

ADB

BACKGROUND NOTE
ON THE JUSTICE SECTOR
OF THE PHILIPPINES

Asian Development Bank





Background Note on the Justice Sector of the Philippines

Asian Development Bank

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Foreword

This background note on the justice sector of the Philippines is part of the efforts of the Asian Development Bank (ADB) to support justice sector reform. It provides an overview of the sector, identifies key constraints and issues confronting it, and undertakes a preliminary assessment of reform initiatives by justice sector agencies—mainly the judiciary—through November 2007.

The administration of justice in the Philippines is challenging, with many agencies and institutions playing critical roles. Reforms introduced in one institution usually affect others. Conversely, the impact of reforms in one institution may be weakened by the absence of reforms in another justice sector agency. While many reports have studied individual justice sector institutions in the Philippines, it has been difficult to find one that consolidates information about the justice sector as a whole.

This note was prepared by the Southeast Asia Department under the supervision of Jaseem Ahmed, director of the Financial Sector, Public Management, and Trade Division. Debra Kertzman served as task manager for the initial version of this study and the ADB team subsequently expanded to include Joven Balbosa, Prasanna Jena, and Thatha Hla. Christine V. Lao, justice systems consultant, the main author of this note, provided new content, structure, insight, and analysis to data from many studies supported by ADB and other development partners. Consultants Jim Michel of DPK Consulting and Vicky Alinsug and Carol Mercado of the Center for Public Resource Management, Inc. conducted extensive consultations with key staff members from various justice sector agencies and, based on these discussions, provided ADB with a proposed long-term strategic framework for justice sector reform. Their study contained data and preliminary analysis on which parts of this note are based. Richard Amurao and Rommel Abritria, consultants, also made contributions to the study. James Cappio, Kimberly Fullerton, and Sukanya Wignaraja edited the note. My thanks go out to all of the members of this team.

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Introduction

This report is part of an undertaking funded by the Asian Development Bank (ADB) in support of justice sector reforms in the Philippines. It consolidates information about the country's justice sector and the reform priorities and achievements of justice sector institutions.

While many reports have studied individual justice sector institutions in the Philippines—notably, the judiciary, the National Prosecution Service (NPS), the Philippine corrections system, and the Philippine National Police (PNP)—none has compiled information about the justice sector as a whole. While it is important to view each institution in the context of the sector, the administration of justice is a function shared by all of these institutions, among others. For example, executive agencies that might seem unrelated to the justice sector—such as the Anti-Money Laundering Council, the country's financial intelligence unit chaired by Bangko Sentral ng Pilipinas (the central bank); the Department of Social Welfare and Development; and agencies in the executive branch with quasi-judicial or dispute-resolution functions—play important roles in justice administration in particular contexts. Reforms introduced in one institution tend to have consequences for others. Conversely, the impact of reforms in one institution may be weakened by the lack of reforms in another justice sector agency.

The Justice System

A justice system comprises institutions and agencies that “resolve conflicts arising over alleged violations or different interpretations of rules that societies create to govern members’ behavior”¹ and that protect rights in accordance with a country’s laws. It plays a critical role in providing predictability in the application and enforcement of laws and rules, thereby “strengthening the normative framework that shapes public and private actions.”² An effective network of justice sector institutions contributes to a society in which accepted rules are fairly and equally applied in an orderly framework that is conducive to liberty, security, and well-being.

The justice system is engaged in the administration of justice. The administration of justice requires a code or body of law against which certain actions can be measured, a mechanism that can interpret the law and decide whether a person’s actions can be deemed to have transgressed the law, and an agency that can uphold the law and enforce decisions regarding the legality or illegality of a person’s actions. A fourth component—one that seeks retribution for offenses committed and deters others from committing the same or similar offenses—exists in the administration of criminal justice.³

The administration of justice involves the participation of the legislative, judicial, and executive branches of government. The legislature creates the laws that are used to resolve disputes. The legislative branch needs to ensure that the laws it issues are consistent with a country’s constitution, the document that embodies the will of the country’s people. A country’s constitution is the standard against which all of its laws and rules are to be measured. The legislature also needs to ensure that it does not violate basic rights. Badly written laws, particularly those that violate constitutional principles, can be questioned in court and annulled. If a number of laws are passed but are subsequently annulled, this may give the impression that a country’s justice system is unpredictable.

The judiciary is the branch of government tasked with interpreting laws and determining their application in actual disputes. As such, it is the branch most visibly engaged in justice administration. This is why the justice system is sometimes thought to be synonymous with the judiciary, even if it is not the

¹ World Bank. 2006. *Justice Sector Assessment Handbook*. Washington, DC, p. 8. Also available: http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWebEdition_1.pdf

² Footnote 1.

³ Bankoff, G. 1996. *Crime, Society and the State in the Nineteenth Century Philippines*. Quezon City: Ateneo de Manila University Press. p. 10.

only government branch engaged in the administration of justice.

The executive branch is charged with the faithful execution of laws. This entails the prerogative to choose who to prosecute for criminal violations, as well as the apprehension and punishment of lawbreakers. The executive branch also has the power to grant reprieves, commutations, and pardons and to remit fines and forfeitures after a final judgment of conviction has been issued by a court.⁴ More important, it has a duty to ensure that it performs its functions in accordance with the country's laws. Foremost among these laws is the country's constitution.

The Justice System of the Philippines

The Constitution of the Philippines provides that the Republic of the Philippines is "a democratic and republican state," a representative government whose public officials derive their mandate from the people, act on their behalf, and are at all times accountable to them on the principle that their office is a public trust. There are three equal branches of government—legislative, judicial, and executive—operating under the doctrine of separation of powers and a system of checks and balances.

Legislative power—the power to make laws—is vested in a bicameral Congress consisting of the House of Representatives and the Senate. Judicial power—that is, the power

to settle actual controversies involving rights which are legally demandable and enforceable [adjudicative power], 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 [judicial review]

—is vested in the Supreme Court and other, lower courts created by law.⁵ Executive power—the power to execute and enforce laws and to administer government affairs—is vested in the President.

Legislative Branch

In the Philippines, the power to propose, enact, amend, and repeal laws is vested primarily in Congress. Congress consists of the Senate and House of Representatives. The Constitution also provides certain mechanisms by which people can directly propose and enact laws, or approve or reject any act or law passed by Congress or local legislative bodies. Laws generally take effect 15 days from publication in a newspaper of general circulation.

Aside from creating the laws that a justice system administers, Congress also plays a critical role in funding the justice system. The Constitution provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law."⁶ This power of the purse is subject only to the President's veto power.

Judiciary

The judiciary is the branch of government that is engaged in dispute resolution. Although private individuals may choose to resolve disputes among themselves, and even though dispute resolution takes place in other government branches (e.g., certain disputes are resolved by an administrative body in the executive branch exercising quasi-judicial power), the judiciary is the only agency that has the power to interpret the law when it is unclear or susceptible to different interpretations. The judiciary also must protect rights and resolve disputes in accordance with its definitive interpretation of the law. Moreover, the judiciary exercises the power to review decisions and actions of any government agency to determine if they have

⁴ See, for example, Constitution, Art. VII, § 19, which explicitly gives this power to the President, subject to the following limitations: (i) it cannot be exercised in impeachment cases, (ii) it can be exercised only after conviction by final judgment, and (iii) the President may grant amnesty (i.e., pardon classes of persons guilty of political offenses) only with the concurrence of all members of Congress.

⁵ Constitution, Art. VIII, § 1.

⁶ Constitution, Art. VI, § 29 (1).

Box 1: Sources and Hierarchy of Laws of the Philippines

The Constitution occupies the highest level in the hierarchy of laws of the Philippines. Statutes enacted by the legislative branch have the next-highest precedence. Treaties that are entered into by the executive branch with the Senate's concurrence have the same status as a statute passed by Congress. Neither statutes nor treaties can be contrary to the Constitution's provisions.

Historically, statutes have been referred to by different names. Statutes enacted by the legislature from 1899 to 1935 are called "acts" or "public acts." Statutes enacted from 1935 to 1941 are called "commonwealth acts." Those enacted from 1946 to 1972 and from 1987 until now are called "republic acts." From 1978 to 1984, statutes passed by the legislature were referred to as "*batas pambansa*" (national law). During periods when the executive exercised legislative powers, presidential issuances have also been considered statutes. Some examples are presidential decrees issued by President Ferdinand Marcos

from 1972 until 1986, as well as executive orders issued by President Corazon Aquino from 1986 to July 1987. (Normally, when the executive does not exercise legislative powers, executive orders are regulations directed at national agencies and officials regarding the performance of their functions.) Local government ordinances, which are passed by local legislative bodies, are also considered laws that apply within the jurisdiction of the local government unit that passed them, provided that they are consistent with national laws.

Statutes take precedence over implementing rules and regulations that the executive branch's agencies adopt to put a statute into force. Implementing rules and regulations cannot supersede a law passed by the legislative branch.

Judicial decisions applying or interpreting the Constitution or laws "form part of the legal system of the Philippines" and have the force of law.^a

^a Civil Code, Art. 6.

been performed "with grave abuse of discretion" or "with lack or in excess of jurisdiction."⁷

The judiciary consists of the highest court in the country, the Supreme Court; the Court of Appeals; two specialized courts, the Sandiganbayan and the Court of Tax Appeals; four types of first-level courts; regional trial courts; and sharia courts, which interpret and apply the Muslim code on personal laws in Muslim regions. There is no separate constitutional court; cases involving constitutional issues may be heard by any court in the Philippines. All courts are subject to the Supreme Court's administrative supervision and follow the rules on pleading, practice, and procedure set by the Supreme Court.⁸

Philippine Trial Courts

Judges are the triers of fact in the Philippine court system. There are no jury trials. Courts are not required to follow a continuous trial system, although some courts are making efforts toward this end. Witnesses appear separately and inter-

mittently, and evidence is not taken in immediate succession. All courts and court personnel, both judicial and nonjudicial, are under the administrative supervision of the Supreme Court.

There are four kinds of first-level courts in the Philippines:

- Metropolitan trial courts are first-level courts located in Metro Manila.
- Municipal trial courts in cities are located in cities that are not part of Metro Manila.
- Municipal trial courts are first-level courts in other municipalities.
- Municipal circuit trial courts are first-level courts that try cases for certain municipalities that have been grouped together into circuits.

The Philippines has 82 metropolitan trial courts, 143 municipal trial courts in cities, 451 municipal trial courts, and 481 municipal circuit trial courts. Metropolitan trial courts exercise jurisdiction over civil cases involving amounts not

⁷ Footnote 5.

⁸ The Armed Forces of the Philippines maintains an autonomous military justice system with military courts that are under the authority of the judge advocate general of the armed forces. Military courts have jurisdiction over all active duty members of the armed forces and operate under their own procedures, but their decisions are ultimately reviewable by the Supreme Court.

Box 2: Rules of Procedure in Philippine Courts

An important constitutional power of the Supreme Court is the authority to prescribe rules of procedure to “provide a simplified and inexpensive procedure for the speedy disposition of cases [that] shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.”^a Pursuant to that broad mandate, the Supreme Court approved revised rules of civil procedure in 1997 and revised rules of criminal procedure in 2000.^b

Civil procedure. Civil cases are initiated by filing a complaint with the clerk of the court that has jurisdiction over the case, and paying related fees. The court sheriff serves a summons and a copy of the complaint on the defendant. The defendant is obliged to answer the complaint or file a motion to dismiss within a set period. Most civil cases are eligible for court-annexed mediation. If the case is not settled in mediation, it proceeds to a pretrial stage in which the parties can exchange information and the court can receive evidence, consider motions for summary disposition, and preside over a pretrial hearing. Upon the conclusion of this stage, the case proceeds to trial and decision. As provided in the Constitution, once all proceedings are completed, the judge must render a decision within 90 days.^c

Criminal procedure. Cases involving crimes punishable by imprisonment of less than 4 years,

2 months, and 1 day are initiated by filing the complaint or information directly with the clerk of the relevant court or with the office of the prosecutor. However, for cases involving crimes punishable by longer periods of imprisonment, the Rules of Court require that a preliminary investigation be conducted by a prosecutor before the latter files the complaint or information with the relevant court. Preliminary investigation proceedings involve a prosecutor’s determination whether there is probable cause to believe that an offense was committed by the accused. Once probable cause is found to exist and charges are filed in the appropriate court, the judicial process in a criminal case begins. The accused is arraigned and is asked to enter a plea. If the accused pleads not guilty, a pretrial phase is initiated. This may include settlement of civil liability, determinations of the admissibility of evidence, stipulations of fact, and a schedule for the trial. The Rules of Court provide for the trial, once commenced, to “continue from day to day as far as practicable until terminated.”^d

^a Constitution, Art. VII, § 5 (5).

^b See Supreme Court of the Philippines. Rules of Court, Part I (civil actions) and Part III (criminal procedure). Also available: <http://sc.judiciary.gov.ph/court%20issuances/rules/index.php>

^c Constitution, Art. VIII, § 15.

^d Rules of Court, Rule 119, sec. 2.

exceeding P400,000 (\$8,510), while the other courts exercise jurisdiction over civil cases where the amount does not exceed P300,000 (\$6,382). All four courts have original jurisdiction in criminal cases where the punishment involved is a maximum of 6 years’ imprisonment or less. A special set of rules for summary procedure applies in these courts, intended to shorten the court processes and trial. Appeals from the decisions of first-level courts are heard by a regional trial court.

The Philippines has 1,243 regional trial courts. Aside from hearing appeals from the first-level courts, regional trial courts have original jurisdiction over matters outside the jurisdiction of the first-level courts. In each city or province, a regional trial court serves as a family court, deciding cases involving juvenile offenders.⁹ Several

regional trial courts have also been designated to handle special matters (e.g., environment-related issues, juvenile and domestic relations, and intellectual property rights) in addition to the usual cases filed under their jurisdiction. Eighty-eight regional trial courts have been designated as commercial courts. Appeals from regional trial court decisions are heard by the Court of Appeals.

Five sharia district courts and 51 sharia circuit courts deal with family, personal, and property relations among members of the Muslim population. Legislation providing for a sharia appellate court has not been implemented.¹⁰

Special Courts

The Sandiganbayan is a special collegiate court with original jurisdiction over corruption cases

⁹ Republic Act No. 8369, 28 October 1997.

¹⁰ Republic Act No. 6734, § 2, 1 August 1989. See also Supreme Court Administrative Circular A. M. No. 99-4-06-SC, 8 June 1999, which resolved that the sharia appellate court be formally organized effective 1 January 2000.

involving government employees with a salary grade level of 27 or higher—that is, those whose salaries are P20,279 (\$431) or higher.¹¹ It hears criminal complaints for violations of antigraft, anticorruption, and anti-money laundering laws, as well as the law on plunder, against employees from any branch of government, independent constitutional commissions, and even senior officials of government-owned and government-controlled corporations. When these officials are found guilty, the Sandiganbayan imposes criminal penalties (as opposed to administrative disciplinary measures such as suspension or removal, which would be imposed by the agency or branch with administrative supervision over the guilty official). It also hears the corresponding civil claims for recovering the fruits of these crimes. The Sandiganbayan is composed of a presiding justice and 14 associate justices sitting in five divisions. Cases are heard by divisions, which consist of three justices each. Decisions issued by divisions can be appealed to the Sandiganbayan en banc. The Sandiganbayan also hears appeals from final judgments of regional trial courts in cases involving violations of antigraft, anticorruption, and anti-money laundering laws and the law against plunder where the case did not fall under the Sandiganbayan's original jurisdiction because of the salary of the accused.

