

# Chapter 5

## Enhancing the Effectiveness and Accountability of the Judiciary

- Access to Justice in the Philippines: A Prerequisite to Prosperity
- Challenges in Implementing Access to Justice Reforms in Bangladesh
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### Access to Justice in the Philippines: A Prerequisite to Prosperity

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*Associate Justice*  
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In the distant past, the highest court in the Philippines (and in many parts of the world) was shrouded in mystery. Its processes were secretive, its sessions private, and its members shielded from public scrutiny. It has been described as a fortress, a Mount Olympus where the gods were unapproachable and untouchable.

Despite its sometimes mysterious ways, the Philippine Supreme Court is treated as a coequal of the Executive Branch and Congress. It is vested by the Constitution with the solemn duty to nullify any act of any branch of government—including those of the President and of Congress—on the

ground of “grave abuse of discretion.”<sup>1</sup> Pursuant to such plenary authority, the Court has, on many occasions, struck down laws that contravened the Constitution,<sup>2</sup> executive and administrative orders issued without lawful authority,<sup>3</sup> and mega contracts entered into with grave abuse of discretion by the officials concerned.<sup>4</sup>

Indeed, the judiciary has a vital role in the development of the country; it reaches not only the traditional domains of peace and order, but almost every aspect of national and community life—be it social, economic, political or humanitarian. Moreover, the judiciary stands as the last bulwark of democracy and the ultimate recourse of the people in redressing grievances not attended to or, worse, committed by other agencies of government.

#### The Need for Transparency in Judicial Processes

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\* See endnotes on page 58.



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*Justice Artemio V. Panganiban chairs the Third Division of the Supreme Court of the Philippines. Concurrently, he is chairman of the House of Representatives Electoral Tribunal (HRET). He also heads seven major committees tasked mainly with the implementation of the Judicial Reform Program initiated by Chief Justice Hilario G. Davide Jr. (Computerization; Public Information; Judicial Excellence; Legislative-Executive Relations; Raffle for Division Cases; Justice for All Through Education; and Access to Justice for the Poor.) At the same time, he is also a consultant of the Judicial and Bar Council (JBC). Justice Panganiban served as vice president of the Philippine Chamber of Commerce and Industry, Governor of the Management Association of the Philippines, and president of the Tourism Organization of the Philippines. He also served as president of the Philippine Daily Inquirer, the country’s most widely circulated newspaper and of the Rotary Club of Manila, the first and largest civic club in Asia. Justice Panganiban completed his associate in arts with highest honors and his law degree cum laude aside from being named “most outstanding student.” He placed sixth among 4,216 examinees in the bar examinations of 1960.*

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Verily, the judicial enclave has been invaded by the transparency requirements of the Constitution,<sup>5</sup> the Ethical Standards Law,<sup>6</sup> the Canons of Judicial Ethics<sup>7</sup> and the New Code of Judicial Conduct for the Philippine Judiciary.<sup>8</sup> The democratic space and libertarian spirit that the Supreme Court has repeatedly espoused in its judgments of other government institutions have seeped into its own functions and activities.

Indeed, the information revolution has permeated the judiciary. Our people no longer accept judicial doctrines they do not understand. Neither do they blindly defer to judgments that do not explain their rationale. For its part, media has persistently knocked on the ramparts of the judicial fortifications and climbed the steep gorges of Mount Olympus. “[T]he invasive power and influence of media have penetrated the thick walls of the judicial fortress.”<sup>9</sup>

Because of its vital role in the life of the nation, the judiciary has become the focus of many credible developmental agencies

like the World Bank (WB) and the ADB. They realize that stability in the rule of law and predictability in the rendition of decisions are indispensable to investor confidence and economic development, and ultimately to good governance.

Today, there is growing interest in how the judiciary can show its pro-people orientation—how it dispenses justice to the marginalized and the disadvantaged. Indeed, access to justice especially by the poor is as essential to good governance, as investor confidence is to the economy.

### **The Pro-Poor Bias of our Constitution and Laws**

The Philippine Constitution is pro-poor, pro-labor and pro-human rights. Having arisen from the ashes of an authoritarian regime, our 1987 Constitution is a document that is international in outlook,<sup>10</sup> promotes social justice,<sup>11</sup> respects human rights,<sup>12</sup> responds to the role of women,<sup>13</sup> protects labor,<sup>14</sup> and is cognizant of the rights of indigenous cultural communities.<sup>15</sup>

This Constitution spells out in neat detail the rights of persons accused of crimes<sup>16</sup> and assures them of free access to the courts and adequate legal assistance, which “shall not be denied to any person by reason of poverty.”<sup>17</sup> Furthermore, it clearly provides what are known as the *Miranda* rights of accused persons.<sup>18</sup> In all criminal prosecutions, due process and the right to “competent and independent counsel” are guaranteed.<sup>19</sup>

Furthermore, social justice is given high priority in our constitutional hierarchy.<sup>20</sup>

To implement these pro-poor constitutional mandates, Congress has passed several laws, among which are those that aim to do the following:

- a. define the rights of persons arrested or detained;<sup>21</sup>
- b. protect women and children from domestic violence;<sup>22</sup>
- c. protect children from abuse, exploitation and discrimination;<sup>23</sup>
- d. penalize violations of basic human rights;<sup>24</sup>
- e. settle disputes amicably at the barangay level;<sup>25</sup>
- f. enhance the capability of law-income groups to acquire low-cost housing;<sup>26</sup>
- g. develop agriculture and to empower small farmers;<sup>27</sup> and
- h. accord protection to labor.<sup>28</sup>

## The Supreme Court's Role in Fostering Social Justice

The Supreme Court has played a direct role in fostering social justice by opening the justice system to indigents through these measures:

- a. exempting them from the payment of docket and other fees and transcripts of stenographic notes;<sup>29</sup>
- b. providing protection to and enforcement of the constitutional rights of the accused;<sup>30</sup>
- c. granting free legal counsel to indigents;<sup>31</sup> and
- d. requiring lawyers to provide free representation to poor litigants.<sup>32</sup>

In addition, *pro bono* legal services are provided by several non-governmental groups, like (a) the Integrated Bar of the Philippines, to which the Supreme Court gives an annual grant to fund its Free Legal Aid Program; and (b) the Free Legal Assistance Group (FLAG), which focuses on public, rather than private, issues.

To attend to Muslim Filipinos, the Supreme Court had authorized the organization of the Shari'ah Appellate Court,<sup>33</sup> which was established by Rep. Act No. 6734, the Organic Act for the Autonomous Region in Muslim Mindanao. Of late, the establishment of a Shari'ah court in Metro Manila is being considered to serve the growing Muslim population.

In a long line of decisions, the Supreme Court has been unabashedly pro-poor, pro-labor and pro-human rights.

In *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*,<sup>34</sup> the Supreme Court held that the Filipino-style party-list system is reserved for the poor and the marginalized. In the decision that I had the honor to write, the Court observed:

*It is ironic...that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted—to give them not only genuine hope, but genuine power; to give them the opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct voice in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, it invites those*

*marginalized and underrepresented in the past—the farm hands, the fisherfolk, the urban poor, even those in the underground movement—to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling and desecrating this social justice vehicle.*

Nowhere is the protection of the Court for the weak clearer than in its labor law decisions. Under its watchful eyes and steady hands thrived and bloomed the seeds sown in 1940 by *Calalang v. Williams*.<sup>35</sup> For sure, some of the battles<sup>36</sup> that have been waged in this front still rage to this day. Thus, the Court has steadfastly ruled that:

- a. workers may be dismissed from work only upon (1) either a *valid* or *authorized* cause, and (2) upon observance of due process;<sup>37</sup>
- b. illegally dismissed workers are entitled to reinstatement, damages and back wages;<sup>38</sup>
- c. strict technical legal requirements may be disregarded whenever they are used to deny substantial justice to workers;<sup>39</sup>
- d. employees, though dismissed for a just cause, may be awarded separation pay on the grounds of equity and social justice, except when they have been dismissed for serious misconduct or some other cause reflecting on their moral character;<sup>40</sup>
- e. workers' quitclaims and waivers are generally not binding and should not bar employees from claiming what is legally due them under the law;<sup>41</sup>
- f. employees in the private sector can, subject to reasonable restrictions, picket and strike to protect themselves against exploitation and to seek better conditions of employment;<sup>42</sup>
- g. local recruitment companies may be liable for violation of the labor contracts of overseas Filipino workers;<sup>43</sup> and
- h. labor doctrines are extended to civil servants who have been dismissed from the service when less punitive penalties would have sufficed.<sup>44</sup>

The foregoing discussion is by no means exhaustive.

