

Now or Never: Judicial and Legal Reforms in the Philippines

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I. INTRODUCTION

The justice system in the Philippines has not been able to deliver on its promise of dispensing justice to the people. This Article attempts to identify the reasons why, and proposes reforms to strengthen its foundations. Given the present situation where it appears that justice from the courts of law is being supplanted by “justice” from the barrels of guns,¹ the matter of

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The views expressed and information provided in this Article are largely drawn from the Author’s personal experience and do not represent any official views of the *Ateneo Law Journal*.

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1. See generally Jodesz Gavilan, Mayors, vice mayors killed under Duterte gov’t, available at <https://www.rappler.com/newsbreak/iq/206262-list-mayors-vice-mayors-killed-since-july-2016-duterte-government> (last accessed Aug. 31, 2018); Karen McVeigh, *Police have killed dozens of children in Philippines war on drugs, Amnesty says*, GUARDIAN, Dec. 4, 2017, available at <https://www.theguardian.com/global-development/2017/dec/04/police-have-killed-dozens-of-children-in-philippines-war-on-drugs-amnesty-says> (last accessed Aug. 31, 2018); & Michael Bueza, IN NUMBERS: The Philippines’

reforms is urgent. If concrete and immediate steps are not taken to strengthen the justice system, the rule of law on which it is based may give way to its opposite, which is the rule of power.²

II. HISTORICAL REVIEW OF THE PHILIPPINE LEGAL SYSTEM

The Philippine legal system is a hybrid of the civil law and common law traditions.³ While the substantive laws are derived from Spain,⁴ the rules of procedure and evidence come from the United States of America (United States).⁵ As a Spanish colony, the Philippines followed the inquisitorial system, where the judge played an active role in the litigation of the case.⁶ American colonizers replaced this mode of litigation with the adversarial system, where the judge plays a more passive role and the party seeking judicial relief bears the burden of proof.⁷

The change in judicial procedure was deliberate on the part of the United States —

In 1900 President McKinley sent ... a Commission, under the presidency of Mr. Taft, to establish [a] civil government in Manila and in the provinces held by the military forces of the United States. In his instructions ... [he] directed that ... ‘the main body of the laws which regulate the rights and obligations of the people should be maintained with as little interference as possible.’ *Changes were to be made ‘mainly in procedure ... to secure speedy and impartial trials.’*

...

The Taft Commission, however, had no occasion to exercise its powers in relation to criminal procedure, for shortly before its organization, the Military Governor, General Otis, ... promulgated a brief but

‘war on drugs’, available at <https://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs> (last accessed Aug. 31, 2018).

2. Denise Meyerson, *The Rule of Law and the Separation of Powers*, 4 MACQUARIE L.J. 1, 1 (2004).
3. Cesar Lapuz Villanueva, *Comparative Study of the Judicial Role and Its Effect on the Theory on Judicial Precedents in the Philippine Hybrid Legal System*, 65 PHIL. L.J. 42, 42 (1990).
4. See Eugene A. Gilmore, *Philippine Jurisprudence — Common law of Civil Law?*, 16 AM. BAR ASS’N J. 89 (1930).
5. *Id.*
6. WILLARD B. RIANO, CRIMINAL PROCEDURE (THE BAR LECTURE SERIES) 22–23 (2016 ed.).
7. *Id.*

comprehensive code which ... has governed the trial of criminal cases ever since.⁸

General Otis's Code of Criminal Procedure⁹ and the Taft Commission's Code of Civil Procedure¹⁰ evolved into what are now called the Rules of Court.¹¹ These rules govern proceedings in all Philippine courts, from the lowest to the highest levels.¹² The influence of American common law on the Philippine legal system "is apparent as judicial institutions based on the Anglo-American tradition were created [in the Philippines] and American common law trained [Filipino] judges developed legal methodologies consistent with that tradition."¹³

The Rules on Evidence¹⁴ used in all Philippine courts are also heavily influenced by the United States. The definition of evidence in force today — that it is "the means ... of ascertaining in a judicial proceeding the truth respecting a matter of fact"¹⁵ — was lifted from Section 1823 of the Code of

8. F. C. Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33, 33 (1932) (emphasis supplied).

9. Code of Criminal Procedure of the Philippine Islands, General Order No. 58 (April 23, 1900). The code was actually written by Major Richard Young of the Utah Light Artillery, U.S. Army. F.C. Fisher, *Some Peculiarities of Philippine Criminal Law and Procedure*, 19 VA. L. REV. 33, 33 (1932).

10. An Act Providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands [CODE OF CIVIL PROCEDURE], Act No. 190 (1901).

11. 1997 REVISED RULES OF CIVIL PROCEDURE, rule 1, § 1.

12. *Id.* rule 1, § 2.

13. American Bar Association - Asia Law Initiative, Analysis of the Rules of Evidence and the Rules of Electronic Evidence for the Republic of the Philippines at 2, available at https://www.americanbar.org/content/dam/aba/directories/roli/philippines/philippines_rules_of_evidence.authcheckdam.pdf (last accessed Aug. 31, 2018).