The Court of Tax Appeals has original jurisdiction to try criminal offenses under the tax and tariff codes. It is composed of a presiding justice and five associate justices, and may sit en banc or in two divisions of three justices each. The Court of Tax Appeals hears appeals from decisions by the

Bureau of Internal Revenue (BIR) and Bureau of Customs involving disputed tax assessments and tax refunds. It can also hear appeals from the decisions of the secretary of finance in certain matters involving the Tariff and Customs Code, such as the imposition of dumping penalties or countervailing duties.¹² Decisions issued by a division can be appealed to the Court of Tax Appeals en banc.

Decisions of the Sandiganbayan and the Court of Tax Appeals may be appealed to the Supreme Court en banc.

Court of Appeals

The Court of Appeals consists of 69 justices in 23 divisions (17 in Manila, 3 in Cebu, and 3 in Cagayan de Oro). In addition to hearing appeals from decisions of lower courts, the Court of Appeals has jurisdiction to review the decisions of a large number of quasi-judicial bodies, primarily in the executive branch. Court of Appeals decisions may be appealed to the Supreme Court.

Supreme Court

The highest court in the country is the Supreme Court, which consists of a chief justice and 14 associate justices. The Supreme Court sits en banc or in divisions. It exercises limited original jurisdiction and has appellate jurisdiction over decisions of the Court of Appeals, the Court of Tax Appeals, and the Sandiganbayan.¹³ Also, decisions of two constitutional commissions (the Commission on Elections and the Commission on Audit) are subject to direct Supreme Court review. Supreme Court judgments cannot be further appealed and have the force of law.

¹¹ These include (i) officials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade 27 and higher in the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), i.e., provincial governors, vice governors, members of the *sangguniang panlalawigan* (provincial council), provincial treasurers, assessors, engineers, and other provincial department heads; city mayors, vice-mayors, members of the *sangguniang panlungsod* (city council), city treasurers, assessors, engineers, and other city department heads; officials of the diplomatic service occupying the position of consul or higher; army and air force colonels, naval captains, and all other officers of higher rank; officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher; city and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and Special Prosecutor; and presidents, directors, or trustees or managers of government-owned or government-controlled corporations, state universities, or vocational institutions or foundations; (ii) members of Congress and officials thereof classified as grade 27 or higher in Republic Act No. 6758; (iii) members of the judiciary; (iv) chairpersons and members of constitutional commissions; and (v) all other national local officials classified as grade 27 or higher.

Public officers and officers and employees of government-owned and government-controlled corporations who are accused of violating anticorruption, anti-money laundering, and plunder laws whose salary grade level is lower than 27 fall under the jurisdiction of trial courts.

¹² Tariff and Customs Code § 301, as amended by Presidential Decree No. 1464 (1978).

¹³ A fourth higher court, a sharia appellate court, is authorized by law but has not yet been established.

Box 3: The Justice System Infrastructure Program

The Justice System Infrastructure Program (JUSIP), inaugurated by President Corazon Aquino in 1988, aimed to construct or rehabilitate courthouses, buildings, and halls of justice that would be or were currently occupied by the courts and the National Prosecution Service, Parole and Probation Administration, Public Attorney's Office, and Registries of Deeds.^a Appropriations for JUSIP were disbursed to the Department of Justice (DOJ), which was tasked with overseeing construction and rehabilitation work. However, DOJ was required to turn over the administration and management of courthouses and halls of justice to the Supreme Court, once these had been completed. Originally, DOJ retained ownership of the buildings and land on which they were built. But in 2000, after JUSIP had built 198 courthouses and halls of justice, the Supreme Court and DOJ entered into a memorandum of agreement transferring the ownership of all halls of justice constructed under JUSIP, including the land on which they were built, to the Supreme Court.^b To date, over 300 courthouses and halls of justice have been constructed under JUSIP, and DOJ continues to include an amount for the construction of buildings under JUSIP in its yearly budget request.^c

^a Office of the President, Administrative Order No. 99, 1 December 1988.

^b Circular No. 88-2000.

^c Monica Pagunsan (director, Management Services Office, Department of Justice), interview by author, 25 October 2007.

The Supreme Court has important management and oversight responsibilities. In addition to supervising judges and other court personnel, it prescribes rules on pleading, practice, and procedure for all courts, and oversees admission to the practice of law and the organized bar. The Supreme Court, through its Office of the Court Administrator (OCA), also maintains all courthouses and halls of justice.

Court-Annexed Mediation

Aside from adjudication and court administration, in 2001 the Supreme Court introduced a system of mediation for cases already filed in courts.¹⁴ Most civil cases are subject to this mediation procedure.¹⁵ The Supreme Court established the Philippine Mediation Center within its training arm, the Philippine Judicial Academy, to set up and run mediation centers in courthouses and other convenient locations throughout the country. Currently, there are 113 units in 11 of the country's 13 judicial regions.

Executive Branch

Executive Power

Executive power is vested in the President of the Philippines, who is both head of state and the chief executive of the government. The President's primary function is to enforce and administer the law—that is, to carry out the laws into practical operation and enforce their observance.¹⁶

Quasi-Legislative Powers

The Constitution empowers the President to enter into treaties, which have the force of law when ratified by the Senate. The President also has the power to issue executive orders, which regulate and direct national agencies and officials.¹⁷ Members of the President's cabinet can also create implementing rules and regulations, which are rules that carry out a particular law.

Quasi-Judicial Powers

The 2007 General Appropriation Act identified 24 quasi-judicial agencies in the national government. Quasi-judicial bodies hear and decide matters affecting substantial rights and interests of private persons.¹⁸ An example is the National Labor Relations Commission, whose labor arbiters hear and preside over labor-related disputes. Most

¹⁴ Supreme Court Administrative Matter No. 01-10-5-SC, PHILJA, 16 October 2001.

¹⁵ See Implementing Rules and Regulations on Mediation in the Trial Courts, Resolution No. 02-04, appended to Supreme Court Administrative Matter No. 04-3-15-SC, PHILJA, 24 March 2004.

¹⁶ *National Electrification Administration v. Court of Appeals*, G. R. No. 143481, 15 February 2002.

¹⁷ Executive orders are not laws, which regulate and direct all who are within the territory or fall under the jurisdiction of the Philippines. However, there have been two periods in history when presidential issuances, including executive orders, had the force of law—periods when presidents Marcos and Aquino exercised legislative powers.

¹⁸ These include three independent constitutional commissions: the Civil Service Commission, the Commission on Audit, and the Commission on Elections. Final decisions of the quasi-judicial agencies are rendered primarily by collective bodies such as

quasi-judicial agencies are under the administrative supervision of the President, and are attached to executive departments for policy coordination.

The final decisions of a quasi-judicial agency are reviewable by the head of the department that contains the agency.¹⁹ Once final, decisions of most quasi-judicial agencies can be appealed only to the Court of Appeals.²⁰ At the time this report was prepared (2007), appeals from decisions of quasi-judicial agencies did not appear to be a major part of the caseload of the Court of Appeals.

The President's Cabinet

The President's powers are exercised through the various executive and administrative departments, offices, and organizations under the executive branch. The President nominates and appoints the heads of these departments and offices, subject to confirmation by the Commission on Appointments, which consists of members of Congress. The President's cabinet is composed of the heads of executive departments. The President has the power to discipline and remove members of this cabinet.

Cabinet members are the President's assistants and agents. When performed and promulgated in the regular course of business, the acts and issuances of department and office heads are generally deemed to have been performed by the President—that is, unless the President disapproves or reprobates such acts.²¹ The President exercises control over the acts of all executive departments, bureaus, and offices.²² This power goes beyond the power to oversee and supervise subordinates and to take actions to make them perform their duties. It allows the President to alter, modify, nullify, and set aside acts performed by subordinate officers in the performance of their duties. The President's judgment can be substituted for that

of his or her subordinates. Executive departments that play significant roles in the administration of justice are outlined in the following.

Department of Justice

The Department of Justice (DOJ) mandate is to uphold the rule of law by serving as the principal law agency of the government.²³ The secretary of justice in the Philippines is the equivalent of an attorney general, and protects the Government's and the people's legal interests. Assisted by DOJ legal personnel, the secretary provides legal advice and legal services to the Government, its functionaries, government-owned and government-controlled corporations, and their subsidiaries. The secretary and legal staff members are tasked with settling intragovernmental disputes, acting on applications for employment of alien technical personnel in nationalized enterprises and for special nonimmigrant visas, reviewing decisions of the Bureau of Immigration on citizenship cases, reviewing the constitutionality or legality of tax ordinances passed by local government units (LGUs) and revoking them when warranted, and providing legal safeguards against monopolies and trust combinations in restraint of trade or free competition.

The secretary of justice supervises and controls the National Prosecution Service (NPS), which is headed by the chief state prosecutor. NPS has two main functions. First, NPS prosecutes all criminal offenses under the Revised Penal Code and other special penal laws, regardless of the length of punishment for these offenses. Second, for cases involving crimes punishable by imprisonment of 4 years, 2 months, and 1 day or longer, prosecutors conduct preliminary investigation proceedings before the complaint or information is filed with the relevant court. These proceedings involve a prosecutor's determination whether there is prob-

commissions, boards, or councils. There are also agencies with quasi-judicial powers, such as the constitutionally based Office of the Ombudsman and the statutory National Commission on Indigenous Peoples, which are independent and do not fall under the executive or any other government branch.

¹⁹ Administrative Code of the Philippines, Executive Order No. 292, 25 July 1987, book VII, ch. IV, § 19.

²⁰ In contrast, decisions of the Commission on Audit and the Commission on Elections—constitutional commissions exercising quasi-judicial functions that are independent of the executive branch—may be appealed to the Supreme Court.

²¹ *DENR v. DENR Region XII Employees*, G. R. No. 149724, 19 August 2003. This principle is called the Doctrine of Qualified Political Agency.

²² Constitution, Art. VII, § 17.

²³ Department of Justice, Government of the Philippines. About DOJ: Mandate and Mission. www.doj.gov.ph/index.php?id1=2&id2=1&id3=0

able cause to believe that an offense was committed by the accused. Once probable cause is found and charges are filed in the appropriate court, the judicial process in that criminal case begins. In addition to the prosecutors in NPS's head office at DOJ, there are city prosecutors and regional state prosecutors in the field. It should be noted that apart from NPS, other government agencies conduct preliminary investigations or prosecute certain criminal offenses in the Philippines.²⁴

The secretary of justice also supervises and controls the Board of Pardons and Parole, which recommends pardons and other forms of executive clemency to the President, grants parole to qualified prisoners, orders their arrest and recommitment when warranted, authorizes the transfer of parolees and the pardoned, and grants their final release and discharge.

In addition, the Board has nine attached agencies that perform a variety of tasks relating to the administration of justice, including

- the Bureau of Corrections, which is charged with the custody and rehabilitation of persons convicted of crimes and sentenced to serve a term of imprisonment of more than 3 years;
- the National Bureau of Investigation (NBI), an investigative service, research, and law enforcement agency staffed primarily by plainclothes investigators;
- the Parole and Probation Administration, which oversees offenders who are likely to respond to individualized and community-based treatment programs; and

Box 4: The Witness Protection, Security, and Benefit Program

To encourage the reporting of criminal violations, the government has adopted the Witness Protection, Security, and Benefit Act.^a The law encourages individuals who have witnessed or have knowledge of the commission of a crime to testify before a court, quasi-judicial body, or investigating authority by providing them with protection from reprisals and from economic dislocation. Presidential Decree No. 749 (1975) provides immunity from prosecution to bribe givers and their accomplices who serve as witnesses in graft cases against public officers.

The government has implemented a witness protection program under the Department of Justice. Under this program, witnesses and their families are given protection through provision of safe houses and living allowances during trial.

These programs apply only to witnesses and complainants and not directly to whistleblowers. Whistleblowers may choose to be anonymous, in which case they cannot be compelled to be witnesses or complainants and are thus not covered by these laws. Likewise, the programs do not benefit the families of witnesses and complainants.

^a Republic Act No. 6981.

- the Public Attorney's Office (PAO), which provides poor litigants with free legal assistance.²⁵

In addition to the foregoing, DOJ runs several special programs relating to justice administration: the Justice System Infrastructure Program,

²⁴ The Office of the Ombudsman, its Office of the Special Prosecutor, and the Commission on Elections control, supervise preliminary investigations of, and prosecute cases falling under their respective jurisdictions. The Office of the Solicitor General also has the power to prosecute certain cases as the representative of the government (e.g., prosecution of tax evasion cases on appeal).

²⁵ The functions of the other offices under DOJ are as follows: (i) the Bureau of Immigration exercises quasi-judicial powers affecting the entry and stay of foreign nationals in the country; (ii) the Land Registration Authority issues land registration decrees pursuant to final court judgments and orders and corresponding certificates of land title, patents, and other land registration documents; oversees transactions involving land; and maintains a land registry based on the Torrens title system, which records land ownership and other interests over land; (iii) the Commission on the Settlement of Land Problems exercises quasi-judicial powers to decide and resolve land disputes involving small settlers and members of indigenous communities; (iv) the Office of the Government Corporate Counsel serves as a law office for government-owned and government-controlled corporations, their subsidiaries, and government-acquired asset corporations; and (v) the Office of the Solicitor General represents the government and its agencies, including government corporations, in cases filed by or against the latter; institutes civil forfeiture proceedings in cases involving money laundering; prepares and reviews government contracts; appears in all proceedings involving the acquisition or loss of citizenship and in declaration of nullity of marriage; defends the constitutionality or validity of any treaty, executive agreement, law, decree, executive order, or other issuance; recovers properties or monies due to the government, and, when directed by the Supreme Court, investigates and prosecutes disbarment cases.

the Katarungang Pambarangay (Barangay Justice System or BJS) Training Program, the Witness Protection, Security, and Benefit Program, and the Victims Compensation Program. It has also formed the Committee on the Special Protection of Children.

Department of the Interior and Local Government

The President supervises LGUs, assisted by the Department of the Interior and Local Government (DILG). General supervision is distinct from control in that the President interferes in the affairs and activities of an LGU only if he or she finds that the LGU has acted contrary to law. The President and his or her representatives cannot interfere in local affairs as long as the LGU acts within the parameters of the law and the Constitution.²⁶ Consequently, DILG's authority is limited to ensuring that LGUs follow the law, including their own ordinances. It can review LGU officers' acts and determine whether the law was violated. If there has been a violation, it can ensure that the law and rules are enforced. DILG cannot establish rules and has no discretion to modify or replace LGUs' rules, nor can it remove or replace local officials. Instead, the Local Government Code (Republic Act No. 7160) provides that locally elected officials may be removed before their terms by registered voters exercising their right to recall officials. That said, when the Sandiganbayan rules that local officials are guilty of corruption, the ombudsman has the power to remove them from government service directly.²⁷

Impact of decentralization on the justice system. LGUs play a significant role in the Philippines, which is an archipelagic country composed of more than 7,000 islands. LGUs link the people with the national government. They act as agencies of the national government in tax collection, law enforcement, and other government functions. The local government system of the Philippines consists of 79 provinces, 115 cities, 1,495 municipalities, and 41,943 *barangays* (vil-

lages). These political subdivisions enjoy autonomy but are supervised by the President through DILG. The President's supervision ensures that LGUs comply with national laws.

The Philippines has experienced recurring tensions between a highly centralized government structure and the demand for local autonomy. Centralized government structures were established by colonial authorities during the Spanish and American colonial periods, as well as by President Ferdinand Marcos during martial law. LGUs believe that their "stunted local growth and underdevelopment" was caused by their overdependence on resources and services from the national government.²⁸

The Constitution, which was adopted after President Marcos was deposed, provides that the state ensures the autonomy of local governments, and that territorial and political subdivisions of the Philippines enjoy local autonomy. The Supreme Court has ruled that these provisions express the principle of local autonomy, and that local autonomy refers to the decentralization of administration.