The magnitude and viciousness of human rights violations in our recent history

**The information revolution has permeated the judiciary. Our people no longer accept judicial doctrines they do not understand. Neither do they blindly defer to judgments that do not explain their rationale. For its part, media has persistently knocked on the ramparts of the judicial fortifications and climbed the steep gorges of Mount Olympus.**

**Our judiciary has steadfastly maintained its social justice orientation, because our Constitution and laws require it, and because an opposite policy would alienate the marginalized. If denied access to the democratic institutions of justice, they may be tempted to take the law into their own hands.**

enthused the Court to strengthen the protection of our people's fundamental rights. It has been uncompromising in (a) penalizing judges who failed to inform uneducated accused persons of their rights to counsel,<sup>45</sup> (b) annulling lower court judgments in which the judge failed to conduct a "searching inquiry" whenever the accused had waived their right to be heard and plead guilty to the charge against them,<sup>46</sup> (c) voiding judgments that do not conform with the constitutional standards as to form and substance<sup>47</sup> and (d) extending the protection of the Universal Declaration of Human Rights to everyone, including aliens.<sup>48</sup> Restoration of the Death Penalty

Notwithstanding the restoration of the death penalty,<sup>49</sup> which the Court declared to be constitutional<sup>50</sup>—despite my unyielding personal opinion that it is not<sup>51</sup>—the Court has been strict in reviewing the death sentences imposed by lower courts. As a result, less than one third of such judgments have been affirmed.<sup>52</sup> Recently in *People v. Mateo*,<sup>53</sup> the Supreme Court has held it "wise and compelling" to have the Court of Appeals review all death and life sentences before they are elevated to the Supreme Court.

Consistent with *Mateo*, the Court amended certain portions<sup>54</sup> of the Revised Rules of Criminal Procedure to simplify the appeal of capital offenses by requiring a notice of appeal to the Court of Appeals.

Since I oppose the death penalty, I personally welcomed the *Mateo* ruling. It gives death convicts an intermediate layer of review to ensure an error-free judgment. Death convicts must be given the same opportunity for multiple review as those convicted of lesser crimes.

Because of the Supreme Court's many decisions favoring the poor, the oppressed and the disadvantaged, it has oftentimes been criticized. Guilty parties are sometimes acquitted because of the stringent requirements of evidence to convict—proof beyond reasonable doubt—and because of the inadmissibility in Philippine courts of illegally obtained evidence. I remember the lament of a foreign diplomat who wryly commented that in his country—unlike in ours—no guilty person, whether rich or poor, had ever been acquitted on a mere technicality of the law.

Also because of our labor laws, many businessmen complain that they are ham-

pered in disciplining erring employees who could harass them through never-ending strikes, pickets, media attacks, or complaints to the National Labor Relations Commission.

Despite these occasional laments, our judiciary has steadfastly maintained its social justice orientation, because our Constitution and laws require it, and because an opposite policy would alienate the marginalized. If denied access to the democratic institutions of justice, they may be tempted to take the law into their own hands.

### Conclusion

To sum up the balancing role of the judiciary in our government, may I quote my recent book, *Leveling the Playing Field*:<sup>55</sup>

The Supreme Court safeguards not only food but also freedom; not only jobs but also justice; not only indulgences but also integrity; not only development but also democracy; not only prosperity but also peace.

Indeed, there can be no prosperity or progress without affording justice and peace to all, especially to the underprivileged and the disadvantaged.

### Endnotes

<sup>1</sup> CONST. art. VIII, sec. 1. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and 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.

<sup>2</sup> The Court nullified Rep. Act No. 8180 (1996), "Downstream Oil Industry Deregulation Act of 1996," the first oil deregulation law, because it violated the Constitution. Specifically, it found that three provisions of the law obstructed the entry of new oil companies into the Philippines, thereby perpetuating a monopoly of the so-called Big Three Oil companies—Petron, Shell and Caltex. *Tatad v. Secretary of Energy*, 346 Phil. 321 (1997).

The Court voided sec. 26 and sec. 31 of Rep. Act No. 6975 (1990), "Local Government Act of 1990," which empowered the Commission on Appointments to confirm the appointments of public officials whose appointments were not required by the Constitution to be confirmed. *Manalo v. Sistoza*, 371 Phil. 165 (1999).

Several portions of Rep. Act No. 9189 (2003), "The Overseas Absentee Voting Act of 2003," were declared unconstitutional for being repugnant to sec. 1, Art. IX-A of the Constitution, mandating the independence of constitutional commissions; such as the Commission on Elections. *Macalintal v. Comelec*, G.R. No. 157013, 10 July 2003, 405 SCRA 614.

Stressing that the determination of just compensation was a judicial function, the Court voided Pres. Dec. No. 1533, which eliminated the Court's discretion to appoint commissioners, pursuant to the then Rule 67 of the Rules of Court. The provisions of Pres. Dec. Nos. 76, 464 and 794 regarding executive determination of just compensation were also nullified. *Export Processing Zone Authority v. Dulay*, G.R. No. L-59603, 29 April 1987, 149 SCRA 305.

<sup>3</sup> Exec. Order No. 284 (1987), which allowed government officials to hold multiple positions in government was declared

unconstitutional for being contrary to sec. 13, art. VII of the Constitution. *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, 22 Feb. 1991, 194 SCRA 317.

Adm. Order No. 308, which established a “National Computerized Identification Reference System” or national ID system, was declared void because it (a) involved a subject that was not appropriate to be covered by a mere administrative order, but by a law enacted by Congress; and (b) placed the right to privacy in clear and present danger. *Ople v. Torres*, G.R. No. 127685, 23 July 1998, 293 SCRA 141.

The Court struck down COMELEC Resolution No. 2347, which prohibited the use of campaign decals and stickers on privately owned cars, because the restriction was so broad that it encompassed even the citizen’s private property; no substantial governmental interest justified the restriction. *Adiong v. Commission on Elections*, G.R. No. 103956, 31 March 1992, 207 SCRA 712.

Dept. Order No. 119, creating the Marawi Sub-District, Engineering Office which had jurisdiction over infrastructure projects within Marawi City and Lanao del Sur, was declared void for being violative of the provisions of E.O. No. 426. *Disomangcop v. Secretary of the Department of Public Works and Highways (DPWH)*, GR No. 149848, 25 Nov. 2004.

4 Some recently voided contracts include the following:

*The AMARI Contract*. The Court ruled that the Joint Venture Agreement between the Public Estates Authority (PEA) and the Amari Coastal Bay and Development Corporation for the reclamation of certain portions of Manila Bay violated the constitutional ban against the sale of reclaimed foreshore lands to and the reclamation of still submerged foreshore lands by a private corporation. *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002); G.R. No. 133250, 6 May 2003, 403 SCRA 1; and G.R. No. 133250, 11 Nov. 2003, 415 SCRA 403.

*The PIATCO Contract*. It was held that the “Build-Operate-and-Transfer” Contract for the construction and operation of Terminal III of the Ninoy Aquino International Airport (a) violated the anti-monopoly provisions of the Constitution because it gave the Philippine International Air Terminals Company, Inc. (PIATCO) the exclusive right to operate a commercial passenger terminal within the island of Luzon; and (b) transgressed the fair competition essence of the law in granting PIATCO substantially more benefits than those allowed by the bidding rules. *Agan v. PIATCO*, G.R. No. 155001, 5 May 2003, 402 SCRA 612 and Jan. 21, 2004.

*The MEGA PACIFIC Contract*. In setting aside the contract for the supply of automated counting machines for the elections, the Court held, among others, that it had been awarded in contravention of the bidding rules laid down by the awarding agency itself, the Commission on Elections. *Information Technology Foundation v. COMELEC*, G.R. No. 159139, 13 Jan. 2004, 419 SCRA 317.

*The SAGE Contract*. The contract granting a private company, the Sports and Games and Entertainment Corporation (SAGE), authority to operate on-line Internet gambling was voided because the charter of the government-owned Philippine Amusement and Gaming Corporation (PAGCOR) prohibited it from delegating its franchise to other entities. *Jaworski v. Pagcor*, G.R. No. 144463, 14 Jan. 2004, 419 SCRA 317.

5 The Constitution provides as follows:

CONST. art. II, sec. 28. 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.

CONST. art. III, sec. 7. 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 such limitations as may be provided by law.

CONST. art. XI, sec. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

6 Rep. Act No. 6713 (1989), “Code of Conduct and Ethical Standards for Public Officials and Employees.”

7 CANONS OF JUDICIAL ETHICS, Canon 30. It is not necessary to the proper performance of judicial duty that judges live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interest in or appearance at meetings of members of the bar.

8 A. M. No. 03-05-01-SC (1 June 2004). The Code is based on the universal declaration of standards for ethical conduct embodied in the Bangalore Draft as revised during the Round Table Conference of Chief Justices at The Hague. It stresses independence (Canon 1), impartiality (Canon 2), integrity (Canon 3), propriety (Canon 4), equality (Canon 5), and competence and diligence (Canon 6). A Code of Conduct for Court Personnel (AM No. 03-06-13-SC) was also instituted effective June 1, 2004.

9 PANGANIBAN, TRANSPARENCY, UNANIMITY & DIVERSITY 57 (2000).

10 CONST. art II, sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part

of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

11 CONST. art II, sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

CONST. art. II, sec. 10. The State shall promote social justice in all phases of national development.