"[T]he PRE [(Philippine Rules of Evidence)] and PREE [(Philippine Rules of Electronic Evidence)] seem to already be based, in part, on some of the Federal Rules of Evidence of the United States[.]" *Id.*

The Supreme Court of the Philippines observed that the Philippine rules on depositions and discovery "[were] taken almost verbatim from Section V, Rule 26 (a) of the Rules of Civil Procedure for the District Courts of the United States" which were based on the Federal Rules of Civil Procedure of the United States. See *Republic v. Sandiganbayan*, 358 SCRA 284, 295 (2001).

14. 1989 REVISED RULES ON EVIDENCE.

15. *Id.* rule 128, § 1.

Civil Procedure of California.¹⁶ The Philippine rules on relevancy of evidence,¹⁷ judicial notice,¹⁸ object evidence,¹⁹ best evidence rule,²⁰ and many other basic evidentiary rules were taken from the Taft Commission's Code of Civil Procedure.²¹

III. DIVERGENCE IN THE APPLICATION OF RULES

The procedural and evidentiary rules that the Philippines inherited from the United States, however, were designed for a *jury* system, where the judge (a lawyer) decides which evidence to admit, while the jury (lay persons) decide on the probative value and appreciation of the evidence.²² In a jury system, the judge acts as a filter and screens the jury from inadmissible evidence so as not to unduly influence them.²³ This is not the case in bench trials where the judge, a lawyer, takes on both functions.²⁴

For the last 100 years, in other words, Philippine courts have been using rules of procedure and evidence designed for juries when all trials in the Philippines are heard and decided exclusively by judges. “The Philippines do[es] not have a jury system, thus, experts would query as to why the PRE (Philippine Rules on Evidence) replicates all the complexities of this [hearsay] and other evidence rules.”²⁵

The fact that the Philippines courts have been applying rules of procedure and evidence designed for a jury system when all the trials are

16. The Code of Civil Procedure of California [CODE OF CIVIL PROCEDURE], § 1823 (U.S.) & MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT I (1980 ed.).

17. REVISED RULES ON EVIDENCE, rule 128, § 4.

18. *Id.* rule 129, §§ 1-3.

19. *Id.* rule 130, § 1.

20. *Id.* rule 130, §§ 3-4.

21. MORAN, *supra* note 16, at 14, 37, 70, & 82.

22. RIANO, *supra* note 6, at 23.

23. Criminal Trial — Admissible Evidence, *available at* <http://law.jrank.org/pages/2207/Trial-Criminal-Admissible-evidence.html> (last accessed Aug. 31, 2018). “In the Anglo-American trial system[,] the judge performs a screening function for the jury, making sure that the evidence brought before it is relevant and that it is not prejudicial to the defendant or to the state.” *Id.*

24. RIANO, *supra* note 6, at 23.

25. American Bar Association – Asia Law Initiative, *supra* note 13, at 10.

bench trials points to a fundamental dysfunctionality in the Philippine justice system. As pointed out in 2006 by American legal experts who analyzed the Philippine Rules on Evidence (PRE) —

Given that the main purpose of rules of evidence in a common law country is to regulate jury decision-making as well as concerns about the ability of jurors to appropriately process information, *were juries to be eliminated in the United States, many of the [United States] rules of evidence would be discarded or fall into disuse* (apart from those applicable in a bench trial). The best example by far is the hearsay rule, which is, in civil cases, purely an outgrowth of concerns about jury reasoning. In criminal cases, there are issues concerning the right to confront witnesses. The Philippines do[es] not have a jury system, thus, experts would query as to why the PRE replicates all the complexities of this and other evidence rules.²⁶

The Philippine rules on relevance,²⁷ hearsay and its exceptions,²⁸ similar acts as evidence,²⁹ expert opinions,³⁰ and privileges,³¹ among others, were designed for a jury system. Yet the courts apply these rules, often very strictly, in the trials of civil and criminal cases, without recognizing this historical fact.

Some of the rules on evidence that the Philippines took from the United States, moreover, are no longer in use in America. The best evidence rule,³² for example, which originated from Section 284 of the Taft Commission's Act No. 190,³³ has all but been abandoned in the United States, the gap was summarized as thus —

There is some thought that the Philippine best evidence rule is a departure from modern evidence codes which facilitate the admissibility of documents rather than make admissibility turn on criteria that is often hard to establish. In contrast to the current Philippine approach, experts suggest

26. *Id.* (emphasis supplied). The experts consisted of highly respected professors of law and authors of legal works on evidence, procedure, and related fields: Professor Edward Imwinkelried, Professor Ronald J. Allen, Professor Michael Froomkin, Professor Peter Nicolas, and Professor Myrna Raeder. *Id.* at Appendix A.

27. REVISED RULES ON EVIDENCE, rule 128, § 4.

28. *Id.* rule 130, §§ 36-47.

29. *Id.* rule 130, § 34.

30. *Id.* rule 130, § 49.

31. *Id.* rule 130, §§ 24-25.