The Local Government Code put the constitutional principle in operation, devolving significant functions, powers, and responsibilities to LGUs that had previously been operating under a highly centralized regime. The law transferred responsibility for the delivery of basic services, including personnel, assets, equipment, programs, and projects, to LGUs. LGUs are now responsible for field health and hospital services, social welfare services, community-based forestry projects, agriculture-related services, locally funded public works, education projects, tourism promotion and development, telecommunications services, and housing projects. LGUs are responsible for enforcing certain laws and regulations. They are now empowered to enforce environmental laws and the national building code, reclassify agricultural land, approve subdivision plans, license tricycle operators, inspect food products, and impose quarantines—all of which were previously administered

²⁶ *Judge Dadole v. Commission on Audit*, G. R. No. 125350, 3 December 2002.

²⁷ *COA-Regional Office XIII v. Hinampas and Cabanos*, *OMB v. Montealto*, *OMB v. Danao*, and *OMB v. Gonzales-de la Cerna and Umali-Ventura*, G. R. Nos. 158672, 160410, 160605, 160627, and 161099, 7 August 2007.

²⁸ ADB. 2005. *Philippines: Country Governance Assessment*. Manila.

from the nation's capital. The law delegates law-making powers to local legislative boards, which can issue ordinances that have the force of law within the LGU's jurisdiction provided they do not go against national laws.

More importantly, the Local Government Code has increased the financial resources available to LGUs, which have been given broadened taxing powers. It has granted LGUs a specific share of the national wealth exploited in their area, and increased their share of national taxes. The law has also given LGUs the ability to generate revenue from local fees and charges and has set the foundation for them to enter into build–operate–transfer arrangements with the private sector, float bonds, and obtain loans from local private institutions. All these measures are meant to decrease LGU reliance on the national government by increasing reliance on internally generated resources.

The increase in LGU resources and the authority and capability to manage those resources has challenged the independence of justice sector institutions. LGUs may be able to provide resources to justice sector institutions that suffer from shortfalls. Unlike LGUs, justice sector institutions, such as courts, field prosecutors and public attorneys, and the police, remain highly centralized financially and administratively. They are likely to depend on LGU contributions when resources from the capital are not forthcoming. The reliance of justice sector institutions on LGU contributions risks compromising their integrity because the LGUs' process for allocating and actually transferring these resources to justice sector institutions is not transparent, and it is subject to discretion and negotiation.

Decentralization has also resulted in overlapping supervision over the police. The Local Government Code provides LGUs with the power to prevent crime and to protect peace and order at the local level. Executive heads of local governments (i.e., mayors and governors) have the power to enforce all laws and ordinances relative to the local government, but actual law enforcement and police action in LGUs is performed by the Philippine

National Police (PNP), a national police agency that maintains a network of field offices in each district, city, municipality, province, and region. Laws grant local executives the power to exercise oversight functions over PNP and to supervise local police officers in their capacity as deputized representatives of the National Police Commission (NAPOLCOM). Yet NAPOLCOM itself lacks the resources and capacity to exercise full control and supervision over PNP officers. PNP is also subject to overlapping supervision by LGU peace and order councils, which formulate and recommend to the local legislature and executive head a local peace and order plan that may include prescriptions on the organization and staffing of the police force in the local area. There is a lack of clarity in lines of authority and duplicative oversight.

Barangay Justice System. In helping the President exercise general supervision over LGUs, DILG supervises barangays, the lowest level of government in the Philippines. The BJS is the administrator and operator of a community dispute resolution mechanism in 42,000 barangays throughout the country. Established by Presidential Decree No. 1508 (which was subsequently amended by the Local Government Code), the BJS can be accessed by residents of the same municipal unit to resolve a wide range of disputes (although certain kinds of cases are specifically exempted from the BJS).²⁹ The law provides that cases under BJS jurisdiction must be submitted to that system before being considered in any court. The implementing rules provide that unless they are repudiated in court within 10 days of being handed down, settlements under the BJS generally have the full force and effect of a final court judgment.

DILG provides training for BJS operators and receives reports from barangays on their caseloads. DOJ is also mandated to issue rules and regulations defining operating policies and processes to guide the BJS.

National Police Commission and Philippine National Police. The principal law enforcement

²⁹ These include (i) cases brought by or against the government or an instrumentality thereof and/or public officers or employees, (ii) offenses punishable by imprisonment exceeding 1 year or a fine exceeding P5,000 (\$106), (iii) disputes involving real property located in different cities unless both parties agree to BJS jurisdiction, (iv) cases involving the Agrarian Reform Law, (v) cases involving labor disputes, and (vi) actions to annul judgment on a compromise.

Box 5: Local Peace and Order Councils

Local peace and order councils are headed by the chief executive officer of the local government unit, and consist of (i) one representative from the field offices of each of the following agencies: the Armed Forces of the Philippines, the Commission on Human Rights, the Dangerous Drugs Board, the National Bureau of Investigation, the National Peace Commission, the National Security Council, the PNP, and the offices of the press secretary, the secretary of justice, and the secretary of social welfare and development; (ii) a member of the local legislative council, chosen by his or her peers to represent them; and (iii) three members of the private sector chosen by the heads of local peace and order councils after consulting with other members.

Local peace and order councils formulate plans and recommend measures to improve peace and order and public safety in their jurisdiction, monitor the implementation of peace and order programs, and make periodic assessments of the prevailing peace and order situation in their jurisdiction. They also evaluate applicants for positions in the Philippine National Police, and recommend candidates to the National Police Commission, through the chief executive officer of the local government unit.

agency in the Philippines is PNP, established to fulfill the constitutional mandate for a police force that is national in scope, civilian in character, and administered by a national commission.³⁰ The national commission to which PNP reports, in accordance with the Constitution, is NAPOLCOM. This statutory body is chaired by the secretary of DILG and includes the director general of PNP and four individuals appointed by the President.³¹ The commission advises the President and the secretary and monitors PNP performance with respect to the entire range of police operations. It

also serves as a forum for appeals of disciplinary actions.

Both NAPOLCOM and PNP have been placed under DILG to facilitate their coordination and cooperation with local officials. PNP field officers are under “operational supervision and control”³² of city and municipal mayors. Governors and mayors have the authority to choose PNP provincial directors and chiefs of police.³³

The Supreme Court has made it clear that NAPOLCOM and PNP were placed under DILG for administrative purposes only, and that NAPOLCOM retains control over PNP. The court limited the operational supervision and control exercised by local government officials to supervising police officers’ performance of day-to-day functions. The court further explained that local officials who choose high-level police staff members exercise such authority as NAPOLCOM deputies and their choice could be countermanded by NAPOLCOM.³⁴

In addition to being responsive to NAPOLCOM and the DILG secretary, PNP needs to be responsive to local governments, which operate local peace and order councils that address issues such as local police staffing. PNP is also often called on to carry out functions for other law enforcement agencies that have a more limited presence in the national territory, such as the Philippine Drug Enforcement Agency (PDEA). Coordination with other law enforcement agencies is carried out through the National Law Enforcement Coordinating Council.

Other Justice Sector Agencies under the Department of the Interior and Local Government. DILG also supervises the Philippine Public Safety College and the Bureau of Jail Management and Penology (BJMP).

The Philippine Public Safety College provides education and training for candidates for and officers of PNP and operates the Fire National

³⁰ Constitution, Art. XVI, § 6.

³¹ Republic Act nos. 6975 and 8551.

³² Republic Act No. 7160, sec. 16 (1990).

³³ Applications for police positions are evaluated by the Local Peace and Order Council and recommended by the city or municipal mayor to the provincial or district director to PNP. The application papers then go to the provincial PNP office where the provincial governor may also intervene and make recommendations. Thereafter, the papers go to the PNP regional office and recommendations are forwarded to the NAPOLCOM regional office for review of the qualifications and fitness of the candidate for the position. Within NAPOLCOM, the papers are reviewed by the regional office and by NAPOLCOM.

³⁴ *Carpio v. Executive Secretary*, 206 SCRA 290 (1996).

Box 6: Department of Budget and Management

The far-reaching authority of the Department of Budget and Management (DBM) over the budget and spending power of all government institutions—including justice sector institutions, which have historically been underfunded—gives it a critical role in improving justice administration, even if it is not directly engaged in justice sector operations.

The executive branch develops the national budget, presents it to Congress, and manages appropriations. DBM coordinates the preparation of the annual budget proposal for the national government, which is based on a medium-term development plan prepared by the National Economic Development Authority. Based on the approved budget ceiling, DBM issues a budget call requiring all national government agencies, including all justice sector agencies, to submit their budgetary requests. DBM consolidates all budgetary proposals and presents the overall budget to the cabinet for deliberation and to the President for approval. The President proposes this budget to Congress, which then

passes a general appropriations bill that is subject to the President's veto of certain items. The approved bill then becomes a general appropriations act. If Congress fails to pass a general appropriations bill by the end of a fiscal year, the preceding fiscal year's general appropriation act is deemed reenacted and remains in force until Congress passes the appropriations bill.

DBM oversees budget implementation and grants all government agencies authority to spend their respective budget allotments. After the general appropriations act's passage, departments are required to submit an agency budget matrix to DBM. It is only when agencies have received their allotment release orders from DBM that they can enter into contracts with suppliers and contractors, purchase materials, or hire personnel for approved projects and activities. Government agencies issue checks to pay for obligations incurred only upon the agency's receipt of a notice of cash allocation issued by DBM in consultation with the Bureau of Treasury.

Training Institute, Jail National Training Institute, National Police College, Philippine National Police Academy, and Police National Training Institute. BJMP is responsible for the management and operation of about 1,100 district, city, and municipal jails. These are facilities for the detention of those against whom criminal charges are pending as well as those serving sentences of 3 years or less.

Department of Social Welfare and Development

The Bureau of Child and Youth Welfare in the Department of Social Welfare and Development operates 10 regional rehabilitation centers for juvenile offenders. Under Supreme Court rules on juveniles in conflict with the law, adopted in February 2002, and the subsequently enacted Juvenile Justice and Welfare Act of 2006, children

can be diverted from detention facilities into non-custodial situations.³⁵ A juvenile offender may undertake restorative measures such as restitution, community service, counseling, or training in lieu of entering the normal criminal justice process. Diversion programs, which are supervised by local social welfare development officers, grew out of concerns about the incarceration of what Save the Children UK estimated to be 4,000 children in the Philippines.³⁶

The Office of the President directly oversees a number of agencies dealing with the administration of justice. These include law enforcement agencies such as the National Intelligence Coordinating Agency, for the coordination of intelligence gathering by all law enforcement agencies; the National Law Enforcement Coordinating Committee, which seeks to coordinate the activities of all law enforcement agencies;³⁷ PDEA,

³⁵ Republic Act No. 9344, 4 May 2006. Implementing regulations of the Juvenile Justice and Welfare Council entered into force on 11 July 2006.

³⁶ Save the Children UK. 2004. *Breaking Rules: Children in Conflict with the Law and the Juvenile Justice Process—The Experience in the Philippines*. London. Also available: www.crin.org/docs/resources/publications/violence/summary.pdf

³⁷ The National Law Enforcement Coordinating Committee provides opportunities for cooperation and integration of law enforcement activities, information, and improvement of crime management strategies and technologies. At present, heads of all law enforcement agencies, including the NBI and PNP, meet monthly at the center to share statistics, update each other on the status of cases and investigations, and perform similar acts of coordination.

which was created in 2002 to focus on drug-related crimes,³⁸ and the Philippine Center for Transnational Crime.³⁹

The Office of the President also oversees agencies that exercise quasi-judicial functions. The Presidential Anti-Graft Commission is a collegial body that has the power to investigate or hear administrative cases or complaints involving presidential appointees' violation of anticorruption and bribery laws.⁴⁰ The National Commission on Indigenous Peoples is empowered to hear and resolve on appeal all claims and disputes arising from local indigenous dispute resolution procedures involving the rights of indigenous cultural communities and indigenous peoples, and all cases pertaining to the implementation, enforcement, and interpretation of the Indigenous Peoples' Rights Act.

Independent Justice Sector Agencies

The Constitution and other laws have created offices that play key roles in justice administration and that are independent of all three government branches. Apart from the independent constitutional commissions that, exercise quasi-judicial powers among other things,⁴¹ the Constitution mentions two offices that play important investigatory and prosecutorial functions. The Commission on Human Rights has the power to investigate human rights violations. The Office of the Ombudsman has a broad mandate to investigate any charge of corruption, inefficiency,

or betrayal of public trust and to ensure the accountability of government employees. The special prosecutor, whose office is attached to the Office of the Ombudsman, has the power to prosecute graft cases against all senior public officials, wherever they serve, at the antigraft court, the Sandiganbayan. When the court rules that such public officials are guilty, the ombudsman has the power to remove officials from government service directly, unless they are members of Congress or the judiciary.⁴²

The legislature has also created independent agencies with investigatory powers. One example is the Anti-Money Laundering Council (AMLC). Created in 2001 as a financial intelligence unit, AMLC performs law enforcement functions that protect against laundering the proceeds of unlawful activity in the Philippines.⁴³ It is chaired by the governor of Bangko Sentral ng Pilipinas, and includes the commissioner of insurance and the chair of the Securities and Exchange Commission. Its secretariat consists of compliance and investigation staff members, legal evaluation staff members, information management and analysis staff members, and an administrative and financial services division. AMLC monitors banking, insurance, and other financial transactions. As appropriate, it applies for judicial orders to freeze assets, refers possible criminal acts for prosecution by DOJ or the Office of the Ombudsman, and develops educational programs. This unique entity works closely with other agencies, the private sector, and the international community.

³⁸ Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, 7 June 2002. PDEA does not have exclusive jurisdiction over the enforcement of antidrug laws and the investigation of drug-related crimes, as the NBI, PNP, and other law enforcement agencies are also involved in combating these offenses, often in collaboration with or in support of PDEA. PDEA relies upon contracted agents and PNP for some services, such as arrests, seizures, and crime scene investigations.

³⁹ The National Intelligence Coordinating Agency and the National Law Enforcement Coordinating Committee are agencies that respectively coordinate all government intelligence and law enforcement operations. The Philippine Center for Transnational Crime supervises and controls the conduct of anti-transnational crime operations of all government agencies and instrumentalities and maintains a related database of information on criminals, methodologies, arrests, and convictions for certain transnational crimes.

⁴⁰ These include (i) Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act; (ii) Republic Act No. 1379 on the unlawful acquisition of property by a public officer or employee; (iii) Republic Act No. 6713, the Code of Conduct and Ethical Standards for Public Officials and Employees; (iv) Presidential Decree No. 46, making it punishable for public officials and employees to receive gifts on any occasion; (v) any provision under title VII, book 2 of the Revised Penal Code; and (vi) rules and regulations duly promulgated by competent authority to implement any of the foregoing laws or issuances.

⁴¹ The Civil Service Commission, the Commission on Audit, and the Commission on Elections. The Commission on Elections also has the exclusive authority to prosecute violations of election laws.

⁴² Footnote 27.

⁴³ Republic Act No. 9160, 29 September 2001. See also the 2003 amendments to comply with the requirements of the Financial Action Task Force, Republic Act No. 9194, 7 March 2003.

Box 7: The Anti-Money Laundering Council

The Anti-Money Laundering Council (AMLC) helps other law enforcement agencies identify criminal activity by tracing the proceeds of money laundering back to the criminal. It is privy to, and monitors, records that are not readily available to other law enforcement agencies, including bank records. As it builds a case for money laundering offenses, AMLC assists other law enforcement agencies by identifying potential predicate crimes, such as drug trafficking, prostitution, tax evasion, corruption, and others that require, and have preceded, the instances of money laundering that AMLC is investigating.