12 CONST. art. II, sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.

13 CONST. art. II, sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

14 The 1987 Constitution is replete with state policies favoring labor. These include: CONST. art. II, sec. 9. *supra*; CONST. art. II, sec. 10. *supra*; and CONST. art. II, sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Sec. 3 of art. XIII (Social Justice) of the Constitution likewise provides that “The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of opportunities for all.

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

“The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

15 CONST. art. II, sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

16 CONST. art. III, sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) 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.

17 CONST. art. III, sec. 11.

18 CONST. art. III, sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him. ...

19 CONST. art. II, sec. 14, *supra*, and CONST. art. III, sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

20 CONST. art. XIII, sec. 1. The Congress shall 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.

To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments.

Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance. Sec. 3. *supra*.

Sec. 4. The State shall, by law, undertake an agrarian reform program

founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof ...

Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the public sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Sec. 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems. ...

Sec. 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation. ...

Sec. 17. (1) There is hereby created an independent office called Commission on Human Rights. ...

Sec. 18. The Commission on Human Rights shall have the following powers and functions: ...

(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection; ...

<sup>21</sup> Rep. Act No. 7438 (1992), "An Act defining certain rights of person arrested, detained or under custodial investigation as well as the duties of the arresting, detaining and investigating officers, and providing penalties for violations thereof."

<sup>22</sup> Rep. Act No. 9262 (2004), "Anti-Violence Against Women and Their Children Act of 2004."

<sup>23</sup> Rep. Act No. 7610 (1992), "Special Protection of Children against Child Abuse, Exploitation and Discrimination Act." See also, Rep. Act No. 8353 (1997), "Anti-Rape Law of 1997"; Rep. Act. No. 9231 (2003) "An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, amending for this purpose Republic Act No. 7610;" and Rep. Act No. 9208 (2003), "Anti-Trafficking in Persons Act of 2003."

<sup>24</sup> REV. PEN. CODE, Book II, Chap. One, Title II (Crimes Against Fundamental Laws of the State), Arts. 124—133. Specifically, the crimes punished are arbitrary detention; delay in the delivery of detained persons to the proper judicial authorities; delaying release; expulsion; violation of domicile; malicious procurement of search warrants and abuse in the service of those legally obtained; searching domicile without witnesses; prohibition, interruption and dissolution of peaceful meetings; interruption of religious worship; and offending religious feelings. See also, Rep. Act No. 7438 (1992), *supra*, and Rep. Act No. 9262 (2004), *supra*.

<sup>25</sup> Rep. Act No. 7160 (1991), "The Local Government Code" and Pres. Dec. 1508, "The Katarungan Pambarangay Law."

<sup>26</sup> Rep. Act No. 7835 (1994), "The Comprehensive and Integrated Shelter Financing Act"; Rep. Act No. 6846 (1990), "The Social Housing Support Fund Act;" and Rep. Act No. 7279 (1992), "The Urban Development and Housing Act of 1992."

<sup>27</sup> Rep. Act No. 7607 (1992), "An Act Providing a Magna Carta for Small Farmers."

<sup>28</sup> Pres. Dec. 442, as amended (1974), "The Labor Code" and Rep. Act No. 8042 (1995), "The Migrant Workers and Overseas Filipinos Act of 1995."

<sup>29</sup> RULES OF COURT, rule 3, sec. 21 and AM No. 04-2-04-SC.

<sup>30</sup> RULES OF COURT, rules 112-127.

<sup>31</sup> RULES OF COURT, rule 116, sec. 7, rule 122, sec. 13, and rule 124, sec. 2. The Court also appoints the Public Attorney's Office to represent the poor in all relevant litigations.

<sup>32</sup> CODE OF PROFESSIONAL RESPONSIBILITY. Canon 2. A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

Rule 2.01 A lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed.

Rule 2.02 In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights.

Canon 14 of the same Code states "A lawyer shall not refuse his services to the needy."

Rule 14.01 A lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person.

Rule 14.02 A lawyer shall not decline, except for serious and sufficient cause, an appointment as counsel *de officio* or as amicus curiae or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

Rule 14.03 A lawyer may not refuse to accept representation of an indigent client unless:

(a) he is not in a position to carry out the work effectively or competently; or

(b) he labors under a conflict of interest between him and the prospective client, or between a present client and the prospective client.

Rule 14.04 A lawyer who accepts the cause of a person unable to pay his professional fees shall observe the same standard of conduct governing his relations with paying clients."

<sup>33</sup> AM No. 99-4-06-SC, June 8, 1999.

<sup>34</sup> 412 PHIL. 308 (2001).

<sup>35</sup> 70 PHIL. 726 (1940). The case laid down the definition of "social justice," which is immortalized in countless decisions. Said the Court:

Social justice is "neither communism, nor despotism, nor atomism, nor anarchy, but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. xxx"

<sup>36</sup> In Chap. VIII of my book BATTLES IN THE SUPREME COURT (1998), I narrated my efforts to accord greater benefits to workers whose services had been terminated for cause but without due process.

<sup>37</sup> *Bolinao Security and Investigation Service, Inc. v. Toston*, GR No. 139135, 29 Jan. 2004, 421 SCRA 406; *Mendoza v. NLRC*, G.R. No. 131405, 20 July 1999, 310 SCRA 846; *Pascua v. NLRC*, 351 PHIL. 48 (1998); and *Pacific Maritime Services, Inc. v. Ranay*, 341 PHIL. 716 (1997).

<sup>38</sup> *Paguio Transport Corporation v. NLRC*, 356 PHIL. 158 (1998); *Mabuhay Development Industries v. NLRC*, 351 PHIL. 227 (1998); *Magcalas v. NLRC*, 336 PHIL. 433 (1997); and *AHS/Philippines, Inc. v. Court of Appeals*, 327 PHIL. 129 (1996).

<sup>39</sup> *Tanjuan v. Philippine Postal Savings Bank, Inc.*, G.R. No. 155278, 16 Sept. 2003, 411 SCRA 168; *Philimare Shipping & Equipment Supply, Inc. v. NLRC*, 378 PHIL. 1131 (1999); *Samar II Electric Cooperative Inc. v. NLRC*, 337 PHIL. 24 (1997); *Aurora Land Projects Corp. v. NLRC*, 334 PHIL. 44 (1997); *The New Valley Times Press v. NLRC*, G.R. No. 100482, 15 July 1992, 211 SCRA 509.

<sup>40</sup> This rule was laid down by the Court en banc in *Philippine Long Distance Telephone Co. v. NLRC*, G.R. No. L-80609, 23 Aug. 1988, 164 SCRA 671. See also *Gabuay v. Oversea Paper Supply, Inc.*, GR No. 148837, 13 Aug. 2004, 436 SCRA 514; *Philippine National Construction Corporation v. NLRC*, 366 PHIL. 678 (1999); *United South Dockhandlers, Inc. v. NLRC*, 335 PHIL. 76 (1997); and *Del Castillo, Jr. v. NLRC*, G.R. No. 75413, 10 Aug. 1989, 176 SCRA 229.

<sup>41</sup> *Emco Plywood Corp. v. Abelgas*, GR No. 148532, 14 April 2004, 427 SCRA 496; *Anino v. NLRC*, 352 PHIL. 1098 (1998); *Alcosero v. NLRC*, G.R. No. 116884, 26 March 1998, 288 SCRA 129; *Agoy v. NLRC*, 322 PHIL. 636 (1996); *Cariño v. ACCFA*, 124 PHIL. 782 (1966).

<sup>42</sup> *Pasvil/Pascual Liner, Inc. Workers Union v. NLRC*, 370 PHIL. 473 (1999); *National Federation of Sugar Workers v. Ovejera*, 199 PHIL. 537 (1982).

<sup>43</sup> *ABD Overseas Manpower Corporation v. NLRC*, 350 PHIL. 92 (1998); *PI Manpower Placements Inc. v. NLRC*, 342 PHIL. 414 (1997); *Zurbano Sr. v. NLRC*, G.R. No. 103679, 17 Dec. 1993, 228 SCRA 556.

<sup>44</sup> *Neeland v. Villanueva Jr.*, AM No. P. 99-1316, 31 Aug. 2001, 364 SCRA 204.

<sup>45</sup> *Gamas v. Oco*, AM No. MTJ-99-1231, 17 March 2004, 425 SCRA 588.

<sup>46</sup> *People v. Besonia*, GR Nos. 151284-85, 5 Feb. 2004, 422 SCRA 210; *People v. Bodoso*, G.R. Nos. 149382-83, 5 March 2003, 398 SCRA 64; *People v. Aranzado*, G.R. Nos. 132442-44, 24 Sept. 2001, 365 SCRA 649; *People v. Durango*, 386 PHIL. 202 (2000); *People v. Nadera Jr.*, 381 PHIL. 484 (2000); *People v. Abapo*, 385 PHIL. 1175 (2000); *People v. Tizon*, 375 PHIL. 1096 (1999); and *People v. Bello*, 375 PHIL. 277 (1999). The Court stressed that the accused must be properly

accorded their fundamental right to be informed of the precise nature of the accusation against them and of the consequences of pleading guilty thereto, which is an integral aspect of the due process clause under the Constitution.