32. REVISED RULES ON EVIDENCE, rule 128, §§ 3-4.

33. CODE OF CIVIL PROCEDURE, § 284.

that the party opposing the admission of a document or a copy should have a high burden to show that the offered evidence is unreliable. The fact of modern practice in [United States] courts is that originals are rarely used in civil litigation and copies are routinely admitted unless there is a bona fide challenge to the duplicate.³⁴

The privilege known as the “dead man’s rule” found in Section 23 of Rule 130³⁵ has been abolished in the United States federal courts.³⁶ The same is true with the parental or filial privilege contained in Section 25 of Rule 130,³⁷ which “only a handful of [] states” have retained.³⁸

Other rules of American origin have radically changed over time in the United States. Under Section 22 of Rule 130 of the PRE, for example, a husband or wife cannot testify against the other during the marriage unless the affected spouse consents.³⁹ This is no longer true in the United States, where “the FRE (Federal Rules of Evidence) and many state evidentiary laws now view the holder of the spousal testimonial privilege to belong to the witness spouse, not the affected spouse.”⁴⁰ Another example is the executive privilege recognized in Section 24 of Rule 130 of the PRE,⁴¹ which is much wider in scope than its American equivalent and “seems overly broad.”⁴² Yet another example is Section 11 of Rule 132 of the PRE on impeachment of witnesses, which prohibits the impeachment of an opponent’s witness by evidence of “particular wrongful acts” if the witness

34. American Bar Association – Asia Law Initiative, *supra* note 13, at 4.

35. REVISED RULES ON EVIDENCE, rule 130, § 23.

36. American Bar Association – Asia Law Initiative, *supra* note 13, at 6.

37. REVISED RULES ON EVIDENCE, rule 130, § 25.

38. American Bar Association – Asia Law Initiative, *supra* note 13, at 6.

39. REVISED RULES ON EVIDENCE, rule 130, § 22. The same section provides for exceptions, thus — “except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter’s direct descendants or ascendants.” *Id.*

40. American Bar Association – Asia Law Initiative, *supra* note 13, at 5.

41. REVISED RULES ON EVIDENCE, rule 130, § 24.

42. American Bar Association – Asia Law Initiative, *supra* note 13, at 6. “The experts suggested adding language to this privilege that would balance the government’s need for confidentiality with the public’s right to know, i.e., that public interest would suffer *more* from disclosure than it would from keeping the information secret.” *Id.*

was not convicted for such acts.⁴³ This is not the case under the United States law.⁴⁴

The way that Philippine courts apply the exceptions to the hearsay rule illustrates how different the Philippine approach has become compared to courts of the United States, to wit —

The ‘business records’ exception to the hearsay rule is set forth in [Section 43 of Rule 130 of the PRE]. As currently written, it is an extremely narrow exception and would benefit from redrafting in several ways. First, the current business record exception is made applicable only if the record was made ‘by a person deceased, or unable to testify.’ Under [United States] law, such records are admissible without regard to the availability of the persons who made the entry because the business duty to create accurate records is believed to make them inherently reliable. Second, to make this provision more useful in prosecuting those who operate unlawful criminal enterprises, it is worth clarifying that the word ‘business’ includes such criminal enterprises. Third, this section conflicts with the PREE [(Philippine Rules on Electronic Evidence)] ... which contain a much more current rendition of the US business record hearsay exception. ...

[Section 44 of Rule 130 of the PRE] creates a *prima facie* presumption regarding the truth of entries in official records. This seems to confide an extraordinary degree of confidence in the government. It might be preferential to indicate that it is simply evidence of the facts therein stated. Otherwise, the presumption of the truth of such entries would put an undue burden on a citizen to show otherwise, a burden that the normal citizen could never meet.

[Section 48 of Rule 130 of the PRE], a provision that excludes lay opinions is surprising. It is literally not possible to eliminate lay opinions from testimony as virtually everything any witness, lay or expert, utters is laced with opinions. Lay opinions can be constrained and minimized to some extent but not eliminated. This rule could become a fertile breeding ground for trial inefficiencies as well as delaying and obstructionist appeals. Judges should encourage witnesses to relate what they believe they have observed and to avoid highly conclusory language but, at the same time, judges need to allow witnesses to express themselves in the normal way of their thinking and speech. A broader rule that would permit more opinions

43. REVISED RULES ON EVIDENCE, rule 132, § 11.

44. American Bar Association – Asia Law Initiative, *supra* note 13, at 16. “Under [United States] law, such acts can be inquired into on cross examination of the witness, although if the witness denies that the incident took place, such acts cannot be proven by extrinsic evidence.” *Id.*

by lay witnesses could use a standard that opinions may be given if they are necessary and helpful.⁴⁵

The continued application of Rules on Evidence and procedure in the Philippines that are not meant for bench trials, but appear to be inconsistent with modern practice, must give way to more realistic rules that are responsive to the people's needs.

IV. INDEPENDENCE AND FOUNDATIONS OF THE JUDICIARY

The outdated rules of procedure are not all that ail the country's justice system. A look back at recent history reveals that the justice system was emasculated by a dictatorship that stripped the judiciary of its independence, and a succession of administrations that failed to strengthen its weakened pillars and foundations.

On 29 September 1972, one week after Ferdinand E. Marcos (Marcos) declared martial law throughout the Philippines, he issued Letter of Instructions (LOT) No. 11,⁴⁶ which states —

[T]o facilitate the reorganization of the Executive Branch ... and in order that the *Judicial Branch* may also be reorganized ... to meet the necessities of the present national emergency ... *I hereby direct, ... that all officers of the national government whose appointments are vested in the President of the Philippines submit their resignations from office, thru their Department Heads, not later than 15 October 1972.*⁴⁷

The following year, Marcos abandoned the 1935 Constitution⁴⁸ and inserted the following in the Transitory Provisions of the 1973 Constitution⁴⁹ —

Section 9. *All officials and employees in the existing government of the Republic of the Philippines shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines, but all officials whose appointments are by this Constitution vested in the Prime Minister shall vacate their respective offices upon the appointment and qualification of their successors.*

45. *Id.* at 12.