AMLC has recovered money-laundering proceeds for the Federal Bureau of Investigation of the United States and counterparts in other countries. Elsewhere, financial intelligence units retain money-laundering proceeds for the operations of all justice sector agencies that participated in the recovery efforts. This practice can be studied further to determine whether it could be an incentive for better coordination and performance in the justice sector of the Philippines.

Other Justice Sector Stakeholders

Integrated Bar of the Philippines

At the time this report was being prepared, there were more than 40,000 attorneys enrolled with the Supreme Court. All of them, by virtue of their oath of office as attorneys, are members of the Integrated Bar of the Philippines (IBP). In 1971, a law authorized

[T]he integration of the Philippine Bar under such circumstances as it shall see fit in order to raise the standards of the legal profession, improve the administration of justice, and enable the bar to discharge its public responsibilities more efficiently.⁴⁴

In 1973, a presidential decree established the IBP as a corporate body with perpetual duration.⁴⁵

The Supreme Court promulgates rules for admission to the practice of law and IBP.⁴⁶ Only IBP members can practice law in the Philippines.

IBP carries out certain activities under its charter and the Rules of Court in furtherance of the purposes of the above-quoted 1971 legislation. In particular, it provides one of two channels for the discipline and disbarment of attorneys. (The Supreme Court has a parallel process that it may elect to use on its own initiative.) In addition, IBP plays an active role in legal education. It recommended the existing program of mandatory continuing legal education for attorneys, and participates in the program's governance.⁴⁷ It participates in collaborative educational arrangements with the Department of Education and Philippine Judicial Academy, works with law schools, and conducts its own educational activities. Through its National Committee on Legal Aid, IBP supports legal aid offices in Manila and in 83 chapters nationwide.

Law Schools

Admission to the practice of law requires passing the Philippine bar examination. Bar examination applicants need to show they have completed all prescribed courses at an approved law school.⁴⁸ At the time this report was being prepared, there were about 100 law schools in the Philippines. Law schools offer an advanced 4-year law degree to students who have previously obtained an undergraduate college degree.

The Philippine bar examination is administered by the Supreme Court through the Bar Examination Committee. This is considered the most rigorous of professional examinations, and the percentage of those who pass, while improving, has always been low.

Law schools also play an important role in the legal representation of the poor. A number of law

⁴⁴ Republic Act No. 6397, 17 September 1971.

⁴⁵ Presidential Decree No. 181, 4 May 1973. See IBP. *A Brief History of the Integrated Bar of the Philippines*. <http://ibp.ph/history.html>

⁴⁶ Constitution, Art. VIII, § 5 (5).

⁴⁷ See Supreme Court Resolution dated 22 August 2000, adopting the rules on mandatory continuing legal education for IBP members, Bar Matter No. 850.

⁴⁸ Rules of Court, Rule 138: Attorneys and Admission to the Bar, § 5.

Box 8: Approved Law Schools

Legislation enacted in 1993 created a Legal Education Board that would set the standard for law school accreditation, among other things.^a The law also grants the board powers to supervise law schools, set minimum standards for law school admission, prescribe curricula, and establish a law practice internship requirement.

The law provides that a law school may not operate unless it is accredited by the board.^b At the time this report was being prepared, the Legal Education Board had not been constituted. In the absence of a functioning Legal Education Board, the Supreme Court allows the graduates of any law school recognized by the Commission on Higher Education (which accredits all institutions of higher learning in the country) to take the bar examinations. The Supreme Court remains the principal source of reforms on law school curricula through its reforms to the bar examination.

^a Legal Education Reform Act of 1993, Republic Act No. 7662, 23 December 1993.

^b Footnote a, §§ 7 and 8.

schools have internship programs and operate legal clinics, through which fourth-year law students can represent poor clients under the supervision of a licensed attorney. This practice is recognized and encouraged by Supreme Court rules.⁴⁹

The Private Sector and Alternative Dispute Resolution

A framework for private dispute resolution has existed since the 1950s, when the Philippines ratified the Convention on the Enforcement of Foreign Arbitral Awards (the New York Convention) and passed a law on arbitration. This framework has recently been updated. The Alternative Dispute Resolution Act establishes a comprehensive approach to alternative dispute resolution, including mediation, conciliation, and domestic and international arbitration.⁵⁰ It adopts the model law of the United Nations Commission on International Trade

Law for international commercial arbitration, authorizes the establishment of an office in DOJ to assure appropriate standards for the conduct of alternative dispute resolution, and provides clear rules for judicial review. The statute calls for a committee, chaired by the secretary of justice, to prescribe rules and regulations for the implementation of this legislation. These rules and regulations must be submitted to a joint oversight committee of Congress, which must approve them before the law can be implemented. At the time this report was being prepared, the implementing rules had been drafted and submitted to Congress, but they had not yet been approved.

Civil Society Organizations, the Media, and the Private Sector

Aside from the foregoing, a number of organizations in civil society and nongovernment organizations, the media, and the private sector are generally less directly involved in the operation of the justice system, but are important factors in how well the system operates. They play important roles in ensuring accountability of justice sector institutions and in improving access to justice for poor and vulnerable groups.

Conclusion

The administration of justice involves the enforcement of a country's laws, the protection of rights in accordance with those laws, and the resolution of conflicts arising over alleged violations or different interpretations of those laws. An effective network of justice sector institutions contributes to a society in which accepted rules are fairly and equally applied in an orderly framework that is conducive to liberty, security, and well-being. It plays a critical role in providing predictability in the application and enforcement of laws and rules.

The justice system of the Philippines is a sophisticated network of government branches,

⁴⁹ Section 1 of Rule 138-A of the Rules of Court authorizes a fourth-year law student to "appear without compensation in any civil, criminal, or administrative case before any trial court, tribunal, board, or office to represent poor clients accepted by the legal clinic of the law school." Law schools with legal clinics include the University of the Philippines (which pioneered in this field), Arellano University, Ateneo School of Law, University of Santo Tomas, and Xavier University.

⁵⁰ Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, 2 April 2004. The law excludes matters falling under the BJS and court-annexed mediation.

agencies, and offices for dispute resolution, investigation, prosecution, police action, and correction and rehabilitation of offenders. No one government branch or office performs all of the above functions. Table 1 sets forth the principal justice sector institutions classified by function and branch of government.

The legislative, judicial, and executive branches of government, as well as independent justice sector agencies created by the Constitution or other laws, all participate in the administration of justice.

Since it is not the province of a single government branch, justice administration requires cooperation and coordination among government branches to proceed effectively and efficiently. However, achieving cooperation and coordina-

tion is a challenge. The country adopted a government that operates under a system of checks and balances, so that each branch ensures that the others do not abuse their powers. In addition, commissions and agencies independent of all government branches have been set up as further checks on government abuse. Such a system comes with the risk that justice administration agencies will relate to each other in an adversarial—rather than a cooperative—fashion. The next chapter discusses the historical emergence of this government structure, which is the context within which the justice sector has developed. Understanding the system of checks and balances and overlapping accountability mechanisms is integral to understanding how the justice sector works.

Table 1: The Philippine Justice Sector

Function	Office	Branch of Government
Dispute Resolution	Courts	Judicial branch
	Quasi-judicial bodies (including National Labor Relations Commission) and administrative agencies with quasi-judicial functions (such as Presidential Anti-Graft Commission)	Executive branch
	Barangay Justice System	Executive branch (Department of the Interior and Local Government)
	National Commission on Indigenous Peoples	Executive branch (Office of the President)
	Commercial arbitration and other alternative dispute resolution mechanisms	Framework set by legislature, implementing rules to be set by Department of Justice, corresponding rules to be adopted by judiciary
	Juvenile Justice System on Diversion (local social welfare and development departments, barangays, law enforcement officers, prosecutors)	Executive branch
Prosecution	National Prosecution Service	Executive branch (Department of Justice)
	Office of the Solicitor General	Executive branch (Department of Justice)
	Ombudsman	Independent constitutional commission
	Commission on Elections	Independent constitutional commission
	Commission on Human Rights	Independent constitutional commission
Law Enforcement: Investigation	Commission on Human Rights	Independent constitutional commission
	Ombudsman	Independent constitutional commission
	Anti-Money Laundering Council	Independent financial intelligence unit
	Presidential Anti-Graft Commission	Executive branch
	Various executive and administrative agencies	Executive branch
Law Enforcement: Police Action	Philippine National Police	Executive branch (National Police Commission and Department of the Interior and Local Government)
	National Bureau of Investigation	Executive branch (Department of Justice)
	Philippine Drug Enforcement Agency	Executive branch (Office of the President)
	Other law enforcement agencies and agencies with power to arrest and effect searches and seizures	Executive branch
Public Defense	Public Attorney's Office	Executive branch (Department of Justice)
Corrections	Bureau of Corrections	Executive branch (Department of Justice)
	Parole and Probation Administration	Executive branch (Department of Justice)
	Bureau of Jail Management and Penology and Philippine National Police-supervised jails	Executive branch (Department of the Interior and Local Government)
	Provincial jails	Executive branch (local government unit)
	Department of Social Welfare and Development	Executive branch (Department of Social Welfare and Development)
	Local government units	Executive branch (local government unit)
Law Enactment	Senate	Legislative branch
	House of Representatives	

Source: Christine V. Lao. 2007. Background Note on the Justice Sector.

The Justice System in a Historical Context

The Philippines was a colony of Spain from 1521 until 1898, when it became a territory of the United States (US) under the 1898 Treaty of Paris, a result of the Spanish–American War. Under Spanish rule, the Philippines was a civil law jurisdiction. Written codes were deemed the primary source of legal authority.

Until the late 1800s, the Philippines was governed by *Las Leyes de los Reinos de Indias* (The Law of the Indies), a collection of enactments borne from Spain's experience with its colonies in America. This body of law was supplemented by royal orders and decrees. It recognized indigenous laws and customs that were not in conflict with the Catholic faith or expressly prohibited under Spanish law. Criminal or civil matters that were not covered by the Law of the Indies were in theory governed by laws in force on the Spanish mainland. In practice, however, Spanish laws were consulted rather than applied consistently. A penal code was introduced in the Philippines in 1887 and a civil code in 1889, both based on their equivalents in Spain. Other codes dealing with civil procedure, commerce, and criminal procedure were enacted in 1888. More specialized areas of commercial and civil law such as mortgages, copyright, mining, railways, and water rights were covered by special enactments.⁵¹

The chief executive of the Government of Spain in the Philippines was the governor-general, who also possessed legislative power and was president of the Royal Audiencia, the supreme court. He shared legislative power with the Royal Audiencia, which, aside from being the principal appellate and review tribunal in the Philippines, possessed the authority to issue *autos acordados* (ordinances). The Royal Audiencia could also assume executive power upon the governor-general's death or prolonged absence.⁵²

Spanish bureaucrats, who frequently held both executive and judicial power, carried out the administration of justice. Other examples aside from the governor-general were the *alcalde mayor* (provincial governor), who was also a judge of the court of first instance, and the *gobernadorcillo* (local mayor), who was also the municipal magistrate.

During the last decades of the 19th century, Spain attempted to separate executive and judicial offices at the provincial and municipal levels. As a result, government and judicial authorities were "to be found in open conflict."⁵³ This

⁵¹ Bankoff, note 3 *supra*, pp. 8, 93, 94.

⁵² Footnote 51, p. 9. The Spanish Crown, acting through its councils, also issued laws that would have application to its colonies, including the Philippines.

⁵³ Footnote 51, p. 9.

type of conflict had not previously arisen in the Philippines, as the administration of justice had always been viewed as an adjunct of executive fiat.

When it assumed control over the Philippines in 1898, the Government of the United States issued a series of organic documents that were based on US constitutional law.⁵⁴ It also created judicial institutions based on common law. The newly created Philippine courts relied on US jurisprudence to interpret the organic documents and apply them to Philippine political and governmental processes. From the beginning, constitutional law was understood in the Philippines as it is in the US—as comprising not just the text of the Constitution, but “a body of rules resulting from the interpretation by a high court of cases in which the validity, in relation to the constitutional instrument, of some act of governmental power... has been challenged.”⁵⁵ Philippine constitutional law continues to be viewed in this manner today, and the judiciary is recognized to possess not only the power but also the duty to review and declare void any act that is not in accordance with its interpretation of the Constitution.

At present, the Philippines is considered a mixed jurisdiction. It implements laws that reflect a civil law legacy from Spanish colonial rule, such as the Civil Code and the Revised Penal Code, and the constitutional and common law tradition of the American colonial period. Philippine law also incorporates elements of precolonial customary law and sharia law of the country’s Muslim population.

The Justice System and Separation of Powers

The first constitution was ratified in 1935. One of its key features was the adoption of a representative government with three coequal branches—

Box 9: The Bill of Rights, Right to Liberty, and Due Process

The experience of the Philippines under Spanish rule was one in which the colonial state power outweighed citizens’ freedom. Shortly before the United States (US) assumed control over the Philippines, a revolutionary government was established in open rebellion against Spain. One of the cardinal aims of the revolutionary government was to balance state power with an expansion of individual freedoms.

An important constitutional legacy from the US resonated with the Filipinos’ devotion to liberty and was eventually embodied in the Philippine bill of rights. The due process guarantee provided under the Fourteenth Amendment of the US Constitution, which provides that “No person shall be deprived of life, liberty, or property without due process of law,” became a key tenet in the constitutional law of the Philippines.

Over the years, the police, prosecutors, and judiciary have become increasingly subject to rules and procedures that safeguard the right to due process of persons suspected or accused of crimes.

executive, legislative, and judicial—operating under the doctrine of separation of powers.⁵⁶ Despite the 1935 Constitution, the legislature and judiciary were unable to check President Marcos when he assumed their functions, exercising power over all three branches of government after declaring martial law in 1972.⁵⁷

Under martial law, President Marcos assumed the power to “direct the operation of the entire Government, including all its agencies and instrumentalities.”⁵⁸ The military, acting under the President’s orders, took control of the legislative building, arrested some legislators, and prevented the rest from performing their duties. The President then issued orders, instructions, and

⁵⁴ These were President William McKinley’s Instruction to the Second Philippine Commission; the Philippine Bill of 1902; and the Philippine Autonomy Act of 1916. Bernas, J. 1987. *The Constitution of the Republic of the Philippines*. Manila: Rex Bookstore. pp. vi–vii.

⁵⁵ Corwin, E. Constitution of the United States of America. Cited in Bernas, J. 1987. *The Constitution of the Republic of the Philippines*. Manila: Rex Bookstore. pp. vi–vii.

⁵⁶ A short-lived revolutionary government was established shortly before the end of Spanish rule and the assumption of US control over the country. A key event during the existence of this revolutionary government was the adoption of a constitution that outlined a government structure along republican lines.

⁵⁷ Proclamation No. 1081, 21 September 1972.

⁵⁸ General Order No. 1, 22 September 1972.

Box 10: Martial Law

Martial law is “the exercise of power by a government temporarily governing the civil population of a locality through its military forces, without the authority of written law in times of rebellion and civil war, as necessity may require.”^a The 1935 Constitution of the Philippines had provided the President with the power to place the country, or any part of the country, under martial law “in case of invasion, insurrection or rebellion, or imminent danger thereof, when the public safety requires it.”^b The President could impose martial law indefinitely, and the legislature had no power to curtail his or her actions or to review the decision. The 1935 Constitution did not specify the role of the Supreme Court in checking the executive’s power to declare martial law.

^a *Aquino v. Enrile*, 59 SCRA 183, 255, citing *Ex Parte Milligan*, 4 Wallace 2, 18 L. Ed. 281 (1866).

^b *Aquino v. Enrile*, 59 SCRA 183, 256, citing Marcos, F. Notes on the New Society of the Philippines at 98 (1973).

Box 11: Approval of the 1973 Constitution

The parties that had filed a petition to nullify the 1973 Constitution believed that the document was not ratified in accordance with the 1935 Constitution and was therefore void. The solicitor general argued that even if this was assumed, the people had already acquiesced to the 1973 Constitution and in so doing implied their approval.