<sup>47</sup> *Velarde v. Social Justice Society*, GR No. 159357, 28 April 2004, 428 SCRA 283; *People v. Ferrer*, G.R. No. 148821, 18 July 2003, 406 SCRA 658; *Yao v. Court of Appeals*, G.R. No. 132428, 24 Oct. 2000, 344 SCRA 202; *People v. Dumaguing*, G.R. No. 135516, 20 Sept. 2000, 340 SCRA 701; *Madrid v. Court of Appeals*, 388 PHIL. 366 (2000); *People v. Bugarin*, 339 PHIL. 570 (1997). CONST. art. VIII, sec. 14 states that “[no] decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.”

<sup>48</sup> *Domingo v. Scheer*, GR 154745, 29 Jan. 2004, 421 SCRA 468.

<sup>49</sup> Rep. Act No. 7659 (1993), “An act to impose the death penalty on certain heinous crimes, amending for that purpose the Revised Penal Code, as amended, other special penal laws, and for other purposes.”

<sup>50</sup> *People v. Echegaray* 335 Phil. 343 (1997).

<sup>51</sup> In my Dissenting Opinion in *People v. Echegaray*, I argued passionately that based on the age, language and socio-economic profiles of convicts then in death row, Rep. Act No. 7659 had militated against the poor and the powerless in society.

<sup>52</sup> This has been consistently shown by court statistics as reported in several of my books. See Chap. 21, *LEVELING THE PLAYING FIELD* (2004); Chap. 14, *THE BIO-AGE DAWNS ON THE JUDICIARY* (2003); Chap. 22, *REFORMING THE JUDICIARY* (2002), Chap. 14, *A CENTENARY OF JUSTICE* (2001); Chap. 16, *TRANSPARENCY, UNANIMITY AND DIVERSITY* (2000); Chap. 6, *LEADERSHIP BY EXAMPLE* (1999) and Chap. 4, *BATTLES IN THE SUPREME COURT* (1998).

<sup>53</sup> *People v. Mateo*, GR Nos. 147678-87, 24 July 7, 2004, 433 SCRA 640.

<sup>54</sup> Sections 3(d), 3(d) and 10 of Rule 122 and Sections 12 and 13 of Rule 124, as follows:

RULES OF COURT, rule 122, sec. 3(c), as amended, now reads: Sec. (c). The appeal in cases where the penalty imposed by the Regional Trial court is *reclusion perpetua*, life imprisonment or where a lesser penalty is imposed for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by notice of appeal to the *Court of Appeals* in accordance with paragraph (a) of this Rule (emphasis supplied);

RULES OF COURT, rule 122, sec. 3(c), as amended, now reads: Sec. (c). The appeal in cases where the penalty imposed by the Regional Trial court is *reclusion perpetua*, life imprisonment or where a lesser penalty is imposed for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by notice of appeal to the *Court of Appeals* in accordance with paragraph (a) of this Rule (emphasis supplied);

RULES OF COURT, rule 122, sec. 3(d), as amended, now reads: Sec. 3(d). No notice of appeal is necessary where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule;

RULES OF COURT, rule 122, sec. 3(d), as amended, now reads: Sec. 3(d). No notice of appeal is necessary where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule;

RULES OF COURT, rule 122, sec. 10, as amended, now reads: Sec. 10. *Transmission of records in case of death penalty.* - In all cases where the death penalty is imposed by the trial court, the records shall be forwarded for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter;

RULES OF COURT, rule 122, sec. 10, as amended, now reads: Sec. 10. *Transmission of records in case of death penalty.* - In all cases where the death penalty is imposed by the trial court, the records shall be forwarded for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter;

RULES OF COURT, rule 124, sec. 12 reads: Sec. 12. *Power to receive evidence.*—The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three months, unless extended by the Chief Justice;

RULES OF COURT, rule 124, sec. 13 provides: Sec. 13. *Certification or appeal of case to the Supreme Court.*—(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review; (b) Where the judgment also imposed a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed and the accused appeals, the appeals shall be included in the case certified for review to the Supreme Court; (c) In cases where the Court of Appeals imposed *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals;

RULES OF COURT, rule 124, sec. 13 provides: Sec. 13. *Certification or appeal of case to the Supreme Court.*—(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review; (b) Where the judgment also imposed a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed and the accused appeals, the appeals shall be included in the case certified for review to the Supreme Court; (c) In cases where the Court of Appeals imposed *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

<sup>55</sup> PANGANIBAN, *supra* note 36, at 59.

# Philippine Action Program for Judicial Reform

EVELYN DUMDUM

*Program Director, Action Program for Judicial Reform (APJR)*

**815,431**

cases are pending at all levels of the judiciary in the Philippines, as of 31 July 2004.

**0.88%**

The portion of the national budget allocated to the judiciary.

**222,000**

Pesos are spent per year for each employee of the judiciary, as opposed to the P332,520 spent per employee per year in the executive branch, and the P641,000 spent per employee in the legislative branch.

The Philippine judiciary faces many obstacles to its efficient performance. The Action Program for Judicial Reform has taken concrete steps to establish a strong foundation for its long-term reform and development.

## Structure of the Philippine Judiciary

Under the Philippine Constitution, the judiciary is the third branch of government. The Philippine court system has four levels: The first level is composed of metropolitan and municipal trial courts. The second level is composed of regional trial courts, which have general original jurisdiction as well as appellate jurisdiction over the lower courts. The court of appeals has jurisdiction to review cases from both tiers of lower courts. The Supreme Court is the highest court in the country.

The municipal and regional trial courts include 950 regional trial courts, 1,124 municipal level courts, 51 circuit courts, and five Shari'a (Islamic law) district courts. The Court of Appeals currently has sixty-three associate justices and one presiding justice.

The Philippine Supreme Court is composed of fifteen justices; a chief justice and fourteen associate justices. They decide cases *en banc*, with five justices presiding simultaneously. The Supreme Court exercises adjudicatory, disciplinary, and rule-making powers. While its chief function is to adjudicate civil and criminal actions and special proceedings, it also has administrative supervision over all courts and personnel, including the power to discipline lawyers for violations of the Code of Professional Responsibility. The Supreme Court also has the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged.

## Challenges Facing the Philippine Judiciary

The Philippine judiciary suffers from two overriding problems: court congestion and limited financial resources.

Case congestion and delay have always been and continue to be a matter of great import for the court, because the degree of delay in disposing of cases reflects the efficiency or inefficiency of the administration of justice. As of 31 July 2004, an astounding 815,431 cases were pending at all levels of the judiciary. The regional trial courts, with approximately 343,875 cases pending before them, accounted for the largest portion of these pending cases.

The limited financial resources available to the judiciary prevent it from opening new courts and hiring competent and highly qualified individuals for the bench. Even the courts that have been provided for by Congress have not all been established due to lack of funding. Whereas Congress provided for 2,153 first- and second-level courts, only 2,064 have been organized. As of September 2004, nearly 33 percent of the total judicial positions were vacant. All but one of these vacancies are in the first- and second- level courts. There are simply too few judges. There are 18 justices or judges for every 1 million Filipinos. In Australia, there are 41 judges per million, in the UK there are 51, in Canada there are 75, and in the United States there are 107 judges for every million citizens.

Not only is the Philippine Judiciary under-funded, but it receives proportionately much less government funding than the other branches of government. For the last six years, the Philippine Judiciary's share in the national government budget has been continually declining. In 2000, the judiciary budget accounted for just over 1 percent of the total national budget, and in 2005, it accounted for only 0.88 percent. For the period 1998–2003, the national government has spent an average of 222,000 pesos per year for each employee of the judiciary. During this time, it spent 332,520 pesos per employee of the executive branch, approximately 150 percent of the amount spent per employee in the judiciary. In the sharpest contrast, the government spent 641,000 pesos per employee of the legislative branch, almost three times the spending per employee for the judiciary. The discrepancy also permeates the budgetary support for

maintenance and operating expenses. The budgets of both the executive and legislative branches of the government have grown much faster than that of the judiciary over the last five years.

Beside these two pervasive problems, several other problems must be addressed in order to maximize judicial efficiency: (a) outdated court technologies and facilities; (b) lack of human resource development, particularly for the non-judicial personnel; (c) perceived corruption in the judiciary, which brings into question its integrity and quality of decisions; (d) perceived limited access to justice by the poor and marginalized sectors of society; and (e) institutional deficiencies which are best characterized by the highly centralized operation of administrative and financial transactions in the Supreme Court.