46. Office of the President, Letter of Instructions No. 11 (Sep. 29, 1972).

47. *Id.* para. 1 (emphases supplied).

48. 1935 PHIL CONST. (superseded 1973).

49. 1973 PHIL CONST. art. XVII (superseded 1987).

Section 10. The incumbent Members of the Judiciary may continue in office until they reach the age of [70] years, unless sooner replaced in accordance with the preceding section hereof.⁵⁰

LOI No. 11⁵¹ and Article XVI, Section 10 of the 1973 Constitution⁵² destroyed the independence of the judiciary. Their impact on the justice system was nothing short of disastrous. With the stroke of a pen, Marcos captured the entire judicial system. From 1972 until 1986, he owned every single judge in the country.⁵³ For 14 years, he could remove any judge at any time, for any cause — or even without cause.⁵⁴ And he did, to wit —

[A]ll judges, from the highest to the lowest, work under the threat of dismissal at any time. *Mr. Marcos can replace any judge any time he is disposed to do so, and in fact, has repeatedly done so.* Veteran judges of long service have been dismissed through court notices of acceptance of their compulsory resignations. Judges have been summarily booted out, their names, careers and reputations ruined and their future shattered, without being heard in their defense, even without being told what were the charges against them.

*Can we now view the judiciary as independent, able to protect the litigants and those accused of crimes, with no other end in view but truth, justice, and fair play?*⁵⁵

But there is more.

By capturing the judiciary, the dictatorship also transformed the legal profession. It created legal “mutants” — lawyers who functioned as glorified fixers — who cultivated their closeness to the powers that be. These glorified fixers established networks among law enforcers, prosecutors, judges, and prison officials, among others. These networks outlasted the Marcos dictatorship. Some of them still operate today.

After the first EDSA Revolution, succeeding administrations tried to go after these networks, but failed to dismantle them. The framers of the 1987 Constitution tried to depoliticize the process for appointing judges by creating the Judicial and Bar Council — but it remains a highly politicized

50. 1973 PHIL. CONST. art. XVI, §§ 9 & 10 (superseded 1987) (emphases supplied).

51. Letter of Instructions No. 11.

52. 1973 PHIL. CONST. art. XVI, § 10 (superseded 1987).

53. CIVIL LIBERTIES UNION OF THE PHILIPPINES, *THE STATE OF THE NATION AFTER THREE YEARS OF MARTIAL LAW* 73 (1975).

54. *Id.*

55. *Id.* at 73-74 (emphases supplied).

body.⁵⁶ And while the 1987 Constitution restored the independence of judges, post-EDSA Revolution administrations paid little attention to strengthening the justice system which martial law had tainted, emasculated, and corrupted.⁵⁷

But martial law also gave rise to another breed of lawyers who took up the cause of human rights — lawyers who realized that, just as the law could be used to oppress, it could also be used to liberate people from oppression.⁵⁸ Lawyers who saw that the law needed to be grounded on a foundation of humanity to attain actual justice.

It was not an easy struggle.

Branded as communists, subversives, and “enemies of the state,” human rights lawyers and advocates were harassed, threatened, arrested, detained,

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56. See United States Agency for International Development, Reducing Corruption in the Judiciary (A 2009 Program Brief Commissioned by the United States Agency for International Development (USAID)) at 9–10, *available at* https://pdf.usaid.gov/pdf_docs/Pnadq106.pdf (last accessed Aug. 31, 2018). The writers observed that “[u]nqualified judges who owe their positions to *political patronage*, or even *corrupt acts*, pose an enormous obstacle to achieving a judiciary that will reflect high standards of independence, integrity, accountability, and transparency. *A merit-based appointment system is a high priority.*” *Id.* at 9 (emphases supplied).
57. See generally Nicole Cu Unjieng, Ferdinand Marcos: Apotheosis of the Philippine Historical Political Tradition (A Paper Presented at the Undergraduate Humanities Forum 2008–2009 of the University of Pennsylvania), *available at* https://repository.upenn.edu/cgi/viewcontent.cgi?article=1002&context=uhf_2009 (last accessed Aug. 31, 2018). See also Artemio V. Panganiban, *Filipino justice — from concept to practice*, PHIL. DAILY INQ., Oct. 19, 2013, *available at* <http://opinion.inquirer.net/63675/filipino-justice-from-concept-to-practice> (last accessed Aug. 31, 2018).
58. See generally Jun Verzola, Martial-law activists now ready to tell own stories, *available at* <http://www.gmanetwork.com/news/news/specialreports/172811/martial-law-activists-now-ready-to-tell-own-stories/story/> (last accessed Aug. 31, 2018); Ma. Ceres P. Doyo, *13 names added on heroes wall*, PHIL. DAILY INQ., Nov. 30, 2010, *available at* <https://www.pressreader.com/philippines/philippine-daily-inquirer/20101130/283764195419604> (last accessed Aug. 31, 2018); & Ma. Cecilia Badian, *Lawyers group asks President to recall martial law declaration*, MINDANAOAN TIMES, May 25, 2017, *available at* <http://mindanaotimes.net/lawyers-group-asks-president-to-recall-martial-law-declaration> (last accessed Aug. 31, 2018).

tortured, and killed.⁵⁹ Yet, against all odds and despite the prevalent fear, they fought on, and ultimately prevailed.