Six out of ten justices held that the 1973 Constitution was not ratified in accordance with the provisions of the 1935 Constitution, but the Supreme Court was unable to reach a majority vote to determine whether the people had acquiesced to the 1973 Constitution. Four justices held that Filipinos had already accepted the 1973 Constitution and that it was therefore in force; but two others disagreed. The rest refused to vote on this issue and said that the restriction of free expression of opinions and media under martial law gave them no means of knowing whether the people had accepted the Constitution.

decrees that amounted to the assumption of legislative powers.

The judiciary was ordered to “continue to function in accordance with its present organization and personnel,”⁵⁹ but was barred from assuming jurisdiction over cases that involved

- the validity, legality, or constitutionality of any decree, order, act, or rule issued by the executive pursuant to the President’s declaration of martial law;
- crimes against national security, the law of nations, public order, and the Constitution;
- usurpation of authority, rank, and title, and improper use of names, uniforms, and insignias; and
- crimes committed by public officers.

Military tribunals were created to try civilians accused of the criminal offenses taken away from the courts’ jurisdiction.

Amendments to the 1935 Constitution were proposed in 1973. The proposed constitution

abolished the Philippine Congress; left the activation of a new legislative body to the discretion of the President; and declared that all proclamations, orders, decrees, instructions, and acts of the President formed part of the law of the land. A plebiscite was called to ratify or reject the proposed constitution, but was later postponed indefinitely. While petitions to forbid the holding of a plebiscite were being heard at the Supreme Court, President Marcos announced that the proposed constitution had been ratified by an overwhelming vote of members of citizens’ assemblies, which he had formed. Petitions to nullify the 1973 Constitution were filed with the Supreme Court, but the court failed to obtain a majority vote against it, and ruled that there was “no further judicial obstacle to the new Constitution being in force and in effect.”⁶⁰

A year later, the Supreme Court ruled on several petitions questioning the validity of the President’s proclamation of martial law.⁶¹ The Court ruled that such questions were obviated

⁵⁹ General Order No. 3, 22 September 1972.

⁶⁰ *Javellana v. Executive Secretary*, 50 SCRA 30, 141 (1973).

⁶¹ *Aquino v. Enrile*, 59 SCRA 30 (1973).

by the 1973 Constitution, which provided that all proclamations and acts of the incumbent President were part of the law of the land and remained valid after the Constitution's ratification. This ruling, together with decisions that upheld the executive branch's violations of constitutionally guaranteed fundamental rights during martial law, undermined public confidence in the judiciary and demonstrated the extent to which extended executive encroachment had eroded judicial independence and self-respect.⁶²

President Marcos was deposed by a peaceful civilian revolution backed by military support in 1986. He was succeeded by President Corazon Aquino, who abolished the national assembly and assumed revolutionary legislative power, which she exercised until the first Congress was convened under a new constitution in 1987.

Checks and Balances under the 1987 Constitution

The separation of executive, legislative, and judicial branches of government was reestablished under the 1987 Constitution, as it provides more effective checks and balances among the three governmental branches. It narrows the bases for imposing martial law and suspending habeas corpus. It also limits the President's discretion to impose martial law by subjecting his or her decision to the review powers of Congress and the Supreme Court. The Constitution also creates the Office of the Ombudsman and the Commission on Human Rights. Independent of the three branches of government, these constitutional offices possess broad mandates to hold public officers accountable and to protect human rights.⁶³

The Philippines' martial law experience highlights the important role played by the Supreme

Box 12: Did the Supreme Court Have the Power of Judicial Review?

The Supreme Court did not issue a definitive ruling on whether the judiciary had the power to review President Marcos's determination that there was a rebellion (the factual basis for declaring martial law) when he proclaimed martial law. Five justices held that the existence of rebellion was a purely political question and that the President's decision could not be reviewed by the courts. The rest held that the judiciary could review whether the President acted arbitrarily, but not determine whether his decision that public safety was endangered by rebellion was correct. When President Marcos constituted an interim legislative assembly in 1976 and a permanent legislative body in 1981, the Supreme Court ruled that he retained concurrent legislative powers.^a

^a *Legaspi v. Minister of Finance*, 115 SCRA 418 (1982).

Court in checking government—and executive—abuse. When it failed in that role, the public lost faith in the judiciary's ability to dispense justice.

The 1987 Constitution pays special attention to strengthening the judiciary's ability to check executive and legislative action effectively. Under the 1987 Constitution, the judiciary is expressly empowered not only to settle controversies involving legally enforceable rights, but also to review acts of government for possible grave abuses of discretion.⁶⁴ The Constitution also protects judicial independence by ensuring the following:

- The legislature, in defining the jurisdiction of the courts, may not deprive the Supreme Court of jurisdiction vested by the Constitution or reorganize the judiciary to undermine the security of judicial tenure.⁶⁵
- Appropriations for the judiciary may not be reduced below the level of the previous year.⁶⁶

⁶² *Gumaua v. Espino*, 96 SCRA 402, 412–420 (1980) summarizes the Supreme Court's principal martial law rulings. The Supreme Court ruled that the President's suspension of the privilege of the writ of habeas corpus during martial law was valid, the suspension of the privilege also suspended the accused's right to bail, and claims of denial of a speedy trial are unavailing during martial law.

⁶³ Constitution, Arts. XI and XIII.

⁶⁴ Footnote 5.

⁶⁵ Constitution, Art. VIII, § 2.

⁶⁶ Constitution, Art. VIII, § 3.

Box 13: Separation of Powers and Protection of Citizens' Rights

The Philippines' restoration of a system of separation of powers was a reaction against the many human rights abuses that took place during martial law. "A government that adopts a system of separation of powers does so to protect its citizens against political tyranny."^a The 1987 Constitution's Bill of Rights not only provides the due process guarantee in general; it also requires justice sector institutions to undertake additional responsibilities to safeguard the right of persons suspected or accused of committing a crime in particular.

The 1987 Constitution requires judges to issue arrest or search warrants only after making a personal determination of the evidence at hand that the person to be arrested had probably committed a crime (in the case of an arrest warrant) or that a crime had been committed (in the case of a search warrant). The theory behind requiring a judge to find "probable cause" before issuing a search warrant or arrest warrant is that

the issuance of such warrants might ultimately lead to the loss of a person's liberty, and that only a competent, neutral, and detached magistrate can carry out this sensitive task. The probable cause requirement was a reaction to the practice, during President Marcos's regime, of prosecutors and administrative agencies issuing such warrants on the President's authority.

In addition, the Constitution requires law enforcement agents to apprise a person suspected of a crime of his or her rights to remain silent and to retain a counsel of his or her own choice, and of his or her other rights while in custody. Prosecutors are required to prove at trial that the suspect had received these notices. The Constitution also prohibits the maintenance of secret detention places, which were prevalent during martial law.

^a Campbell, T. 2004. *Separation of Powers in Practice*. Stanford, CA: Stanford University Press. p. 1.

- The Supreme Court has broad powers to prescribe rules for the protection of constitutional rights, court procedures, admission to the practice of law, and legal assistance for the poor. The court can also disapprove rules of procedure established by special courts and quasi-judicial bodies.⁶⁷
- The Supreme Court appoints all officials and employees of the judiciary and exercises administrative supervision over the courts and their personnel; it has the power to discipline judges and remove them for cause.⁶⁸
- Judicial appointments are made by the President on the basis of recommendations by the Judicial and Bar Council (JBC), chaired by the chief justice, with representation from the executive branch, legislative branch, the judiciary, bar (represented by the Integrated Bar of the Philippines), academia, and the private sector.⁶⁹
- Justices and judges hold office until the age of 70 years, and their salaries may not be decreased.⁷⁰

Conclusion

The justice sector of the Philippines is characterized by the distribution of justice sector functions among the different branches of government. During its development, separation of government powers, liberty, and due process emerged as key values. As a result of the country's colonial history and its experience with martial law, these values enjoy constitutional protection.

The period spent under Spanish rule did not allow for institutionalization of the concepts of rule of law or separation of powers, as public officials wielded executive, legislative, and judicial powers with substantial discretion. As a result, liberty became a key value, and a revolution against the Spanish was waged to obtain it. The separation of government branches as a strategy to balance power became one of the objectives of the revolution.

Although the revolution was short-lived, the Philippines under US rule was exposed to a government that adopted a system of separation of

⁶⁷ Constitution, Art. VIII, § 5.

⁶⁸ Constitution, Art. VIII, § 5, 6, 11.

⁶⁹ Constitution, Art. VIII, § 8.

⁷⁰ Constitution, Art. VIII, §§ 10, 11.

powers. Under US rule, an independent judiciary became a key tenet of government, and courts wielded the power to review any act of government that was contrary to the Constitution. Liberty of citizens and the right of the accused to due process were primary values that found protection in the constitutive documents, laws, and jurisprudence of the time. Constitutional law developed during this time became the basis of the first Constitution of the Philippines, adopted in 1935.

When President Marcos declared martial law in 1972, he concurrently assumed executive and legislative powers; his power, including his power as commander in chief of the armed forces, was absolute. Civilian courts lost jurisdiction over cases regarding the validity and constitutionality of any executive issuance, including issuances with the force of law. They also lost jurisdiction over cases regarding crimes committed by public officers. Further, their jurisdiction to hear cases involving crimes against national security and those involving the usurpation of authority was taken away and given to military tribunals. During martial law, courts could not defend the due process and political rights of citizens, as military tribunals tried civilians for cases that ought to have been under the civilian courts' jurisdiction. Allegations of torture and human rights violations by the military and police, which was controlled by the military, were widespread.

The Supreme Court was unable to rule definitively on the constitutionality of the President's proclamation of martial law or the adoption of the 1973 Constitution. The President's actions, including those that curtailed the courts' power of judicial review, remained unchallenged. These actions impaired the system of separation of powers, removed mechanisms that would keep public officers accountable to the people, and denied citizens' basic rights and liberties.

In reaction, the 1987 Constitution safeguarded judicial independence and contained several provisions that sought to check government abuse, particularly of citizens' basic rights, by preventing the concentration of power in any one governmental branch.

As a result of the colonial history of the Philippines and its experience with martial law, the judiciary has been called upon to use its power of judicial review extensively. This has created tension between the judiciary and other branches of government. There is currently no overall justice sector policy or structure (other than normal budget procedures) for setting priorities, organizing work, and guiding and monitoring sector performance.

The doctrine of separation of powers does not preclude cooperation and coordination among government branches. It does not allocate the duty to determine the constitutionality and lawfulness of government acts to the judiciary alone. Neither does it absolve the executive and legislative branches from upholding the Constitution. All government branches are called upon to uphold the rule of law. In fact, a government of separated powers is designed so that each branch can ensure that the others respect the fundamental rights enshrined in the Constitution, including the right to due process and respect for citizens' liberty, and can hold them accountable for their actions.

It is hoped that such an understanding of the doctrine of separation of powers can facilitate reflection on how justice sector agencies can coordinate efforts to improve the sector's performance. Judicial reform is arguably more advanced than that of other justice sector institutions; the Supreme Court has led efforts to regain the judiciary's credibility and strengthen its independence, accountability, and efficiency since 1986. The judiciary is also the only justice sector institution that is a single branch of government. All courts have a uniform mandate and are under the administrative control of the Supreme Court. Justice sector institutions belonging to a different branch of government do not enjoy these advantages. Fortunately, most justice sector institutions have made—or have been the subject of—initial studies that identify their limitations and needs. Many have initiated frameworks for reform, and there is some interest in closer cooperation and substantial interagency and interbranch coordination. These reforms are discussed in the following chapters.

Recent Justice Sector Reforms

The strong emphasis on justice, human rights, and the rule of law in the 1987 Constitution inaugurated an era of reform that has continued to the present. Reforms embodied in the Constitution aimed to create a sound basis for an effective justice system. These reforms helped restore the independence of the judiciary and initiated a continuing justice reform effort. The 1987 Constitution strengthened the independence of the judiciary in order to bolster its ability to check the excesses of other government branches.

The Constitution's added protection of judicial independence supported the Supreme Court's efforts to reform the court system. The Constitution granted the Supreme Court rule-making powers, enabling it to issue authoritative guidelines for the country's judges on the administration of justice (1987); establish comprehensive measures for court management (1988); and create a planning, development, and implementation office to formulate ways to improve the administration of justice, coordinate with other organizations in the justice sector, and monitor the performance of judges and courts (1989).

The Constitution also established new justice entities with broad investigatory powers such as the Office of the Ombudsman, to help check graft and corruption by high-level government officials, and the Commission on Human Rights, to curb the abuse of citizens' human rights. The Constitution called for the two police forces that had existed prior to 1987 to be reorganized into one civilian police force.⁷¹

After the adoption of the 1987 Constitution, nonjudicial justice sector organizations were created or restructured. The Public Attorney's Office (PAO) was established in DOJ with responsibility for defending and providing legal advice to the poor.⁷² PNP was reorganized, and its relationships with NAPOLCOM and LGUs were revised. PNP was placed under the authority of an expanded DILG.⁷³ The Barangay Justice System (BJS) was

⁷¹ Of the two police forces, one, the Integrated National Police, was local and directly controlled by local officials. The other—the Philippine Constabulary—was simultaneously a military force under the armed forces and was national in scope. The first was widely criticized during the drafting of the Constitution for “spawn[ing] warlordism, bossism and sanctuaries for vices and abuses” (V Record of the Constitutional Commission at 297 [1986]). The Philippine Constabulary was allegedly involved in the violation of citizens' basic rights during and after martial law.

⁷² Administrative Code of 1987, Executive Order No. 292, 25 July 1987, book IV, title III, ch. 5, § 14.

⁷³ Philippine National Police Reform and Reorganization Act of 1998, Republic Act No. 8551, 25 February 1998; Department of the Interior and Local Government Act of 1990, Republic Act No. 6975, 14 December 1990.

substantially revised, placing greater responsibility on local authorities at the community level.⁷⁴

Laws to protect the rights of the accused were also enacted.⁷⁵ Entities that would further improve the access of poor and vulnerable groups to justice were created.⁷⁶ These reforms generated responsibilities that demanded increased human and institutional resources throughout the justice sector.

During this period, the Justice System Infrastructure Program (JUSIP) was inaugurated by the President.

Building Capacity and Integrity in the Justice System

Many laws were aimed at building the capacity of existing justice sector agencies' staff. Congress passed legislation aiming to improve the judiciary's ability to deliver speedy justice. The Speedy Trial Act was enacted in 1998 to specify time limits for various stages in criminal trials, with a view to expediting the disposition of criminal cases.⁷⁷ Earlier, the Legal Education Reform Act of 1993 provided for the creation of the Legal Education Board, which has not yet been established. It was intended that the board would accredit law schools and oversee their operation and curricula.⁷⁸ The law aimed to enhance the quality of legal education, which would lead, it was hoped, to a more competent judiciary.

Many Supreme Court-led reform initiatives focused on improving the judiciary's ability to re-

spond to the increased demands brought about by judicial and justice sector reforms. It adjusted the courts' jurisdiction, size, and areas of specialization to enable them to manage their work more effectively. Frequently, the Supreme Court designated specific courts to hear cases involving specialized subject matter, such as intellectual property rights, commercial disputes, certain complex crimes, and juvenile justice. Certain trial courts were also designated as family courts.⁷⁹ The Philippine Judicial Academy was created in 1996 to develop and implement training modules aimed at strengthening the capabilities of judges, judicial candidates, nonjudicial court personnel, and others involved in the administration of justice, in order that they might perform their functions better. The Office of the Court Administration (OCA), which assists the Supreme Court in supervising lower courts, was restructured in 1991 and 1996 to increase its efficiency in providing oversight to the courts, improving court procedures and administration, addressing causes of congestion and delay, and promoting legal education and court management.⁸⁰

More generally, the early years of the post-Constitution era included a focus on integrity and accountability in the entire public service. For example, the Administrative Code of 1987⁸¹ required public employees to declare their assets and liabilities, and in 1989, a code of conduct and ethical standards for public officials and employees were enacted.⁸²

Parallel to the reforms targeting the integrity and accountability of public officials, the Supreme

⁷⁴ Local Government Code of 1991, Republic Act No. 7160, 10 October 1991.