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

The Action Program for Judicial Reform (APJR) has adopted various strategies and identified specific programs, projects, and activities to address the challenges faced by the Philippine judiciary and to improve delivery of judicial services. The APJR is founded on the vision and mission espoused by Chief Justice Hilario G. Davide Jr. This a vision for a judiciary that is independent, effective, efficient, and worthy of public trust and confidence; and a legal profession that provides quality, ethical, accessible, and cost-effective legal service to our people, and is willing and able to answer the call to public service. The program addresses six areas: (1) Judicial Systems and Procedure; (2) Institutions Development; (3) Human Resource Development; (4) Institutional Integrity Development; (5) Access to Justice by the Poor; and (6) Reform Support Systems.

The APJR builds on previous reform efforts by the Supreme Court, including the technical assistance on justice and development programs funded by the United Nations Development Fund (UNDF), which produced the blueprint of action for the judiciary, as described above. Diagnostic studies, funded by the World Bank, provided the data which formed the basis for the development of specific reform programs. The APJR is the product of extensive consultations over the last years with stakeholders, not just within the judicial sector, but also

with representatives from the legal community, civil society, academia, private sector, and the media.

The APJR seeks to achieve the following goals:

- a. impartiality, access to, and speed of judicial systems;
- b. judicial autonomy and self-governance;
- c. streamlined institutional structure and operations;
- d. decentralization;
- e. information systems-based operations, planning, performance, management and decision-making;
- f. competitive and equitable remuneration;
- g. continuing capability improvement;
- h. transparency and accountability in appointments to the Bench; and
- i. consensus-building and collaboration with civil society.

### **Factors Influencing the Success of Reforms**

The success or failure of a reform program rests on the foundation on which it is built. Reform programs must begin with a comprehensive diagnosis that sets the parameters for effective management of program. In the case of the Philippine Supreme Court, it undertook a comprehensive review of the present state of the Philippine judicial system with the help of judiciary officials and external experts. They assessed the judiciary's institutional capacity to effect and absorb change, and analyzed its strengths, weaknesses, opportunities, and challenges to reforms. The diagnostic studies undertaken by the Supreme Court included (a) an assessment of past judicial reforms; (b) a review of the criminal justice system; (c) a review of the alternative dispute resolution mechanisms; and (d) an assessment of the impact of judicial education and directions for change and development. These diagnostic studies revealed the nature, causes, and impact of strengths and weaknesses on the judicial system. They also established the foundation for the development of concrete projects and activities to realize the judiciary's vision.

A successful reform program must involve participation by the stakeholders. From the very beginning, Chief Justice Davide, whose leadership and political will largely made the reform program possible, insisted that the success of the program de-

## **The Action**

### **Program for**

### **Judicial Reform**

**(APJR) builds on previous reform efforts by the Supreme Court, including the technical assistance on justice and development programs funded by the United Nations Development Fund (UNDF), which produced the blueprint of action for the judiciary.**



**Evelyn Dum Dum**  
Program Director,  
Action Program for  
Judicial Reform (APJR)

“The success or failure of a reform program rests on the foundation on which it is built. Reform programs must begin with a comprehensive diagnosis that sets the parameters for effective management of program. In the case of the Philippine Supreme Court, it undertook a comprehensive review of the present state of the Philippine judicial system with the help of judiciary officials and external experts. ”

*Evelyn Toledo-Dum Dum is the program director of the Philippine Supreme Court's Action Program for Judicial Reform. Previously, she was a consultant to the World Bank. Ms. Dum Dum has two master's degrees in management from the University of the Philippines. She has two bachelor's degrees (A.B. Social Science and B.S. Foreign Service) both from the University of the Philippines.*

pended on how the Court could manage, combine, and synchronize the efforts of the judiciary and its stakeholders.

The success of judicial reforms depends partly on the perception of the public and the legal community. The Court conducted perception surveys that gauged how judges, court personnel, and external stakeholders viewed the gravity of the problems with the judiciary. These surveys included: (a) a survey of private legal practitioners to monitor access to justice by the disadvantaged; (b) the 2003 assessment of the public attorney's office; (c) the national survey on inmates and institutional assessment; and (d) a survey on the state of the legal profession and the state of the judiciary.

In order to make the most of technical assistance and funding donations for judicial reforms, the reform program must effectively coordinate with and manage contributions from donors. Many donor institutions assist the Supreme Court in implementing its reform projects. These include the Asian Development Bank, World Bank, United Nations Development Programme, Canadian International Development Agency, Australian Agency for International

Development, US Agency for International Development, and The Asia Foundation.

There must be a global perspective to implementing reform programs. A comparative analysis of the successful reform programs of other countries helped the Philippine Supreme Court develop its own program. The Court also avoided costly reform pitfalls by drawing lessons from relevant international experiences and practices.

The APJR articulates certain considerations that should guide program implementation to best achieve the programs goals. The factors identified are as follows:

- a. Reforms must restore public trust and confidence in the justice system;
- b. Reforms will require significant resources, but will be implemented and pursued within the context of severe national government resource constraints;
- c. Judicial independence will be pursued in a traditionally centralized environment;
- d. The judiciary must take the lead in pursuing, synchronizing, and sustaining the various reforms, several of which will require administrative cooperation with other departments and sectors;
- e. Reform implementation must be programmed in accordance with the capacity for change by the judiciary and its stakeholders;
- f. The judiciary must ensure continuous development and the institutionalization of capacities in order to sustain the gains made by the reforms; and
- g. Reforms will require top-level support and commitment within a political environment where achieving broad and continuing consensus require persistent efforts and where there is inadequate appreciation of the role of the justice system in socioeconomic development.

The implementation of judicial reforms is expected to lead to a well-functioning judicial system, which is efficient and fair, accessible and transparent, and independent and autonomous. In turn, this is expected to lead to a socioeconomic environment that is stable and predictable, which are the basic requisites for both domestic and foreign investors to invest in the Philippines. The comprehensive approach taken by the

APJR and the support of many of our leading justices form a solid foundation for systematic reform of the judicial system in the Philippines.

## Challenges in Implementing Access to Justice Reforms in Bangladesh

MOUDUD AHMED

*Minister of Law, Justice and Parliamentary Affairs, Bangladesh*

**T**here is a nexus between an effective and meaningful legal system and a country's economic growth. One cannot speak of good governance without the rule of law, and one cannot speak of the rule of law without having an effective legal system. Bangladesh has seen many significant judicial reforms and has successfully dealt with some of the challenges facing those reforms. The backlog of cases has become smaller and cases are being processed more quickly, but there is still much work to be done to improve the criminal justice system and increase judicial independence and accountability.

### Speedy Implementation of Justice

In Bangladesh, there are about one million cases pending for resolution. Of these, about 550,000 are criminal and 450,000 are civil cases. Ninety percent of the total cases are pending in the subordinate courts while the remaining ten percent are pending before the either the High Court or the Appellate Division of the Supreme Court.

Formerly, criminals were not deterred by the possibility of punishment because investigations and trials were lengthy and not certain to result in convictions. This perception no longer exists, due to newly introduced speedy trial courts for minor offenses, and speedy trial tribunals for major

offenses such as murder, rape, drugs, illegal arms, and explosives. In the last eighteen months, these tribunals have disposed of 500 cases and 186 people were sentenced to death. The average length of time needed to dispose of a case has been reduced from five to seven years to five to seven months. This represents a fantastic success.

The success of the efforts to speed resolution of criminal cases was due to an accountability program and to the formation of special courts to systematically process specific types of cases. The judicial accountability program requires a judge to report in writing to the Supreme Court every time he does not dispose of a case within a time frame provided. Similarly, the prosecution and the investigating officers must answer to their superiors if they are unable to prepare a case to be tried before the court in keeping with the schedule. The new criminal courts for minor and major offenses do not handle any other cases. As opposed to traditional district level courts, in which a judge tries all kinds of cases, these specialized courts only try a particular type of case so that they can systematize their processes for greater efficiency. In addition, unlike the typical lower courts that enjoy a one-month vacation in December, these tribunals remain open and continue to try cases throughout the year.

### Focus for Further Reforms

Despite the progress the judiciary has made in processing the backlog of cases and speeding up the litigation process for new cases, there are many reforms that still remain to be implemented, including improving prosecution for criminal trials and improving judicial independence and accountability.