If not for them, the freedoms the people enjoy today would not exist.

V. GUARDING THE PEOPLE'S FREEDOMS

Now, these freedoms are again under attack, and human rights defenders are being blamed as the cause of rampant crime and corruption.⁶⁰

Are human rights defenders really to blame? Or is it the country's weak legal system that has allowed crime and corruption to proliferate?

What is happening now, all around us? Filipinos are seeing a different kind of justice being dispensed from the barrels of their guns and the employment of fear and violence to maintain order⁶¹ — the very same fear and violence that the dictatorship used so effectively 46 years ago.

Fear need not be of communists: it may be of terrorists ... or of gangsters[,] or mere non-conformists. *Whatever its cause, fear — carefully nurtured by the establishment — hardens into the belief that communists, terrorists, ... dissenters, anarchists [or even drug addicts and pushers] — call them what you will — have forfeited their humanity, and so have forfeited their rights.* Seen as posing extraordinary dangers, they justify extraordinary remedies: national defense becomes national security; military values infiltrate civil society; the inevitable result is military rule or some other variant of dictatorship; and in the process, human rights blur and evanesce.

Please do not misunderstand me. The point I wish to make is not that the danger feared is imaginary — it may well be very real. The point is that there are dangers we do better to live with than to try to eliminate. *Fear is a powerful motive, but an unreliable guide. It can create evils more monstrous than those it seeks to avoid. It can kill freedom while trying to preserve it.*⁶²

59. *See generally* PRIMITIVO MIJARES, *THE CONJUGAL DICTATORSHIP OF FERDINAND AND IMELDA MARCOS* (1976).

60. *See generally* Human Rights Watch, *Philippines: Duterte Threatens Human Rights Community*, available at <https://www.hrw.org/news/2017/08/17/philippines-duterte-threatens-human-rights-community> (last accessed Aug. 31, 2018) & Pia Ranada, Roque: Human rights groups may be 'unwitting tools' of drug lords, available at <https://www.rappler.com/nation/199005-malacanang-harry-roque-human-rights-groups-unwitting-tools-drug-lords> (last accessed Aug. 31, 2018).

61. Gavilan, *supra* note 1; McVeigh, *supra* note 1; & Bueza, *supra* note 1.

62. JOSE W. DIOKNO, *A NATION FOR OUR CHILDREN* 41 (1987) (emphases supplied).

The use of fear and violence to fight crime blinds us to the truth that the only lasting solution to rampant crime is to strengthen the Philippine justice system — not to short-circuit it. The only real salvation to impunity — the only effective way to replace impunity with accountability — is to make the country's justice system work for its people.

The sad reality is that the Philippine justice system badly needs strengthening:

- (1) Only 32% or less than one-third of those accused of crimes by the government are convicted.⁶³
- (2) There is no centralized database or system in place to ensure that those who are convicted by final judgment actually serve their sentences.
- (3) Many cases are postponed because of “the huge volume of cases filed each year and the slow and cumbersome adversarial system that the judiciary has in place[.]”⁶⁴
- (4) 40% of persons accused of crimes walk away free because complainants and witnesses stop coming after too many postponements.⁶⁵
- (5) 20% of the trial courts have no judges.⁶⁶
- (6) 34% of the public prosecutor positions are vacant.⁶⁷

63. See Department of Justice, Case dispositions in trial courts, 2016–2017, available at https://www.doj.gov.ph/files/open_data/2018/2016%20NPS%20Court.xlsx (last accessed Aug. 31, 2018). See also Lian Buan, Under Aguirre: DOJ in numbers, available at <https://www.rappler.com/nation/174198-doj-accomplishment-report-aguirre> (last accessed Aug. 31, 2018).

64. JUDICIAL AFFIDAVIT RULE, A.M. No. 12–8–8–SC, whereas cl. (Sep. 4, 2012).

65. *Id.*

66. Judicial and Bar Council, Judiciary Book, available at <http://jbc.judiciary.gov.ph/index.php/judiciary-book> (last accessed Aug. 31, 2018).

67. See Department of Justice, Publication of Vacant Positions as of February 1, 2018, available at <https://www.doj.gov.ph/files/Publication.pdf> (last accessed Aug. 31, 2018). See also Department of Justice, Publication of Vacant Positions as of June 15, 2018, available at <https://www.doj.gov.ph/files/PUBLICATION%20OF%20VACANT%20POSITIONS%20AS%20OF%20%20JUNE%2015%20C%202018.pdf> (last accessed Aug. 31, 2018).