⁷⁵ For example, Republic Act No. 7438, 27 April 1992, which protects persons arrested, detained, or under custodial investigation, confirms guarantees set forth in Article III, § 12, of the Constitution in positive law.

⁷⁶ The establishment of the National Commission on Indigenous Peoples to facilitate the use by indigenous populations of parallel, customary legal systems is an example. See Indigenous Peoples Rights Act of 1997, Republic Act No. 8371.

⁷⁷ Republic Act No. 8493, (1998). See also Supreme Court Circular No. 38-98, 11 August 1998, providing guidance on the implementation of this law.

⁷⁸ Republic Act No. 7662 (1993).

⁷⁹ Adjustments included increased jurisdiction for trial courts under Republic Act No. 7691 (1994) and for the Court of Appeals under Republic Act No. 7902 (1995) and Republic Act No. 8246 (1996). Specific courts designated to hear cases involving specialized subject matter include those designated to hear cases involving intellectual property rights, commercial disputes, certain complex crimes, and juvenile justice. See Administrative Order 51-96, 3 May 1996, designating courts for kidnapping, robbery, dangerous drugs, carjacking, and other heinous crimes under Republic Act No. 7659. See also the Family Courts Act of 1997, Republic Act No. 8369, 28 October 1997, and Supreme Court Administrative Matter No. 99-1-13-SC, designating the regional trial courts to hear cases within the jurisdiction specified in the Family Courts Act.

⁸⁰ Supreme Court Circular No. 30-91, 30 September 1991 and Circular No. 36-97, 9 June 1997. A further reorganization of OCA was effected by Supreme Court Administrative Matter No. 98-7-01-SC, 22 February 2005.

⁸¹ Administrative Code of the Philippines, Executive Order No. 292, 25 July 1987.

⁸² Republic Act No. 6713, 20 February 1989.

Court adopted a code of professional responsibility for the legal profession and a code of judicial conduct (1988), and initiated a pilot program to increase judicial efficiency through the use of continuous trials (1988 and 1989). These measures established the leadership of the Supreme Court, helped restore the independence of the judiciary, and initiated the continuing justice reform process.

Creating an Institutional Framework for Systematic Justice Reform

In 1998, Chief Justice Hilario Davide publicly declared his commitment to a policy of judicial reform with a statement of vision and a mission of achieving specific goals with respect to independence, effectiveness and efficiency, public trust and confidence, and the legal profession.⁸³ Although Chief Justice Davide's 1998 policy statement, which came to be known as the "Davide Watch," focused on the development of a reform action plan for the judiciary, the Supreme Court encouraged the participation of other justice sector institutions in consultations and planning. The National Economic Development Authority and the United Nations Development Programme (UNDP) supported initial consultations to identify technical needs for justice reform in general, in line with the Supreme Court's recognition that "the task of justice delivery is not the courts' alone; it is shared by the executive and legislative branches of the government and the other four pillars of the criminal justice system."⁸⁴

The outcome of the initial consultations was the publication in February 2000 of *Blueprint of Action for the Judiciary*, which focused on four areas:

- independence, integrity, and accountability;
- enhanced knowledge-based adjudication;
- fairness and efficiency; and
- accessibility.⁸⁵

An additional 18 months of deliberations and consultations led to the Supreme Court's adoption of the Action Program for Judicial Reform (APJR) in August 2001. The Davide Watch, Blueprint of Action, and APJR represented a consolidation of previous reform efforts. They reflected a systematic identification of strengths and weaknesses, accomplishments and shortcomings; they looked at reform systematically and recognized the roles of other justice sector organizations outside the judiciary. Davide and his successor, Chief Justice Artemio Panganiban, implemented the APJR.

The Action Program for Judicial Reform

The APJR established a coherent multiyear plan with priorities and cost estimates, and created an executive committee (including senior officials from outside the judiciary) and a program management office to assure policy oversight, coordination, monitoring, communication with stakeholders, and follow-up actions. The APJR concluded in 2006, even as reforms begun prior to 2006 continue to be implemented.

The APJR had six components:

- judicial systems and procedures, concerned with the jurisdictional structure, rules, procedures, and management systems for the administration of justice;
- institutional development, concerned with the role of the judiciary as an independent and accountable branch of government;
- human resources management development, concerned with the selection, training, career development, compensation, and discipline of judges and judiciary staff members;
- institutional integrity development, concerned with the prevention, detection, and punishment of corruption in the judiciary and in the legal profession;
- access to justice by the poor, concerned with assuring that the justice system includes

⁸³ Davide, H. 1998. *Leading the Philippine Judiciary and the Legal Profession towards the Third Millennium*. Manila: Supreme Court.

⁸⁴ Navarsa, A. and UNDP. 2000. *Blueprint of Action for the Judiciary*, Manila: Supreme Court. p. 3.

⁸⁵ Footnote 84, p. 39.

genuine opportunities for participation by the marginalized and disadvantaged; and

- reform support systems, concerned with management systems to assure the success and sustainability of the reform program and to foster public awareness.

Significant reforms accomplished during the APJR included

- improved judicial efficiency, demonstrated by an increase in the number of cases disposed by courts;
- computerized case management information systems in the Supreme Court, Court of Appeals, Court of Tax Appeals, and Sandiganbayan;⁸⁶
- increase of judicial salaries by 100% over a 4-year period, approved in 2003, facilitating the recruitment of qualified candidates for judicial appointment and reducing vacancies in the judiciary;⁸⁷
- decentralization of court administration functions (currently exercised by the Supreme Court, assisted by OCA in Manila) to a pilot regional court administration office (intended to increase efficiency);⁸⁸
- the establishment of 113 court-annexed mediation centers nationwide (intended to facilitate access to justice); and
- the adoption of new codes of conduct for judges, employees in the judiciary, and public notaries in 2004.⁸⁹

Box 14: Decentralization of Financial Management and Administrative Functions of the Judiciary

Under the Action Program for Judicial Reform (APJR), the Supreme Court approved an assessment report on financial management practices in the judiciary. The report recommended financial management reforms and a decentralized administrative structure to correct deficiencies. Thereafter, the Supreme Court approved the recommended reforms. A pilot regional court administration office was launched in Region 7 by Chief Justice Reynato Puno in 2008 to address easily identifiable redundancies and inefficiencies. New management tools are being implemented in Region 7. Other reforms in Region 7 include budget submissions that fully reflect and account for the use of fines and duties collected by the courts, local government unit contributions, and funds reallocated from unfilled positions in the judiciary's budget. Guidelines promoting transparency in the use of all resources available to the courts, including contributions from local government units, have been issued by the Region 7 administrator, under the authority of the Supreme Court. Region 7 will support enhanced financial systems that will track all receipts and expenditures irrespective of their origin. It is expected that this initiative will be replicated in at least two additional regions of the Philippines.

Reflecting, in part, the impact of these reforms, the Supreme Court has consistently ranked in the top three government agencies in

⁸⁶ The APJR identified the need for such systems. The launch of the case management information system at the Sandiganbayan took place during the APJR, but the systems at the Supreme Court, Court of Appeals, and Court of Tax Appeals were launched after the APJR, in 2008.

⁸⁷ Republic Act No. 9227, 23 October 2003.

⁸⁸ Steps toward decentralization of court administration functions were recommended and planned during the APJR, but the launch of the pilot Regional Court Administration Office took place after the APJR in May 2008. Chief Justice Puno presided over the launch of the pilot Regional Court Administration Office.

⁸⁹ Supreme Court Administrative Matter Nos. 03-05-01 SC (judges), 03-06-13-SC (court employees), and 02-8-13 (public notaries). The Supreme Court has published a manual on ethics and has conducted orientation seminars for judges and court personnel to ensure their familiarization with their responsibilities under the codes.

Other notable reforms during APJR include (i) the inauguration of mandatory continuing legal education for attorneys in 2003 to ensure that they are updated on legal developments and issues of professional responsibility (Supreme Court Administrative Order No. 113-2003, effective 1 September 2003. The Supreme Court approved the rules for mandatory continuing legal education in Bar Matter No. 850 on 22 August 2000); (ii) updated rules on family law and related litigation procedures, including with respect to adoption, annulment of marriages, custody of minors, and guardianship (Supreme Court Administrative Matter Nos. 02-11-10 SC, 4 March 2003; 02-11-11 SC, 15 March 2003; and 03-02-05, 1 May 2004); (iii) the issuance by the Supreme Court in 2004 of authoritative guidance for pretrial procedures and discovery, with a view to expediting court proceedings (Supreme Court Administrative Matter No. 03-1-09-SC, 14 August 2004. The Supreme Court has undertaken a number of follow-up measures to this guidance. See also Administrative Circular No. 3-99, 15 January 1999); and (iv) the launch of the Supreme Court's electronic library in 2004, empowering the courts to conduct legal research with more up-to-date and readily available materials.

the Social Weather Station survey of enterprises perceived as sincere in fighting corruption.

Continuing Judicial Reforms after the Action Program for Judicial Reform

Upon taking office in 2006, Chief Justice Reynato Puno, who succeeded Artemio Panganiban, announced that he would lead judicial reforms in three broad areas: the speedy and efficient resolution of court cases, including administrative cases against judges, lawyers, and court personnel; improving the integrity of the court; and access to justice. Under his leadership, the Supreme Court has continued APJR-initiated reforms falling into these three areas. For example, the Supreme Court has pursued decentralization of administrative and financial management functions to regional court administration offices (a move that is expected to speed up overall court efficiency, integrity, and oversight) and has designated 22 small-claims courts employing judicial dispute mediation and the Justice on Wheels Program to improve access to justice.

Chief Justice Puno also demonstrated concern for and an understanding of the judiciary's resource limitations, as well as an interest in financial management reforms that would facilitate the judiciary's ability to plan and demonstrate reasonable budget proposals and assert fiscal autonomy during budget execution. For example, upon being informed that commitment to the Organization Performance Indicator Framework would enable the judiciary to plan and explain its budget proposals to the executive, who proposes the budget to the legislature, the chief justice expressed commitment to the framework, and the Supreme Court submitted documents that demonstrate such

commitment in 2008.⁹⁰ Moreover, although Chief Justice Puno has focused on reforms that have a direct impact on the judiciary, he has not abandoned interest in coordinating justice reforms. Since his appointment, he has hosted multisector summits that have been lauded for demonstrating justice sector leadership.⁹¹

Although the APJR focused on the development of a reform action plan for the judiciary, the Supreme Court encouraged the participation of other justice sector institutions in consultations and planning. The APJR proceeded on the assumption that the judiciary shares the administration of justice with the other branches of government and other pillars of the criminal justice system—the prosecution service, police and law enforcement, corrections, public defense, and the community. Without reforms in other justice sector agencies, judicial reforms risked being less successful than expected. The APJR produced a series of diagnostic studies that provided the basis for policy reforms in DOJ, the Office of the Ombudsman, PAO, and the corrections system. Subsequently, DOJ created the Management Systems Office to coordinate its reform program, the Office of the Ombudsman adopted a medium-term anticorruption program, PNP launched its own reform program, and PAO successfully lobbied for a law that implemented the recommendations of an APJR study on increasing the office's autonomy. These studies provided the opportunity to build a road map for reform in these institutions.⁹²

The increased coordination among justice sector agencies during the APJR-facilitated consultation and passage of a series of laws that recognized that improving justice sector efficiency required better coordination, if not cooperation, among justice sector agencies, including nonjudicial agencies. These include

⁹⁰ The Organization Performance Indicator Framework is a results-based budgeting approach that links proposed budgets to performance measures.

⁹¹ Examples are the Summit on Extrajudicial Killings, which brought together criminal justice sector agencies to discuss ways by which extrajudicial killings may be halted, and the Summit on Increasing Access to Justice, which served both as a multisector consultative forum and venue for justice sector agencies to discuss possible ways to coordinate efforts to bring about better access to justice. One example of a collaboration resulting from the latter is the mobile court unit launched by the City of Manila and the Supreme Court near the Manila City Jail a month after the summit. The mobile unit was intended to speed up hearings of detainees at the Manila City Jail.

⁹² Hard copies of the DOJ and PNP reform agenda, as well as the medium-term action plan of the Office of the Ombudsman, are available at their offices and at ADB upon request.

- legislation to increase the autonomy of PAO and to strengthen its capabilities, thereby increasing the availability of high-quality legal services for the poor and disadvantaged;⁹³
- enactment in 2004 of a new legislative charter for alternative dispute resolution;⁹⁴
- creation in 2001 of a comprehensive legislative framework to deny wrongdoers who engage in money laundering the financial benefit of their criminal acts;⁹⁵
- legislation in 2006 to protect children in violation of the law and establish appropriate treatment for them, including diversion from the formal judicial system;⁹⁶ and
- legislation in 2003 and 2004 to define the responsibilities of justice organizations to protect women and children against violence and trafficking in persons.⁹⁷

Arguably, the APJR has also contributed to subsequent activities that may lead to more effective government coordination of justice sector performance. In 2008, the judicial, executive, and legislative branches signed a memorandum of agreement for the creation of the Judiciary Executive and Legislative Advisory Consultative Council. Although the council exists as a forum primarily for discussing issues related to financing the judiciary, its formation suggested an openness to communication and coordination among the different branches of government within well-defined limits. This bodes well for justice sector agencies, which stand to benefit from better coordination, without sacrificing their independence.

Conclusion

Since 1987, the judiciary has made significant progress, especially in restoring a sound institutional structure for the administration of justice,

analyzing needs, and designing measures to improve performance. Its efforts, particularly in the last 6 years, have not only resulted in improvements in the effective administration of justice, but have also promoted increased coordination among justice sector agencies.

That said, the results achieved to date are less than was hoped for in many key areas. The full implementation of some initiatives has been impeded by limitations in the capability of the concerned organizations. At the same time, resource constraints have impeded sustained investment in building the capacities needed to implement the reforms. These issues continue to confront the judiciary:

- delay in the delivery of justice;
- need for more adequate provision of budgetary resources;
- need for better facilities, adequate provision of equipment, and effective management systems;
- need to address personnel shortages, adequate training, and better working conditions;
- need to strengthen administrative and financial management and related systems, as well as communication among lower courts, the Supreme Court, and offices such as OCA; and
- need to improve access to justice and legal services for the poor and disadvantaged.⁹⁸

Several factors appear to explain the persistence of these needs. Some observers have identified the vicious circle of limited implementation ability, inadequate investment in increasing capability, and weak accountability for failure to implement planned actions in a timely manner as the immediate cause. Underlying this difficult environment is the need for a political consensus that the benefits of improved performance of the judiciary

⁹³ Republic Act No. 9406, 23 March 2007.

⁹⁴ Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, 2 April 2004.

⁹⁵ Republic Act No. 9160, 29 September 2001. See also the 2003 amendments to comply with the requirements of the Financial Action Task Force, Republic Act No. 9194, 7 March 2003, and Supreme Court Administrative Matter No. 05-11-04, 15 November 2005, establishing rules of procedure in asset forfeiture and freezing of assets in cases relating to money-laundering offenses.

⁹⁶ Juvenile Justice and Welfare Act of 2006, Republic Act No. 9344, 26 April 2006.

⁹⁷ Republic Act No. 9262, 8 March 2004; Republic Act No. 9208, 6 May 2003.