### IMPROVING CRIMINAL JUSTICE DELIVERY

The criminal justice system in Bangladesh requires reform in four major areas: investigation, witness protection, prosecution, and trial. Criminal investigations should not be the responsibility of the already overburdened police force, but should be allocated to a separate, independent and professionally trained investigation department. Members of this department may come from the police force but would not be assigned routine police work. These investigators would be able to focus all their time on assembling

**Lawyers in Bangladesh were originally resistant to the introduction of alternative dispute resolution (ADR) mechanisms in family courts; however, after months of workshops and seminars, they began to accept the new mechanisms.**



Anamul Haque Arnan

**After ADR was successfully introduced in the family courts, it was introduced in the civil courts.**



**Moudud Ahmed**  
Minister of Law, Justice  
and Parliamentary  
Affairs, Bangladesh

**"Despite the progress the judiciary has made in processing the backlog of cases and speeding up the litigation process for new cases, there are many reforms that still remain to be implemented, including improving prosecution for criminal trials and improving judicial independence and accountability."**

*Barrister Moudud Ahmed, M.P. is the Minister of Law, Justice and Parliamentary Affairs of the Government of Bangladesh. He was elected a Member of the Parliament five times (1979, 1986, 1988, 1991 and 2001). He has previously served as Vice President from 1989-1990, and Prime Minister and Leader of the House from 1988-1989 in Bangladesh. As Minister, he has held the following portfolios: Industries; Planning; Law, Justice and Parliamentary Affairs; Special Affairs; Energy, Water Resources, and Flood Control; Communication-Railways, Roads and Highways; and Post, Telegraph and Telephones. He was a Fellow at Queen Elizabeth House, Oxford University (1983); Harvard University Center for International Affairs, (1980-1981); Fairbank Asia Center (1988); and South Asian Institute, Heidelberg University (1976, 1980 and 1996). He has a B.A. (Hons.) and an M.A. from Dhaka University and is a Barrister-at-Law, Lincoln's Inn, England.*

evidence and completely thorough investigations. Witness protection programs are currently inadequate and must be expanded so that investigators and prosecutors can process cases more efficiently. The quality of prosecutors and trial judges must also be improved. In Bangladesh, the prosecutors are all politically appointed, so that new prosecutors are appointed every time there is a change of government. Hence, there is no continuity in service. The prosecutors have neither the necessary skills and training, nor the requisite accountability. A system in which prosecutors were permanent public servants that were educated, well-trained, and accountable to the system would provide better prosecutorial services than the current political-appointee system. Finally, trial judges would be better positioned to provide justice if they were independent from political influence.

Currently, the executive branch has influence magistrates exercising judicial functions.

**JUDICIAL INDEPENDENCE AND ACCOUNTABILITY**  
Although in Bangladesh magistrates exercising judicial functions currently belong

to the executive branch of government, the judiciary is otherwise fully independent from executive control. To ensure the separation of the judiciary from the executive, control of these magistrates must be transferred to the judiciary.

Independence of the courts does not mean, however, that the courts must answer to no one. Reform efforts must focus on promoting judicial accountability in order to check judicial independence. Article 102 of the Constitution gives the High Court the power to interfere in actions of the other branches of government. The judges of the High Court are subject to disciplinary action taken by a Supreme Judicial Council consisting of the Chief Justice and the next two senior judges. However, in the last 34 years, only one judge has been removed from office. An effective accountability mechanism must be composed of members outside of the judiciary itself.

### **Challenges to Implementing Reforms**

The judiciary is particularly difficult to reform because it is one of the Bangladesh's most conservative institutions. There will always be a people who do not want change that might compromise their vested interests. Education of interested parties can often ease transitions to new systems. Lawyers in Bangladesh were originally resistant to the introduction of alternative dispute resolution (ADR) mechanisms in family courts, however after months of workshops and seminars, they began to accept the new mechanisms. After successful introduction of ADR in the family courts, it was introduced in the civil courts. It is also important to build positive public opinion before a law is introduced or amended. Consulting with stakeholders including lawyers, judges, civil societies, and non-governmental organizations involved with the justice system can be helpful for building widespread support.

In implementing new laws and reforms, it is important to remain open to suggestions and feedback from the judiciary and the legal community. For example, the Civil Procedure Code was amended to impose penalties on litigants who unnecessarily delayed cases by filing frivolous papers and pursuing empty allegations. Much of the time it takes to resolve a case is spent on interlocutory orders. The penalties were

## **One million**

The number of cases in Bangladesh that are pending for resolution.

## **500**

The number of cases have been disposed of in the last 18 months. The average length of time needed to dispose of a case has been reduced from five to seven years to five to seven months.

imposed to reduce interlocutory litigation and speed resolution of the primary suit. A penalty of 100,000 taka was imposed on a party found to have made false allegations based on falsified documents. A penalty of 50,000 taka was imposed on a party that obtained an injunction on a baseless claim, in addition to the defendant's right to sue for damages. Initially, critics of the new penalties maintained that they would frustrate justice. After the amendment was passed, the Ministry of Law held meetings and seminars with the district bar presidents, secretaries, and Supreme Court association presidents. While the discussions resulted in a reduction in the amounts of the penalties, the original principles were retained.

Legal reform always depends on the individual judges and lawyers for effective implementation. There must be support for the reforms from within the system if reforms are to succeed. The leadership of every district judge who has to implement a particular new law is important. System reform never brings quick results. A stable government that provides continuity of governance facilitates the process, and the longer the reforms are allowed to entrench themselves in the system, the more positive the net effects will be. The legal reform programs currently being implemented in Bangladesh aim to ensure access to justice: easy, inexpensive, and speedy justice in the courts.

## Challenges in Implementing Access to Justice Reforms in Pakistan

HON. SHAFIUR RAHMAN

*Former Justice, Supreme Court of Pakistan*

**L**aw reform in Pakistan has been a continuing process, which began long before the country's independence in 1947. The reform efforts can be divided into three phases: the pre-independence period (pre-1947), and two post-independence periods, distinguished by the amount of funding that

was available for legal reforms. From 1947–1997 funding for legal reforms was scarce, but after 1997 period substantial funds for legal reforms became available, culminating ultimately in the Access to Justice Program funded by the Asian Development Bank.

Before Pakistan's independence, the only significant law reform effort was the establishment of the Civil Justice Committee, headed by Justice George Clause Rankin, in 1923. Despite the Committee's report and the limited reforms that followed, the judiciary remained inefficient because the reforms were unable to speed the processing of cases to alleviate congestion in the courts. For the first fifty years after the nation's independence, funding for the judiciary was severely limited resulting in an inadequate number of judges, courthouses, and other support facilities. Large-scale reforms began only after 1997, when funding started to become more available. Initially, the reforms focused on the commercial sector, then they moved to the civil judiciary, before finally being consolidated in the comprehensive Access to Justice Program (AJP) that affects nearly every aspect of the judiciary.

### Retention of the Positive Elements from the Colonial System

Although the statutes and systems that were established during colonial rule are generally discredited, there are some good practices that should be preserved in our reform efforts. Part of the reform program should be to implement those positive aspects of the colonial statutes that have not previously been enforced. For example:

- *Inspections of the District Courts by High Court judges.* Despite the fact that existing law provides for regular court inspection, there are district courts that have not been inspected for over ten years. Although sporadic inspections sometimes take place, they are no substitute for regular inspections, which afford a High Court judge the opportunity to interact with the subordinate judiciary, the bar, the litigants, and the district bureaucracy.
- *Inspections of the courts by the presiding officer.* The current court rules require that in the year in which the High Court judge does not inspect the courts, the head of district judiciary, *i.e.*, the dis-

**Large-scale reforms began only after 1997, when funding started to become more available. Initially, the reforms focused on the commercial sector, then they moved to the civil judiciary, before finally being consolidated in the comprehensive Access to Justice Program.**



**Lawyers in Pakistan stand to benefit from the reforms under the Access to Justice Program.**

Muhammad Bilal



**Hon. Shafiur Rahman**  
Former Justice, Supreme  
Court of Pakistan

"Certain measures can be taken to ensure successful implementation of law reform, including providing secure tenure for judges, building capacity through training, improving public awareness, and improving internal accountability measures."

*Justice Shafiur Rahman served as Justice of the Supreme Court of Pakistan from 1979-1994 and Justice of the High Court of West Pakistan/Punjab from 1969-1979. His career in the civil service and the judiciary, which spans over five decades, includes stints as deputy secretary of the Home Department and Social Welfare Department of West Pakistan, registrar of West Pakistan's High Court, law secretary of West Pakistan, acting Wafaqi Mohtasib (federal ombudsman), member of the Pakistan Law Commission, and chairman of the Commission on Corporate Laws and Labor Laws of Pakistan. He has served as consultant to the Asia Foundation and the Asian Development Bank for technical assistance on legal and judicial reforms and the Access to Justice Program in Pakistan.*

strict and sessions judge, shall inspect each of the courts in the district in a similar fashion. In addition, the judge of each court in the district is required to inspect his court once in a quarter and submit a report to his superior.

- *Submission of statistical reports on court performance.* The abstract order sheet of all civil and criminal cases pending for over one year must be submitted by each court. Criminal cases that are pending for over four months have to be reported to the next higher authority. These statistics must be collected accurately and reported in the prescribed form in time to facilitate preparation of annual reports. These annual reports had ceased to be published after 1973 and were revived as part of the Access to Justice Program.

### **Challenges to Successful Implementation of Reforms**

Law reform involves more than simply passing new laws. However, the Pakistani attitude is that laws take effect immediately upon their placement in the statute books. Pakistanis often believe that after the law is changed on the books, nothing more must be done to ensure implementation, so that even statutory rules and regulations are unnecessary. In addition, it is believed that the

harsher the law, the more effective it will be in achieving its objectives.