- (7) In a survey of lawyers some years back, 56% of the respondents stated that corruption was widespread in the trial courts, 39% said that corruption was widespread in the Court of Appeals, and 20% said that corruption was widespread in the Supreme Court.⁶⁸
- (8) No more than 2% of the national budget goes to the judiciary.⁶⁹

One of the reasons for the low conviction rate is the fact that the Philippine National Police (PNP) does not work hand-in-hand with the Department of Justice (DOJ) in its goal of convicting criminal offenders. Instead of gauging its performance on conviction rates (as the police forces of other countries do), the PNP considers a case “solved” when: (a) the offender has been identified[,] (b) there is sufficient evidence to charge him [or her,] (c) the offender has been taken into custody[,] and (d) *the offender has [] been charged before the prosecutor’s office or court of appropriate jurisdiction.*⁷⁰ The PNP, in addition, considers a case “solved” when: (a) at least one of the offenders has been identified, (b) there is sufficient evidence to charge him or her, (c) the offender has been taken into custody, and (d) *he or she has been charged before the prosecutor’s office or any other court of appropriate jurisdiction.*⁷¹ Most law enforcers, therefore, consider their job done once they have transmitted the case to the prosecutor’s office or court. There is little, if any, cooperation or coordination between the public prosecutors and the police once the latter consider a case “solved” or “cleared.”

Even if the perpetrators are convicted, moreover, there is no centralized database or monitoring system to ensure that they actually serve their sentences. The low conviction rates and lack of monitoring system explain why crime and corruption are so rampant and remain unchecked.

68. Arts and Sciences Interdisciplinary Network Inc., A Survey of Private Legal Practitioners to Monitor Access to Justice by the Disadvantaged (A Study Conducted in Support of the Supreme Court’s Action Program for Judicial Reform), *available at* http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2012/12/PLP_Final.pdf (last accessed Aug. 31, 2018).

69. See Lian Buan, House committee approves ₱2-billion increase in 2018 judiciary budget, *available at* <https://www.rappler.com/nation/178007-judiciary-2018-budget-house-committee> (last accessed Aug. 31, 2018).

70. National Police Commission, Adopting a Uniform Criteria in Determining when a Crime is Considered Solved, Memorandum Circular No. 94-017, ¶ 1 (June 2, 1994) (emphasis supplied).

71. National Police Commission, Letter of Instructions No. 02/09 (Apr. 22, 2009) (emphasis supplied).

Another major contributor to impunity is the fact that, while members of the PNP are part of the civil service, they do not fall within the disciplinary jurisdiction of the Civil Service Commission (CSC), the government's central personnel agency and disciplinary authority.⁷²

A series of laws and regulations has effectively stripped the CSC of its disciplinary authority over the police. Republic Act No. 7160, the Local Government Code of 1991,⁷³ and Republic Act No. 8551, the Philippine National Police Reform and Reorganization Act of 1998,⁷⁴ transferred disciplinary power over the police from the CSC to the National Police Commission (NAPOLCOM) and high-ranking PNP officials.⁷⁵ NAPOLCOM Memorandum Circular No. 2007-001⁷⁶ put in place a complicated labyrinth of rules and procedures for prosecuting disciplinary cases that has made it difficult, if not impossible, to hold wrongdoers accountable.⁷⁷

To make matters worse, the Supreme Court has held that victims of police abuses are mere witnesses in administrative disciplinary proceedings, who have no right to appeal when charges against PNP members are dismissed or they are exonerated, as such —

[*Civil Service Commission v. Dacoycoy* allowed the Civil Service Commission to appeal dismissals of charges or exoneration of respondents in administrative disciplinary proceedings. However, [it] maintained the rule that the private complainant is a mere government witness without a right

72. *Montoya v. Varilla*, 574 SCRA 831, 850-51 (2008).

73. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T. CODE], Republic Act No. 7160 (1991).

74. An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes, Amending Certain Provisions of Republic Act Numbered Sixty-Nine Hundred and Seventy-Five Entitled, "An Act Establishing the Philippine National Police Under a Re-Organized Department of the Interior and Local Government, and For Other Purposes" [Philippine National Police Reform and Reorganization Act of 1998], Republic Act No. 8551 (1998).

75. *Id.* § 52.

76. National Police Commission, Uniform Rules of Procedures Before the Administrative Disciplinary Authorities and the Internal Affairs Service of the Philippine National Police, Memorandum Circular No. 2007-001 (Mar. 6, 2007).

77. JOSE M.I. DIOKNO, CIVIL AND ADMINISTRATIVE REMEDIES AS INSTRUMENTS OF ACCOUNTABILITY FOR VIOLATIONS OF HUMAN RIGHTS 43-50 (2011).

to appeal. Thus, case law holding that the private complainant has no right to appeal the decision of the disciplining authority remains good law.

...

[Republic Act No.] 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 ... authorize 'either party' to appeal in the instances that the law allows appeal. One party is the PNP member-respondent The other party is the government.