⁹⁸ Michel, J., V. Alinsug, and C. Mercado. 2007. Long Term Strategic Framework for the Philippine Judiciary. Unpublished draft available at ADB.

and other justice sector agencies outweigh the costs and risks. The next chapter provides a description and assessment of justice sector institutions and identifies challenges that contribute to the persistence of the issues mentioned above.

These issues underline the immediate need to intensify the focus on results. The emphasis in the next phase of reform needs to be on improving the system's performance from the standpoint of those who are affected by it. The achievements and shortcomings of reforms to date need to be assessed in their historic context as necessary preparation for significantly improved delivery of justice services.

Justice Sector Agencies— Detailed Description and Challenges

A common perception in the Philippines is that the quality of the rule of law is poor. The justice system is often cited as a contributing factor to the low comparative rankings of the Philippines on several widely known indexes of economic competitiveness. While reforms have helped improve the credibility of justice sector institutions—particularly the Supreme Court and more recently, PNP—crosscutting issues persist. The sector’s human and financial resources and physical infrastructure remain grossly inadequate or poorly allocated and managed, workloads are unrealistically high, court dockets remain congested with delays perceived to be excessive, and the jail population is growing primarily as a result of prisoners awaiting trial. Conviction rates remain very low; public confidence in the integrity of justice system operators is also low; the private sector is frustrated by uncertainties about the law, its interpretation, and application; and access to justice is impeded by delays, costs, uncertainties, and, in some cases, the physical remoteness of courts.

The following description of the justice system of the Philippines examines key justice sector agencies engaged in dispute resolution (courts, quasi-judicial administrative bodies, alternative dispute resolution systems), law enforcement (NBI, PNP), prosecution (National Prosecution Service [NPS], Office of the Ombudsman), public defense (PAO), and corrections (Board of Pardons and Parole, Bureau of Corrections, Bureau of Jail Management and Penology [BJMP], Parole and Probation Administration, provincial jails). For each group of organizations, the description seeks to capture its role, structure, budget, human resources, procedures, workload, and performance. The description of the justice system is followed by a discussion of the challenges that the system faces.

Justice Sector Agencies Engaged in Dispute Resolution

Justice sector agencies engaged in dispute resolution are

- the judiciary, which includes the Supreme Court, three collegiate (i.e., with multijudge panels) higher courts, and some 2,450 lower courts located throughout the country (including 56 sharia circuit and district

courts in the Autonomous Region in Muslim Mindanao);

- some two dozen quasi-judicial bodies of the national government, mostly within the executive branch, which decide a wide range of specialized issues; their decisions are generally subject to judicial review, either by appeal or by petition alleging a grave abuse of discretion;⁹⁹
- community justice and indigenous justice systems in each of the country's approximately 42,000 barangays that are integrated into the formal justice system through the BJS¹⁰⁰ and through customary procedures facilitated by the National Commission on Indigenous Peoples; they resolve disputes relating to ancestral lands, cultural integrity, and the economic life of indigenous peoples and cultural minorities;¹⁰¹ and
- private alternative dispute resolution systems, including commercial arbitration and mediation centers, the frameworks for which were described in previous sections.

Judiciary

Judicial Independence and Fiscal Autonomy

An independent judiciary is a key feature of an efficient justice sector. The *Beijing Statement of Principles of the Independence of the Judiciary in the Asia Region*, an international document signed by 32 chief justices from throughout Asia and the Pacific, including the Philippines, defines judicial independence in terms of a judiciary deciding matters impartially “without improper influences, direct or indirect, from any source.”¹⁰² The colonial history of the Philippines and its experi-

ence with martial law contributed to a strong tradition of judicial independence. After the People Power Revolution in 1986, the 1987 Constitution expanded court jurisdiction to include the power to review government actions, including actions of the executive and legislative branches.

A key constitutional provision protecting judicial independence in the Philippines mandates the automatic and regular release of the judiciary's budget after it has been approved by the legislature.¹⁰³ The same constitutional provision also states that the judiciary's budget may not be reduced by Congress below the amount appropriated for the previous year. Judicial fiscal autonomy—that is, the guarantee that the court's budget is automatically and regularly released once it has been approved by the legislature—aims to safeguard judicial independence by ensuring adequate resources for the judiciary.

Budget and Finance

The principal source of financing for the courts is the national government budget.

In 2008, President Arroyo signed a P1.314 trillion budget. The judiciary was allotted about P11.5 billion, which is equivalent to 0.876% of total government spending. Although the amount devoted to the judiciary constituted a 9.31% increase over the 2007 obligation budget for the courts, the courts' share in the national budget has remained virtually unchanged over the past 5 years. Table 2 sets forth the relationship between national and total judicial budgets during the 21st century. Consistent with the pattern throughout the justice sector, about 85.0% of the annual national budget contribution to the judiciary goes to salaries and allowances of

⁹⁹ See Rules 43 and 65, Rules of Court, Supreme Court of the Philippines.

¹⁰⁰ Presidential Decree No. 1508 (1978), as amended by Republic Act No. 7160, the 1991 Local Government Code of the Philippines.

¹⁰¹ Indigenous Peoples' Rights Act of 1997, Republic Act No. 8371, 29 October 1997.

¹⁰² The Beijing statement represents a remarkable consensus within the region of the minimum standards that need to be complied with to maintain the independence and effective function of the judiciary. It identifies the rule of law to be the aim and object of every justice system—otherwise, legal power becomes an instrument of oppression and corruption. The following are identified in the Beijing statement as features of judicial independence: (i) appointment of competent, incorruptible, and independent judges without discrimination or undue influence; (ii) security of tenure of judges, with removal only for incapacity or inappropriate conduct as determined by an independent tribunal; (iii) judicial remuneration at an appropriate level, guaranteed for the term of a judge's appointment; (iv) a guaranteed jurisdiction for a judge that cannot be altered except with the consent of the members of the court; (v) judicial administration controlled by the court, especially in relation to the allocation of cases; (vi) a relationship with the executive that is free of pressure upon the judiciary; and (vii) adequate resources for the courts.

¹⁰³ Constitution, Art. VIII, § 3; CSC v. DBM, G. R. No. 158791, 10 February 2006.

Table 2: Annual Judiciary Budget as Percentage of the National Expenditure Program, 2000–2008
(P million)

Year	Total National Government Obligation	Annual Growth Rate (%)	Total Judiciary Budget	Annual Growth Rate (%)	% Share of National Obligation
2000 (actual)	682,459.8	17.59	7,044.1	4.92	1.032
2001 (actual)	707,093.1	3.61	7,433.8	5.53	1.051
2002 (actual)	742,022.4	4.94	7,737.4	4.09	1.043
2003 (actual)	825,113.3	11.98	7,709.9	(0.35)	0.931
2004 (actual)	867,009.8	5.08	7,878.2	2.18	0.907
2005 (actual)	947,553.7	9.29	8,286.9	5.19	0.875
2006 (actual)	1,044,827.4	10.27	9,041.2	9.10	0.865
2007 (actual)	1,155,508.8	10.59	10,306.2	13.99	0.891
2008 (actual)	1,314,613.6	13.76	11,511.4	11.69	0.876

() = negative.

Source: Department of Budget and Management, Budget of Expenditures and Sources of Financing 2002–2010.

court personnel, with 13.0% for maintenance and other operating expenses and only 1.5% for capital outlays. These proportions are set forth for 2000–2008 in Table 3.

The judiciary is also authorized to retain and spend fees or charges that it collects and to deposit those revenues in the Judicial Development Fund, from which 80% is allocated to personnel costs and 20% to capital outlays.¹⁰⁴ The fund has become a substantial source of additional revenue for the judiciary, augmenting its funds by an estimated P1 billion (\$20 million) annually in recent years.

Human Resources

There are more than 32,000 positions for judicial and support personnel in the judiciary. Of these, fewer than 2,300 are for justices and judges.¹⁰⁵ (There are more courts than judges, because some judges serve simultaneously in two courts, and several courts that have been authorized are not yet in operation.) The ratio of support staff to judicial personnel is thus about 14 to 1 for the entire judiciary; for the lower courts it is about 12.6 to 1.

Staffing levels in the lower court branches are standardized and do not take variations in

caseloads among different *salas* (chambers) into account. Court stations with multiple *salas* are provided with common support positions in addition to positions directly allocated to judges.

Appointment, Tenure, and Discipline of Judges

Judges are appointed by the President on the basis of nominations by the Judicial and Bar Council (JBC), a body established under the Constitution to foster the selection of judges on the basis of merit.¹⁰⁶ JBC is chaired by the chief justice of the Supreme Court; it includes two ex-officio members (the secretary of justice and a representative of Congress), and four regular members (representatives of the organized bar, academia, and the private sector, and a retired Supreme Court justice). The clerk of the Supreme Court serves as its secretary. JBC has prescribed procedures and criteria to guide the recruitment, evaluation, and selection of judicial nominees.¹⁰⁷ Justices and judges hold office during good behavior until age 70 years unless incapacitated.¹⁰⁸ While members of the Supreme Court can be removed only by impeachment, the Supreme Court has the authority

¹⁰⁴ The Judicial Development Fund was created by Presidential Decree No. 1949, 18 July 1984.

¹⁰⁵ The Staffing Summary, General Appropriations Act, 2007, and OCA use a base figure of 2,271 judicial positions. JBC uses a number of 2,258 judicial positions, according to a report on vacancies in the judiciary released on 19 September 2007. See Panganiban, A. 2007. Solving the Judicial Vacancy Problem. *Philippine Daily Inquirer*, 23 September.

¹⁰⁶ Footnote 69.

¹⁰⁷ JBC Order No. 009, effective 1 December 2000. <http://jbc.supremecourt.gov.ph/rules/rule9.php>

¹⁰⁸ Constitution, Art. VIII, § 11.

Table 3: Distribution of Judiciary Budget by Expense Class, 2000–2008
(P million)

Year	Personnel Services	%	Maintenance and Other Operating Expenses	%	Capital Outlay	%	Total
2000	5,831.7	82.78	1,162.4	16.50	50.1	0.72	7,044.1
2001	6,118.8	82.31	1,246.0	16.76	68.3	0.30	7,433.8
2002	6,822.2	88.17	719.0	9.29	195.9	2.54	7,737.4
2003	6,867.7	89.08	705.5	9.15	136.7	1.77	7,709.9
2004	6,884.5	87.39	820.6	10.42	173.1	2.20	7,878.2
2005	7,201.4	86.90	952.1	11.49	133.4	1.61	8,286.8
2006	7,811.7	86.40	1,100.2	12.17	129.3	1.43	9,041.2
2007	8,604.9	83.49	1,588.4	15.41	112.9	1.10	10,306.2
2008	9,499.5	82.50	1,826.9	15.90	185.0	1.60	11,511.4

Source: Department of Budget and Management, Budget of Expenditures and Sources of Financing 2002–2010.

to discipline judges of lower courts, including by removal from office.¹⁰⁹

Judges initially appointed to the lower courts can be promoted to fill vacancies in more senior positions. Candidates from outside the judiciary are normally recruited for the appellate courts. Career development for nonjudicial personnel is not systematized, and court employees are only rarely selected for judicial appointments.

Vacancies

Vacancies in judicial positions have been a serious problem. The Supreme Court has reported that there is one judge for every 52,077 Filipinos.¹¹⁰

Since December 2004, when the vacancy rate exceeded 30%, vacancies have steadily declined to about 19.7% by the end of 2007. The decline in vacancies appears to be attributable to legislation enacted in 2003 that authorized a 100% increase in compensation for judges, which increase was phased over a 4-year period,¹¹¹ together with a recruiting effort by JBC.

However, by 2008, the judicial vacancy rate had increased to 22.7%, with 519 out of 2,250 judicial positions remaining vacant. The problem is especially serious in the lowest tier of courts.

Vacancies occur often in localities where there are few candidates for judicial appointment. Under the Constitution, each judicial appointment must be made from a list of at least three nominees.¹¹² If there are fewer than three candidates, the position remains vacant.

Nonjudicial Personnel and Vacancies

Almost 30,000 of 32,000 positions for government personnel in the judiciary are allocated for nonjudicial staff members, such as clerks of court, interpreters, legal researchers, process servers, sheriffs, stenographers, utility workers, and officers and staff of the judiciary's administrative and financial management units. The Supreme Court exercises administrative supervision of courts' nonjudicial personnel. Its Selection and Promotion Board screens appointments for hiring and promotion. The chief justice and the chair of a division appoint a person to fill a nonjudicial vacancy in the said division. The Supreme Court also has the power to discipline and remove nonjudicial personnel for cause, in accordance with the provisions of the Civil Service Law.

About 3,900 (12.2%) nonjudicial staff positions have remained vacant. This high vacancy

¹⁰⁹ Constitution, Art. VIII, § 11; see also Art. XI, § 2.

¹¹⁰ Supreme Court. 2008. Annual Report 2008.

¹¹¹ Footnote 87.

¹¹² Constitution, Art. VIII, § 9.

rate is attributed to budgetary shortfalls and the Supreme Court's adherence to the government policy of leaving noncritical positions vacant when possible in the interest of saving scarce public resources.

Training

Training in the judiciary is the responsibility of the Philippine Judicial Academy, established in 1996.¹¹³

The academy is headed by a board of trustees chaired by the chief justice of the Supreme Court; it has 14 academic departments in various fields of legal scholarship, each headed by a recognized expert. It conducts a regular program of courses, including a prejudicature program for aspirants to judicial appointment, judicial career enhancement programs, courses for quasi-judicial agencies, and seminars for judges. It has a rich content of courses on specific themes, has developed a number of electronic learning modules, and produces many educational publications. It also holds seminars for nonjudge court personnel, but a training program for this group has not yet been developed.

In addition to the Philippine Judicial Academy programs, the Supreme Court has distributed bench books and manuals to lower court judges and disseminates updates of jurisprudence to judges. Judges with internet access can use the Supreme Court's online e-library; others receive periodic CDs with recent decisions and other materials.

Integrity and Codes of Conduct

The Supreme Court adopted a new code of conduct in 2004, based on the internationally respected Bangalore Principles of Judicial Conduct. Also in 2004, it adopted a separate code of conduct for nonjudicial personnel.¹¹⁴ The Philippine Judicial Academy provides training on ethics. Rules governing grounds and procedures for administrative complaints against judges are set out in the Rules

of Court (Rule 140). The Supreme Court enforces adherence to these codes of conduct through OCA, whose role is discussed in section i. In addition to imposing sanctions for misconduct, the Supreme Court uses positive incentives to improve performance, such as judicial excellence awards. A number of lower court judges who have received these awards have been selected for promotion.

Court Administration

The Constitution vests the Supreme Court with authority to undertake court administration.¹¹⁵ The chief justice is the chief executive officer of the Supreme Court. He or she is assisted in the performance of his or her executive duties by the clerk of court, who provides adjudication support services, such as the maintenance of records, as well as internal managerial support for the Supreme Court, such as procurement, human resources management, and budget management services. The court administrator assists the Supreme Court as a whole in the oversight and in the direct implementation of the administrative and financial operations of the lower courts. The court administrator oversees a centralized system of procurement, financial management, and human resources for all lower courts and associated administrative offices.

OCA is the key agency in the judiciary that investigates violations of codes of ethical conduct in the lower courts. With over 400 officers and employees, OCA tracks over 20,000 judicial and nonjudicial court employees countrywide. OCA investigates reports of alleged anomalies in lower courts upon the filing of a complaint or on its own initiative. It is likewise through OCA that the Supreme Court manages its halls of justice and courthouses.

Challenges

Resource limitations are a major challenge to the judiciary, and pose risks to judicial independence.

¹¹³ The academy was originally established by Supreme Court order (Administrative Order No. 35-96, 12 March 1996.) Two years later, it received a legislative charter (Republic Act No. 8557, 26 February 1998.) Previously, judicial training had been provided by the University of the Philippines Law Center.

