geographic regions and among all income class categories of respondents.

5.1.4 Public Perception of Judges and Lawyers

The majority of respondents considered many judges to be both trustworthy (54 per cent) and good at their work

(62 per cent). However, this was accompanied by the perception that many of them can be bought or bribed (56 per cent).

Lawyers fared worse in terms of trustworthiness with half of the respondents saying that few or none of them could be trusted and 64 per cent saying that many could be bought or bribed. However, this did not preclude 62 per cent from saying that many or most lawyers were good at their work.

5.1.5 Public Confidence in Court Decisions

Almost two of every five persons expressed little or very little confidence that a court would issue a decision quickly in a case like murder where an important person is accused. In contrast, somewhat more people expressed confidence in the court's fairness and timeliness with regard to decision-making in cases of human rights violations involving police or military personnel. Direct experience in a court case seemed to turn people's expectations around with almost two of three respondents being confident of fairness by the court in making its decision.

5.1.6 Influence and Pressure on the Courts

The survey that the Alternative Law Groups commissioned in 2007 showed that the public perceived the courts to be subject to pressure from several entities, in particular the Office of the President, Congress, local authorities, big business, the military, civil society groups and organized crime. Respondents thought that the courts were least able to resist pressure from local authorities, big business and the military. They also said that the courts were best able to resist pressure from civil society groups and organized crime (both 44 per cent). In the 2009 survey, 33 per cent of the respondents thought that the Supreme Court behaved according to the wishes of President Macapagal Arroyo. These results seem to validate the commonly held view that maintaining their independence is a significant challenge facing the courts.

5.1.7 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 (1) the monetary cost involved in bringing and pursuing a case in court, (2) the time needed to do so, (3) 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 (4) the general fairness with which the court arrives at its decision.

The two most significant issues that the public worries about when taking a case to court are the financial cost and cost in terms of time that are involved. These create significant obstacles for the poor. Following these are the fear that opponents would resort to bribery and the difficulty of finding a good lawyer, both of which imply the availability of financial resources. Other problems cited are the language used in court proceedings (English) and the complexity of the language and the procedures at trials.

These issues are even more burdensome for the poor, with the cost of litigation presenting an obstacle for almost four out of every five respondents. When confronted with legal problems, the poor said they tend to seek the help of government agencies, in particular, the Department of Social Welfare and Development (DSWD) and the Public Attorney's Office.

Public perception regarding the difficulty of using the courts to fight for one's rights showed a slight deterioration between 2007 and 2009 with more people saying it was very hard in the more recent survey than in the earlier one (51 per cent versus 47 per cent). This was particularly the case for those with comparatively little knowledge of the justice system. Most respondents cited the expense of pursuing a court case as the major stumbling block.

5.1.8 Lawyers' and Judges' Opinions on the State of the Judiciary

More judges than lawyers agreed that poverty need not be a barrier to obtaining justice (75 per cent versus 53 per cent). What is more, this perception on the poor's access had significantly improved from that of ten years ago among judges (from 61 per cent) but only slightly among lawyers (from 50 per cent). These differences between lawyers' and judges' perceptions were reflected similarly with regard to satisfaction with judicial procedure as well as with the pace of court cases.

A significant majority of judges (59 per cent) believed that many or very many of the police were corrupt. They also thought that many sheriffs and prosecutors were prone to corruption, including a significant number of lawyers. On the other hand, few of the other judicial officials and personnel, such as justices, clerks of courts, judges and secretaries, were perceived to be corrupt.

Lawyers were asked to rank judicial institutions by their performance. Not surprisingly, the police received the lowest satisfaction rating with only 11 per cent expressing satisfaction. The prosecution service also had a high dissatisfaction rating. Unfortunately, these two services play crucial roles in seeing through the successful conclusion of court proceedings.

5.1.9 Public Perceptions of Changes in the Justice System for the Poor

A significant majority of respondents agreed that there have been improvements in the justice system with regard to access for the poor in the five years prior to the 2007 survey. This is in contrast to the finding that only a small proportion saw general improvements in the justice system as a whole as discussed above. These improvements in access for the poor were in the areas of substantive legal rights, services to avail of or enforce legal rights, and procedures for access to justice. There was also some awareness of the passage of key laws as a pro-poor change but this is tempered by the experience of the poor on the

unsatisfactory delivery of justice and the ineffective implementation of laws. In order to see actual improvements, respondents believed that more education on laws and better training for justice system personnel were areas needing special attention.

5.2 Conclusion

- It is important that the image of the public regarding the system of justice is improved if confidence and trust in justice institutions are to be raised so that they resort to these institutions in their search for justice. The independence of the courts and their personnel has much to do with this level of trust and confidence.
- Remedial measures in the administration of justice, 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, are necessary.
- Enforcers of the law and justice, especially the police, should be trained in the values of justice and in the skills related to the proper enforcement of rules and the law.
- The pillars of justice should be made more 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. Public administration institutions should ensure that the rule of law and access to justice are 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.

Concluding Statements

6

Rule of law and access to justice are founded on fundamental principles of democracy. These include the predictability and clarity of rules, the independence of the institutions that govern and make the laws, and the transparency and accountability of political actors. Access to justice demands a judicial system that responds promptly to those who seek it and treats everyone equally regardless of class, gender, ethnicity and religion. In other words, rule of law and access to justice imply that there are two parts to the equation: there are reasonable and functioning institutions and that these institutions serve the purposes of those who seek justice.

A significant factor that explains the weakness of the rule of law has to do with the functioning of the public administrative institutions. These have been hobbled by the insufficient budgets that have hampered their operations, by the lack of public defenders to respond to the legal needs of the poor, and by the slow disposition of court cases which is partly due to corruption in the justice system.

The challenges facing the justice system seem to imply that:

1. A review of the rules of law is in order to make the rules coherent 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 imperative for these to be taken to heart by the people.
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 for their actions.

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 related factors, basically a feeble public administration and a weak enforcement of rules and procedures that both result in a system alienated from the people. 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 people's 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.

The assessment suggests the following measures to improve the justice system:

- Institute reforms that include 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 acknowledge the need for change and possess the integrity and enjoy the trust of the public.

- Strengthen the 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.
- Examine the challenges posed by the rule of law and access to justice on different stakeholders and to engage them toward reform and the pursuit of public trust in the institutions of justice.
- Acknowledge the role that an indigenous justice system can play in resolving social conflicts and enhance this as necessary.

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Appendix

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 has 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?