[T]he government party appealing must be the one that is prosecuting the administrative case against the respondent.⁷⁸

VI. STRENGTHENING THE JUDICIARY

The failure of the justice system to deliver on its promise of dispensing justice without fear or favor has resulted in the people's loss of trust and confidence in the system.⁷⁹ This loss of trust and confidence is exacerbated by two institutional stumbling blocks to judicial accountability and transparency: (1) the Supreme Court ruling in *Maceda v. Vasquez*⁸⁰ and (2) its special guidelines on access to Statements of Assets, Liabilities, and Net Worth (SALN) of members of the judicial department by the public.⁸¹

In 1991, a criminal complaint was filed with the Office of the Ombudsman against a lower court judge for allegedly falsifying a certificate

78. National Appellate Board (NAB) of the National Police Commission (NAPOLCOM) vs. Mamauag, 466 SCRA 624, 640-41 (2005) (citing Civil Service Commission v. Dacoycoy, 306 SCRA 425 (1999) & An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes [Department of the Interior and Local Government Act of 1990], Republic Act No. 6975, §§ 43 & 45 (1990)).

79. See Duterte: Nation's real problem – erosion of faith, trust in gov't, *available at* <https://www.rappler.com/nation/138158-duterte-nation-real-problem-erosion-faith-trust-government> (last accessed Aug. 31, 2018) & Katerina Francisco, PH needs strong institutions to overcome 'trust deficit', *available at* <https://www.rappler.com/newsbreak/rich-media/159010-philippines-strong-institutions-overcome-trust-deficit-ronald-mendoza> (last accessed Aug. 31, 2018).

80. *Maceda v. Vasquez*, 221 SCRA 464 (1993).

81. Supreme Court, Re: Request for Copy of 2008 Statement of Assets, Liabilities and Net Worth [SALN] and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary, A.M. No. 09-8-6-SC (June 13, 2012).

of service that he had submitted to the Supreme Court.⁸² Arguing that the Office of the Ombudsman had no jurisdiction over his case, the judge elevated the matter to the Supreme Court.⁸³ In 1993, the Court granted his petition and held that the Ombudsman's investigation encroached into the Court's power of administrative supervision over all court personnel, thereby violating the separation of powers doctrine.⁸⁴ The Court then laid down the rule that

[i]n fine, where a criminal complaint against a judge or other court employee arises from their administrative duties, the Ombudsman must defer action on said complaint and refer the same to this Court for determination whether said judge or court employee had acted within the scope of their administrative duties.

WHEREFORE, the instant petition is hereby GRANTED. The Ombudsman is hereby directed to dismiss the complaint filed by public respondent Atty. Napoleon A. Abiera and to refer the same to this Court for appropriate action.⁸⁵

By preventing the Office of the Ombudsman from fulfilling its mandate insofar as judges and court personnel are concerned, the *Maceda* ruling has become a stumbling block to judicial accountability.

In 2012, as already mentioned, the Supreme Court issued a set of guidelines that imposed conditions on public access to the Statements of Assets, Liabilities and Net worth (SALN) of members of the judiciary, as follows:

- (1) All requests [for the SALNs of Justices] must be filed with the Office of the Clerk of Court of the Supreme Court, the Court of Appeals, the Sandiganbayan, [and] the Court of Tax Appeals [respectively.] [F]or the lower courts, [requests should be filed] with the Office of the Court Administrator, and for attached agencies, with their respective heads of offices.
- (2) Requests shall cover only copies of the latest SALN, PDS[,] and CV of the members, officials[,] and employees of the Judiciary, and may cover only previous records if so specifically requested and considered

82. *Maceda*, 221 SCRA at 465.

83. *Id.*

84. *Id.* at 466-67.

85. *Id.* at 468. Curiously, while the body of the decision in *Maceda* stated that the Ombudsman must *defer action* on the complaint until the Court had acted on it administratively, the dispositive portion of the decision directs the *dismissal* of the complaint. *Id.*

as justified, as determined by the officials mentioned in par. 1 above, under the terms of these guidelines and the Implementing Rules and Regulations of [Republic Act] No. 6713.

- (3) In the case of requests for copies of SALN of the Justices of the Supreme Court, the Court of Appeals, the Sandiganbayan[,] and the Court of Tax Appeals, the authority to disclose shall be made by the Court *En Banc*.
- (4) Every request shall explain the requesting party[']s specific purpose and their individual interests sought to be served; shall state the commitment that the request shall only be for the stated purpose; and shall be submitted in a duly accomplished request form secured from the [Supreme Court] website. The use of the information secured shall only be for the stated purpose.
- (5) [For requesting individuals who are not members of the media,] their interests should go beyond pure or mere curiosity.
- (6) [For members of the media,] the request shall additionally be supported by proof under oath of their media affiliation and by a similar certification of the accreditation of their respective organizations as legitimate media practitioners.
- (7) The requesting party, whether as individuals or as members of the media, must have no derogatory record of having misused any requested information previously furnished to them.

The requesting parties shall complete their requests in accordance with these guidelines. The custodians of these documents (the respective Clerks of Court of the Supreme Court, Court of Appeals, Sandiganbayan, and Court of Tax Appeals for the Justices; and the Court Administrator for the Judges of various trial courts) shall preliminarily determine if the requests are not covered by the limitations and prohibitions provided in [Republic Act] No. 6713 and its implementing rules and regulations, and in accordance with the aforesaid guidelines. Thereafter, the Clerk of Court shall refer the matter pertaining to Justices to the Court *En Banc* for final determination.⁸⁶

Unlike Republic Act No. 6713,⁸⁷ or the Code of Conduct and Ethical Standards for Public Officials and Employees, which provides that “[a]ny