These notions are, of course, mistaken. New and reformed laws are not automatically implemented. There are several reasons for this. First, the financial implications of new laws are frequently not thought through at the time the laws are drafted, and provisions are not made for the funds needed to implement the law. The department responsible for administering the law has to in all likelihood make do with insufficient resources, so that without additional funding, new laws will simply be ignored. Also, inadequate and poorly trained human resources prevent laws from being properly implemented. There is the lack of capacity to plan and utilize funds for the most optimal value. There is no scheme at either the federal level or at the provincial level to address the requirement of recruiting judges and staff and providing adequate working conditions for the subordinate judiciary. None of the courts have any recruitment policy extending beyond the next five to ten years.

Successful implementation of laws requires monitoring, evaluation, and performance review. However, no annual reports on the subject are published and no effort is made to elicit public opinion on law reforms.

The success of law reforms depends on consistency of vision within political leadership. However, neither federal nor provincial leadership has provided such a collective vision. Disparate incentives and institutional goals cause the head of each governmental body to pursue his own designs and priorities without coordinating with other governmental bodies. Furthermore, changes in office frequently mean changes in the vision of the political leadership. Accordingly, there is little continuity or consistency in the pursuit of reform programs and the prudent management of reform funding.

Nor has political leadership consistently supported reform efforts at all. Retired Chief Justice of Pakistan Ajmal Mian, in his book *A Judge Speaks Out*, noted his experience of political opposition to judicial reforms:

*On the basis of more than twenty-one years of experience as a member of the superior judiciary, I can say without any fear of contradiction that **none of the governments in Pakistan during my tenure wanted an independent judiciary...***

had asked the President and the Prime Minister to refer cases of judicial misconduct against the judges who did not enjoy a good reputation, but there was no response. It is, therefore, imperative to confer on the Supreme Judicial Council the power to initiate misconduct proceedings suo moto upon an application from an aggrieved party, provided the application is bona fide and is supported by reliable material, so that the judges of the superior courts may become accountable.<sup>1</sup>

Interference from the military has also impeded judicial reform efforts. For example, the military coerced resignations from a judge of High Court and from the Chief Justice of the same High Court, instead of seeking the appropriate institutional actions against them through the constitutionally established Supreme Judicial Council.

### **Suggestions for Successful Implementation of Reforms**

Notwithstanding the serious issues facing the judiciary in Pakistan, certain measures can be taken to ensure successful implementation of law reform, including providing secure tenure for judges, building capacity through training, improving public awareness, and improving internal accountability measures.

Judges, particularly of judges of superior courts, should be granted secure tenure. If judges are confident that they will retain their jobs, they will be more willing to implement reforms even in the face of opposition.

Capacity building is essential to sustainable law reform. Training and technical assistance by highly qualified and experienced professionals is required for (a) fund management of the Law and Justice Commission; (b) curriculum and training of the Federal Judicial Academy; (c) operational efficiency of the website set up by the Ministry of Law; (d) court management techniques; and (e) record keeping and automation.

In order to build public support for reforms and public confidence in the judicial system, the performance of the judiciary should be periodically disclosed to the public. These performance reports will encourage the judiciary's accountability to society. If a petition for review has remained

pending, unattended, in the highest court of the country for over 10 years, that fact should be disclosed to the public. Similarly, the judiciary should be placed under a statutory obligation to hold annual conferences and to publish periodic reports with regard to the accomplishments of and problems facing the law reform agenda, as well as the demands and working conditions of the judiciary. Dialogue among the members of the judiciary as well as between the judiciary and the public is necessary for a cooperative and efficient reform effort.

Finally, an effective internal grievance redress system should be instituted as part of the governance structure of the country. An accountability mechanism must be implemented both in the judicial sector and the rest of the bureaucracy to supplement public awareness and provide for public participation in the judicial reform process.

When these reforms are instituted, Pakistan will be much closer towards a smooth, well-functioning, effective and efficient judiciary.

## **Judicial Reform in Indonesia**

**HON. MARIANNA SUTADI**  
*Vice Chief Justice*  
*Supreme Court of Indonesia*

**T**he law enforcement system in Indonesia, from the police to the prosecutor to the courts, is perceived to be unjust and there is little public confidence in the legal system. In order to promote justice and public and investor confidence in the legal system, further judicial reforms must focus on strengthening judicial independence and accountability and improving trial procedures.

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. Judges must uphold and exemplify the principles of judicial independence in both their individual and institutional capacities. The Bangalore Principles of Judicial Conduct<sup>1</sup> provides that judicial independence can be achieved by applying the following principles:

**The Supreme Court and civil society organizations (CSOs) have formulated "blueprints" for reform, which are supported by various donors, which are intended to facilitate implementation of the one-roof system within the judiciary.**

<sup>1</sup> AJMAL MIAN, A JUDGE SPEAKS OUT 347 (2004) (emphasis added).

**20,000**

The number of cases that are in the backlog of Indonesia's Supreme Court.

**80%**

The percentage of backlog that is made up of civil cases.

Measures to reduce the backlog include regulations on class actions and court affiliated alternative dispute resolution (ADR) that will provide other channels of adjudication to litigants to reduce crowding of the court dockets.

- A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason;
- A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate;
- A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom;
- A judge shall make decisions independent from influences of his judicial colleagues;
- A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary;
- A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, with the understanding that public confidence is a fundamental goal of judicial independence.

### Legislation Furthering Legal Reform

Legislation has been passed since 1999 to address 1) judicial independence, 2) trial procedures, and 3) corruption. In 1999, Law No. 35 was passed to amend Law No. 14 of 1970 on the Principal Provisions on Judicial Authority. This amendment established a "one roof" policy: resulting in the judiciary being removed from the control of the executive branch and placed under the authority of the Supreme Court. Even this transfer of authority, by itself, has been insufficient to restore public confidence in the judiciary.

Legislation has also been passed to promote access to justice by providing for improved trial procedures. Law No. 8 of 1981 on the Law of Criminal Procedure (KUHAP) and Law No. 35 of 1999 replaced legislation from 1970 and provide that the trial process must be conducted in a quick, simple, low-cost, open, honest, and impartial manner in all levels of trials.

Anti-corruption legislation has been passed as well. The Corruption Eradication Commission (KPK) proposed Law No. 30 in 2002, which mandated the establishment of the Anti-Corruption Court. This body specially designed to hear corruption cases handled by the Anti-Corruption Commission. The court has recently begun proceedings on alleged corruption in the procurement of military equipment. Other anti-corruption programs that have been implemented include: (a) training in anti-corruption techniques for the Anti-Corruption Court judges, prosecutors, and support staff; (b) the development of a recruitment system for Anti-Corruption Court ad-hoc judges; and (c) the preparation of a manual on the administration of the Anti-Corruption Court.

In order to increase public and investor confidence in the Indonesian legal system, judicial independence must be increased, trials must be made efficient and accessible, and corruption must be mitigated. The legislation passed in recent years is the first step, however. Further reform programs have been formulated and are in the process of being implemented.

### Implementation of Reforms

The Supreme Court and civil society organizations (CSOs) have formulated "blueprints" for reform, which are supported by various donors, which are intended to facilitate implementation of the one-roof system within the judiciary. These reforms address personnel issues, case management, and judicial accountability. The Supreme Court has established a secretariat and a judicial reform team responsible for coordinating and monitoring the implementation of the Supreme Court's comprehensive reform agenda. A Donor Consultation Forum acts to ensure that programs sponsored by international and multi-lateral organizations are coordinated with each other and the Supreme Court reform agenda.

The Supreme Court agenda on court and judicial personnel reforms addresses personnel organization, functions, recruitment, promotion and rotation, and judicial supervision, evaluation and discipline. The Asia

<sup>1</sup> THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (2002), available at [www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)

Foundation and the Danish Government are supporting a program to develop a system of recruitment, promotion, and reallocation of judges.

The reform agenda addresses measures to promote access to justice by reducing the Supreme Court's backlog of 20,000 cases (80 percent of which are civil). These measures include regulations on class actions and court-affiliated alternative dispute resolution (ADR) that will provide other channels of adjudication to litigants to reduce crowding of the court dockets. Measures to improve the efficiency of the courts themselves include funding and support infrastructure, case management, and information management of the Court. To this end, the Asia Foundation and Asian Development Bank (ADB) are supporting the Supreme Court's efforts to establish an information management system for handling cases and to establish a managerial system for legal cases as they travel through the courts of first instance, appellate courts, and the Supreme Court.

The Supreme Court has strengthened internal and external oversight of individual judges' performance as well as institutional performance generally in order to improve accountability and transparency. Partnership for Governance Reform in Indonesia is supporting the development of an external control system for improvement of the supervision and control of the Supreme Court, as the policy was adopted through Law No. 22 of 2004.

### Challenges to Reform

The reform programs have internal and external support. The Chief Justice Bagir Manan has been effective in mobilizing stakeholders' support for judiciary reform within the judiciary. The strong partnership with CSOs to define and implement the reform agenda through the blueprints has consolidated support for reforms outside the judiciary.