86. A.M. No. 09-8-6-SC.

87. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [Code of Conduct and Ethical Standards for Public Officials and Employees], Republic Act No. 6713 (1989).

and all statements filed under this Act, shall be made available for inspection at reasonable hours,”⁸⁸ and which imposes a ministerial duty on the SALN custodian to release the requested SALN upon payment of a reasonable fee to cover the cost of reproduction, mailing and certification,⁸⁹ the Supreme Court’s guidelines do not allow inspection of a Justice’s SALN during office hours and make it discretionary on the Court *En Banc* to grant or deny a SALN request.⁹⁰

Unlike Republic Act No. 6713, which allows the public and the press to obtain copies of the government official’s previous SALNs,⁹¹ the Court’s guidelines limit access only to the most recent SALN filed by the Justice concerned.⁹² This restriction impedes any investigation into a Justice’s alleged ill-gotten wealth, since the most important SALNs in assessing ill-gotten wealth are the first SALNs that the justice filed when he or she entered the judiciary.

As a final point on the issue of corruption, while a number of persons have come forward to blow the whistle on large-scale acts of corruption by government officials, the absence of a legal mechanism allowing them to perpetuate their testimonies has allowed those charged with corruption to escape liability.

Because they fear for their lives, whistle-blowers admitted into the government’s Witness Protection Program⁹³ are placed under guard in safe-houses until they testify during the trial. Due to protracted litigation, however, these witnesses end up languishing in safe-houses for years while

88. *Id.* § 8 (C) (1).

89. *Id.* § 8 (C) (1)-(4). Section 8 (C) (2) provides that “[s]uch statements shall be made available for copying and reproduction after ten (10) working days from the time they are filed as required by law.” *Id.* § 8 (C) (2).

Section 8 (C) (4) provides that “[a]ny statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement.” *Id.* § 8 (C) (4).

Republic Act No. 6713 does not impose any other condition with regard to the public’s access of the SALNs.

90. A.M. No. 09-8-6-SC.

91. Code of Conduct and Ethical Standards for Public Officials and Employees, § 8 (C) (1).

92. A.M. No. 09-8-6-SC.

93. An Act Providing for a Witness Protection, Security and Benefit Program and For Other Purposes [Witness Protection, Security and Benefit Act], Republic Act No. 6981 (1991).

the government officials they have exposed roam free. They begin to feel that they are the ones in jail instead of the government officials whom they blew the whistle on. A good number of them end up leaving the Program without testifying because there is no legal mechanism for perpetuating their testimonies. Their failure to give vital testimony has resulted in the dismissal of the criminal cases against the officials whom they had exposed. Millions of pesos of taxpayers' money are wasted housing these witnesses and giving them security and financial assistance when they end up leaving the Program without testifying.

The government's Witness Protection Program cannot work without a mechanism for perpetuating testimonies. Congress should amend the Witness Protection, Security and Benefit Act so that a witness admitted to the Witness Protection Program can testify within six months from admission, with notice to all the persons he or she will incriminate and opportunity for their counsels to cross-examine. Once the testimony is taken, it should automatically form part of the trial record. Once the witness has testified, he or she can then be given a new identity and livelihood and be relocated to another place. The witness will no longer be dependent on the Program and can move on with his or her life. The Supreme Court should amend the Rules on Criminal Procedure for the same purpose. These amendments should be broad enough to cover whistleblowers and other witnesses in danger, including members of the military and police who cannot avail of witness protection under the present law.⁹⁴

VII. LEGAL AND JUDICIAL REFORMS URGENTLY NEEDED

For us to effectively curb rampant crime and corruption and restore the people's trust and confidence in the justice system, the government needs to take bold and concrete measures to strengthen its foundations, including the following:

- (1) Dismantle the "Berlin Wall" that separates the police and the prosecution by requiring that both agencies gauge their success by conviction rates and include conviction rates in their annual reports.
- (2) Establish a transparent, centralized database and monitoring system to ensure that persons convicted of crimes by final judgment actually serve their sentences.

94. Section 3 of Republic Act No. 6981, or the Witness Protection Act, denies witness protection to members of the military and police. *Id.* § 3.

- (3) Return the PNP to the disciplinary jurisdiction of the Civil Service Commission and recognize the right of private offended parties to appeal the dismissal of disciplinary cases.
- (4) Abandon the *Maceda* ruling and recognize the Ombudsman's power to conduct lifestyle checks and criminal investigations of judges, justices, and court personnel.
- (5) Do away with the Supreme Court's special guidelines on SALNs.
- (6) Amend the Witness Protection, Security and Benefit Act and the Rules on Criminal Procedure to allow the perpetuation of the testimonies of whistleblowers and other witnesses whose lives are in danger because they have personal knowledge of corruption or other criminal activities of government officials.
- (7) Depoliticize the appointment of justices, judges, and prosecutors.
- (8) Adopt a transparent, non-partisan process for filling the vacancies in the trial courts and prosecution service to attract the best and most qualified lawyers.
- (9) Increase the budget of the judiciary.
- (10) Redesign and simplify the rules on evidence and procedure to make them consistent with bench trials and responsive to the needs of the Filipino people.

The time to strengthen our justice system is now. Complacency is not an option. The window for action is closing quickly. We owe it to those who came before us and those who will come after us to make justice a reality.