Despite widespread support, the reform effort faces many challenges. The inertia of institutional culture, limited human resources, and the tsunami have all posed challenges to the speedy implementation of judicial reforms. The culture of reform within the judiciary has not been internalized. An important aspect of implementing reforms is to expose the judiciary to reform-

"Despite widespread support, the reform effort faces many challenges. The inertia of institutional culture, limited human resources, and the tsunami have all posed challenges to the speedy implementation of judicial reforms."



Hon. Marianna Sutadi  
Vice Chief Justice  
Supreme Court  
of Indonesia

LARRY RAMOS

*Ms. Justice Marianna Sutadi is the Vice Chief Justice of the Supreme Court of Indonesia. She began her 40-year career in the judiciary as a judge at the Jakarta Special District Court in 1964. She was promoted to Assistant Justice of the Supreme Court in 1981, and served as High Court Judge at the Tanjungkarang and Jakarta High Courts. She was appointed as Vice Chief of the Central Kalimantan High Court in 1993, and of the Tanjungkarang High Court in 1994. She was appointed Justice of the Supreme Court in October 1995. Justice Sutadi graduated from the Faculty of Law of the University of Indonesia in 1964.*

ist ideas and initiatives by disseminating information on all ongoing and planned reform activities to members of the judiciary. Lack of human resources and inadequate infrastructure limits the courts' capacity to implement the reform agenda. This constraint can only be resolved through continuing training for judges and other judicial staff tailored to meet the demands imposed by the reforms. Finally, the tsunami disaster on 26 December 2005 in Aceh has further slowed judicial reform efforts. Now, in addition to the nationwide reform programs, the judiciary must divert extra resources to Aceh, where the court system must be completely rebuilt. The Supreme Court has taken initial steps towards addressing this urgent problem, stretching the already limited resources of the judicial system even thinner.

Reorganization and reformation of the judicial infrastructure takes time. The implementation of the one-roof system, which was initiated in 1999, took five years. We cannot expect changes to happen quickly, and must persevere with the reform agenda even if we do not experience immediate results.

### Conclusion

The pursuit of the goals set forth in the Supreme Court's blueprints is an essential first step in achieving an independent, modern, ethical, transparent, and participative judicial framework. In implementing the blue-

**First, corruption within the Attorney General's Office (AGO) must be eliminated, because such internal corruption renders law enforcement ineffective. Second, the AGO must be mobilized to fight corruption throughout the country, and bring to justice the worst offenders.**

prints, priority should be given to those goals that will have an immediate effect on the development of an independent and impartial court. This can be best achieved by the establishment of an external supervisory mechanism, as is currently being pursued by the Partnership for Governance Reform. The Supreme Court should also continue to partner with CSOs and reform-minded academic circles so they can consolidate their expertise and experience in implementing the reform agenda.

## **Reform Developments in the Attorney General's Office of Indonesia**

**MAS ACHMAD SANTOSA**  
*Adviser, Partnership for Governance Reform in Indonesia*

**P**ublic expectations for Indonesia's public prosecutor's office Attorney General's Office (AGO), are focused on the elimination of corruption on two fronts. First, corruption within the AGO must be eliminated, because such internal corruption renders law enforcement ineffective. Second, the AGO must be mobilized to fight corruption throughout the country, and bring to justice the worst offenders, who have embezzled government funds and adversely affected the image of the Republic.

The AGO has four plans of action to meet these public expectations:

- a. To intensify the investigation and prosecution of corruption cases throughout Indonesia;
- b. To review all cases that have ended in an order to stop the investigation or prosecution and expedite the enforcement of all cases that have attracted public attention;
- c. To promote internal reform within the AGO; and
- d. To push forward the establishment of

the independent prosecutorial commission as a part of the effort to develop an external control mechanism for the AGO.

Internal reforms in the AGO will address public demands to establish an ethical, transparent, participatory, and accountable public prosecutor. The ADB-funded Governance Audit of the Public Prosecution Service, as well as the National Development Planning Agency's national plan of action for combating corruption, will provide findings and recommendations that will form the basis for AGO reforms.

A prosecutorial commission has been proposed. If the President establishes the Commission, it will act as an external oversight body that will supervise and enhance the AGO's performance. The Commission will monitor and evaluate organizational conditions within the AGO. It will supervise and evaluate prosecutors' conduct and make recommendations for reforms.

The AGO has involved independent legal experts and CSOs in two task forces: the task force handling corruption cases and the task force for internal reform agenda. There are also plans to include CSO members and independent experts in the selection committee of the Prosecutorial Commission. This multi-lateral strategy is similar to Chief Justice Manan's approach to defining and implementing the judicial reform agenda with the involvement of non-governmental organizations (NGOs).

NGOs working on the judiciary reforms formed a coalition called NGOs' Coalition on Judiciary Monitoring. The NGOs' involvement in the reform agenda included: (a) providing technical assistance, including consulting service; (b) drafting Supreme Court regulations and developing blueprints for reform; (c) compiling comparative research on certain legal issues such as class action suits and court-affiliated ADR; and (d) participating in the selection process of justices. For example, there is a civil society representative in the selection committee of *ad hoc* judges for the Anti-Corruption Court. The NGOs also act as watchdogs by examining court decisions that trigger public controversies and investigating candidates for appointment as justices or as members of the judicial commission. In sum, NGOs have had a significant role in promot-

ing judicial reforms and supplementing the pro-active role and leadership of the Supreme Court. The involvement of independent experts and CSOs in the AGO reforms should likewise promote the efficacy and sustainability of the reform projects.

The multi-tiered AGO reform agenda, in conjunction with the proposed prosecutorial commission, will do much to combat both corruption that is internal to the AGO and corruption in the rest of the government. Reforms that can make strides against corruption and improve the law enforcement conditions in Indonesia will succeed in responding to public demands and meet public expectations for the AGO and law enforcement in Indonesia generally.

“The Attorney General’s Office has involved independent legal experts and CSOs in two task forces: the task force handling corruption cases and the task force for internal reform agenda.”



Larry Ramos

**Mas Achmad Santosa**  
Adviser, Partnership for  
Governance Reform in  
Indonesia

*Mas Achmad Santosa is an Adviser for Legal and Judicial Reform in the Partnership for Governance Reform in Indonesia, a non-governmental organization set up by the government of Indonesia and the United Nations Development Program (UNDP), which is mandated to promote governance reform in Indonesia. He is involved as an advisor in various efforts to reform the Supreme Court (Mahkamah Agung) and the Attorney-General’s Office (AGO). Besides his teaching activities in the Law School at the University of Indonesia, he is also involved in various NGOS, working for legal and judicial reform as founder and senior researcher in the Indonesian Centre for Environmental Law (ICEL), as well as the Indonesian Institute for Independence of Judiciary (LeIP), the National Consortium on Legal Reform (KRHN) and the Indonesian Institute for Conflict Transformation (IICT). He is also currently a member of the Governing Board of the Indonesia-Australia Legal Development Facility (IALDF).*

## OPEN FORUM

# On Enhancing the Effectiveness and Accountability of the Judiciary

### Judicial Independence and Accountability

#### REGION-WIDE OBSERVATIONS:

- The general public has little or no confidence in the judiciary.
- Even well-connected investors are extremely frustrated with unpredictable investment climates caused by the unpredictable and inefficient judicial system.
- Developing countries cannot achieve sustainable economic growth, which is the key to poverty eradication, without a well-functioning, efficient, and honest judiciary.
- Increasing judicial independence and accountability can transform judicial systems and provide the foundation for sustainable economic growth.

#### CHALLENGES TO INCREASING JUDICIAL INDEPENDENCE AND ACCOUNTABILITY:

- Analytical studies and recommendations alone do not guarantee implementation of reforms.
- Without a stable, democratic, and clean political system, it is hard for the judiciary in any country to avoid government interference.
- Judicial independence requires:
  - o **strong leadership** within the judiciary to overcome day-to-day interference from outside forces and withstand the onslaught of vested interests;
  - o **financial independence** in order to avoid improper political influence and manipulation achieved through budgetary pressure; and
  - o **administrative support** to maintain functional independence from the other branches of government.
- Members of the judiciary must be held accountable to an entity within the democratic institution, for example: the parliament or civil society.
- A judicial ombudsman could be established to monitor the justices, as an alternative or supplemental

accountability mechanism. There are, however, in certain jurisdictions, constitutional provisions that ensure the independence of the judiciary, which may limit the scope or prohibit such establishment entirely.

### **Networking among Regional Judiciaries**

- The Philippine Supreme Court, in cooperation with the World Bank and ADB, is organizing a regional conference for members of the judiciaries, law professionals, and heads of judicial academies. The conference aims to facilitate the sharing of information and experiences about judicial reforms among the various judicial systems and jurisdictions. The conference presupposes that:
  - o a functional and efficient judiciary is a necessary component of good governance and a precondition for sustainable economic development, and
  - o the participating countries are all engaged in efforts to reform their judiciaries and legal systems with the same guiding principles in mind.



**Networking among regional judiciaries results in the identification of strategies for increased judicial effectiveness and accountability.**