¹¹⁴ The Code of Judicial Conduct for the Philippine Judiciary (Administrative Matter No. 03-05-01 SC) and the Code of Conduct for Court Personnel (Administrative Matter No. 03-06-13-SC) both became effective on 1 June 2004. See Puno, R. 2005. *The New Philippine Code of Judicial Conduct*. Manila: Supreme Court. The Bangalore Principles of Judicial Conduct, as revised, are available at www.ajs.org/ethics/pdfs/Bangalore_principles.pdf

¹¹⁵ Article VIII, § 6 of the Constitution states, "The Supreme Court shall have the administrative supervision over all courts and the personnel thereof."

Although the constitution provides that the legislature may not reduce the judiciary's budget below the amount appropriated for the previous year, and in despite of annual increases in the judiciary's obligation budget, the value of that budget in real terms and the judiciary's share of the national expenditure program have decreased. While there was a slight recovery in real term budgetary allocation in 2007, it was not enough to meet the increasing demands of the courts' workload. In fact, the budget allocation of the judiciary in 2007 could buy about 5% less in goods and services than could its budget in 2000. With national government budgetary resources inadequate, the courts must turn to other sources of financing for their operations.

The amounts allocated for courts' maintenance and operating expenses are insufficient to pay utility bills, replace office supplies, and cover the costs of routine maintenance. The Supreme Court Committee on Halls of Justice has estimated that only 50% of all courts and related facilities are located in halls of justice. Consequently, the judiciary bears the additional burden of paying rent. Despite JUSIP—an ongoing justice system infrastructure program begun in 1998 that has constructed or repaired hundreds of buildings—many court buildings are in poor condition, with courtrooms and other facilities poorly maintained. Because of inadequate storage space, case files are often stored in public areas without security, risking loss of important records.

Under a memorandum of understanding between the Supreme Court and DOJ, ownership of the land and of infrastructure built under JUSIP has been transferred to the courts, which maintain the court facilities. Inadequate management and maintenance of these facilities has strained the local judiciary's relations with executive branch field offices and agencies that are also housed therein.

The shortage of maintenance and operating expense funds has led many lower court judges and personnel to pay for some necessities, such as basic furniture, office equipment, and supplies, out of their own pockets. This poses risks to the professionalism of court personnel and lowers morale in the service.

Resource limitations also make members of the judiciary susceptible to improper influence. Many

LGUs contribute resources to the lower courts in their territory, which are not recorded in the financial accounting records of the judiciary. It is believed that local governments' policies about contributions to local courts, as well as the amounts they provide, vary considerably. Some local governments include contributions to local courts in their annual budgets, but most do not. These contributions come in many forms, including monthly and travel allowances given to judges; cars for judges; office space; equipment and furniture; payment of charges for electricity, communication and other utilities; repair and maintenance of facilities; office supplies; and contractual personnel.

This practice is a vulnerability that challenges judicial independence at the local level. It is exacerbated by the fact that the Supreme Court oversees some 2,450 lower courts in the country's various islands through a centralized administrative bureaucracy without efficient, automated information and reporting systems that connect the center to lower courts. Without such a system, the Supreme Court and OCA cannot monitor the performance of judges or their compliance and that of other court employees with ethical codes. As a result, the judicial disciplinary system, which has disciplined and removed a number of staff members, including two justices of the Court of Appeals, has nevertheless been criticized for failing to deal firmly with serious misconduct in the judiciary. At the same time, it has also been criticized for failing to protect judges from harassment by aggressive lawyers and litigants.

Centralized financial and administrative management has also contributed to delays that increase inefficiency. For example, requests to undertake repairs on courthouses and halls of justice, replace equipment, or pay utility bills must be submitted to and be processed by OCA in Manila in advance. However, the lack of telecommunications connections between most courts outside of Metro Manila and OCA results in long delays in payment and the suspension of key services by court staff members. In the meantime, lower courts often seek and receive financial assistance from LGUs.

The slight increase in the judicial vacancy rate in 2008 has placed an additional strain on the courts' abilities to perform their functions. As

budget constraints impose limits on the number of personnel, it becomes necessary to increase the productivity of those on the rolls. This requires training, but training budgets are also limited, particularly for nonjudicial personnel.

Beyond training, there remains the challenge of allocating work to make the most effective use of valuable human resources and to provide greater job satisfaction. Court efficiency is also affected by rigid staffing patterns for nonjudicial personnel, which prevent judges from reorganizing the work of nonjudicial employees, redeploying employees to where they are most needed, or adopting multitasking schemes—all of which can increase productivity.

Effect of Challenges on Court Efficiency

These challenges have taken their toll on court efficiency. The timely disposition of cases has been a major challenge for the courts.

In recent years, cases have flowed into the courts at an annual rate of about 450,000. About 82% of cases filed are criminal, about 16% are civil, and the rest are a variety of cases (special proceedings, administrative complaints and others) that do not fall under the first two categories. Table 4 sets forth the numbers for 2006–2008.

Until recently, caseloads had been declining slightly. This correlates with a decreasing number of judicial vacancies and improved case disposition rates. Courts have been disposing of more cases than are being filed each year. However, this has not improved the clearance rate—that is,

the volume of cases disposed as a percentage of total caseload. Low clearance rates mean that case backlogs remain high.

As Table 5 shows, although courts disposed of 107% more cases than the total number of cases filed in 2008, the volume of cases disposed over total caseload (i.e., the number of cases pending at the start of the year plus cases filed during the course of the year) declined below the number for 2006.

Under the Constitution, judges should decide a case within 3 months after trial. In criminal cases, this stage is preceded by pretrial and trial phases that lower courts need to complete in less than 12 months.¹¹⁶ In reality, the time limits imposed by the law are not always honored, as the law itself contains many exceptions.¹¹⁷ As of 2003, criminal and civil cases that were appealed to the Supreme Court remained in the court system for an average of 5 years before decision. According to Chief Justice Puno, the Supreme Court requires an average of 1.43 years to decide a case; the Court of Appeals, 1.32 years; the Court of Tax Appeals, 2.6 years. Cases filed in the Sandiganbayan required a remarkable 6.6 years for decision on average.¹¹⁸

There are numerous discretionary factors for granting continuances.¹¹⁹ Judges' heavy workloads and case backlogs contribute to difficulties in meeting the prescribed periods. Judges have been observed to have adjourned a trial for more than 1 month at a time in violation of the Rules of Court.

Table 4: Case Inflows by Type of Case, 2006–2008

Type of Case	2006	2007	2008	Total	% Distribution
Criminal Cases	299,644	282,366	292,491	874,501	82.23
Ordinary Civil Cases	61,242	54,123	58,132	173,497	16.31
Other Cases	23,879	45,730	45,891	115,500	1.46

Source: Court Administration Management Information System, Office of Court Administrator, Supreme Court of the Philippines.

¹¹⁶ Republic Act No. 8493 (1998).

¹¹⁷ Footnote 116, §§ 10–11.

¹¹⁸ Puno, R. 2007. Toward an Independent, Fair and Fast Justice System. *Business Mirror*. June 26. Also available: www.businessmirror.com.ph/06262007/perspective01.html

¹¹⁹ American Bar Association–Asia Law Initiative. 2006. *Judicial Reform Index for the Philippines*. Washington, DC.

Table 5: Summary of Caseload, Disposition, and Clearance Rates, All Courts, 2006 and 2008

Year	Pending on 1 January	Inflow	Total Caseload	Number of Cases Disposed of by the End of the Year	Pending on 31 December	Disposition Rate (%)	Clearance Rate (%)
2006	709,495	414,765	1,124,260	445,483	678,777	107.41	39.62
2008	694,927	361,266	1,056,153	386,993	665,148	107.12	36.64

Note: Excludes Supreme Court.

Source: Office of the Court Administrator, Supreme Court.

A 2002 survey indicated that a significant proportion of civil and criminal cases in all lower courts exceeded the time limits prescribed by law.¹²⁰ It found that the type of case or matter involved, location of the court, and type of court that had jurisdiction over the case affected the timeliness of decisions. Table 6 sets out percentages for the period covered by the survey.

The largest portion of the backlog in the first-instance courts is made up of criminal prosecutions for bounced checks, which are handled under essentially the same procedures as more complex criminal cases.¹²¹ These cases are the result of the 1979 legislation that made a person criminally responsible for debts as a consequence of a check that is not paid upon presentation to the bank. This change in the law, intended to assure more effective enforcement of debts, has had the unintended negative result of shifting a larger part of the cost of collecting private debts

to the state. As the use of checks declines, the impact of this criminal process falls increasingly upon the poor.

A large number of cases, including about one-third of the criminal cases filed, are “archived” (moved to inactive status) when there is no action for a period of 6 months. This large percentage of criminal cases is explained in part by cases in which the defendant was never apprehended. Another reason is the statistical practice of counting multiple charges against a single defendant as multiple cases, which tends to inflate the number of cases recorded. As Table 7 reveals, the number of cases archived dropped slightly between 2006 and 2008 (while the percentage rose slightly).

The performance of other justice sector agencies affects judicial performance, as the large percentage of cases that are eventually archived because the defendant was not apprehended underscores. Moreover, delays in court proceedings have reportedly been caused by nonappearance of witnesses, absence of prosecutors and public defenders during trial, or law enforcement officers’ delay in turning over evidence to the courts.

Table 6: Percentage of Civil and Criminal Cases Exceeding Prescribed Time Limits, Lower Courts

Court	Civil	Criminal
Regional Trial Court	57.6	46.1
Metropolitan Trial Court	38.8	51.4
Municipal Trial Court in Cities	57.0	27.4
Municipal Trial Court	35.1	51.2
Municipal Circuit Trial Court	50.0	34.6

Source: Hunter, R. and Center for Public Resource Management (CPRM) Consultants. 2002. *Case Decongestion and Delay Reduction Strategy*. Washington, DC: World Bank.

Table 7: Comparative Archival Rates, 2006 and 2008

Year	Total Disposed	Total Archived	%
2006	429,066	120,582	28.10
2008	386,993	111,228	28.74

Source: CAMIS, Office of the Court Administrator, Supreme Court.

¹²⁰ Hunter, R. and CPRM Consultants. 2002. *Case Decongestion and Delay Reduction Strategy*. Washington, DC: World Bank.

¹²¹ In 1979, Batas Pambansa Blg. 22 (An Act Penalizing the Making or Drawing and Issuance of a Check without Sufficient Funds or Credit and for Other Purposes) criminalized these cases. Supreme Court Circular No. 57-97, 16 September 1997, provides for consolidation of civil and criminal actions in these cases, but does not otherwise modify the applicable criminal procedure.

Notably, although the Constitution and law impose limits on the time the judiciary is required to hear and decide a case, there generally are no counterpart provisions for other stages in the administration of justice, particularly in phases where the likelihood of delay occurring is strong—during the police investigation, preliminary investigation stages, and the enforcement of judgment.

Quasi-Judicial Agencies

Most quasi-judicial agencies are under the administrative supervision of the President, and are attached to executive departments for policy coordination. Decisions may be reviewed by the head of the department to which the agency is attached.¹²² The decision of the department head may generally be appealed to the Court of Appeals.

The Administrative Code of 1987 prescribes general rules of procedure for the performance of quasi-judicial functions.¹²³ These include standards for notice and hearing, rules of evidence, powers of subpoena, protection of rights to due process of law, internal appeals within the agency, finality of administrative decisions, and judicial review. As authorized by the Administrative Code, most agencies prescribe supplemental rules to govern their own proceedings. The courts are obliged to take judicial notice of agency rules that comply with these requirements.¹²⁴

Agency rules must be published—which is taken to mean publication in a newspaper of national circulation—filed with the University of the Philippines Law Center, and maintained in an agency register that is open to public inspection. There is no requirement that the rules be made electronically available on agency websites; private individuals may obtain copies by physically visiting the law center or agency keeping the register.

Quasi-judicial agencies' findings of fact must be supported by substantial evidence. They are obliged to allow the parties to present evidence, to reach their decisions on the basis of the evidence presented, and to identify the reasons for

their conclusions in their decisions.¹²⁵ The courts generally accept the findings of fact of quasi-judicial agencies when these are supported by substantial evidence.

Appeals from decisions of quasi-judicial agencies do not appear to be a major part of the caseload of the Court of Appeals. It is unclear whether this is due to the parties' satisfaction with agency decisions, or to the escalating costs that would need to be covered for an appeal to the courts. This underscores the importance of ensuring competence and capacity in quasi-judicial bodies, which may very well issue the final determination of parties' rights in a particular case.

Budget and Workforce

The budgets of the principal quasi-judicial agencies are not substantial, amounting to some P575 million (\$12.23 million). More than 60% of that total is attributable to a single agency—the National Labor Relations Commission. Consistent with the pattern elsewhere in the justice sector, personal services consume the greatest part of the budget in most cases, with very small amounts dedicated to capital investment. The staffs of the quasi-judicial agencies are likewise quite modest. Two agencies that settle a significant amount of disputes annually are the National Labor Relations Commission and the Department of Agrarian Reform Adjudication Board. The former has 15 commissioners and 105 arbitrators deployed in its regional branches. The latter has 178 authorized positions, many of which are vacant.

In spite of their small budgets and workforces, quasi-judicial agencies dispose of a substantial volume of disputes. The disposition and clearance rates of the two previously mentioned agencies approximate the productivity of the courts. Specifically, the Department of Agrarian Reform Adjudication Board sustained an average disposition rate of almost 100% and a clearance rate of 50% within a 6-year period (2000–2006). During the same period, the National Labor Relations Commission maintained an average disposition

¹²² Footnote 19.

¹²³ Footnote 19.

¹²⁴ Footnote 19.

¹²⁵ *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

rate of almost 87% and an average clearance rate of 27%.

Issues and Challenges

The sheer number and variety of agencies performing quasi-judicial functions is a likely reason why quasi-judicial bodies have not been the focus of organized development assistance in spite of the critical role that they play in justice administration. Another reason could be that quasi-judicial bodies exist under different departments, which would have to be interested in and committed to receiving such assistance but may have pressing priorities apart from dispute resolution. Although some quasi-judicial bodies (such as the Department of Agrarian Reform Adjudication Board and National Labor Relations Commission) have received support to undertake studies identifying reform priorities, these studies have yet to be compiled, systematically analyzed, and viewed in the context of other justice sector agencies. Given that quasi-judicial bodies play an important role in justice administration, such an analysis would help complete the picture of the justice sector of the Philippines and identify areas where further reform is needed.

Like other justice sector agencies, quasi-judicial bodies subsist on small budgets and are often understaffed. Attached to and dependent for funding on various executive departments, they have little, if any, fiscal autonomy. Where funding is limited—as in the case of the Department of Agrarian Reform, to which the Department of Agrarian Reform Adjudication Board belongs—quasi-judicial bodies share staff members with other agencies, creating muddled lines of accountability and oversight. The competence and capability of members of quasi-judicial bodies is critical, as such agencies are often the final arbiters of parties' rights.

Community-Based and Indigenous Dispute Resolution Mechanisms

Community justice and indigenous justice systems are integrated into the formal system through Presidential Decree No. 1508, which established

the BJS, and through the Indigenous Peoples' Rights Act, which recognized customary dispute settlement procedures of indigenous cultural communities and indigenous peoples.

Barangay Justice System

The BJS can be accessed by residents who share a municipal unit to resolve a wide range of disputes. The law provides that cases under BJS jurisdiction need to be submitted to that system before being considered in any court. Certain cases are specifically exempted from the BJS, including

- cases brought by or against the government, an instrumentality thereof, or public officers or employees;
- offenses punishable by imprisonment exceeding 1 year or a fine exceeding P5,000 (\$106);
- disputes involving real property located in different cities, unless both parties agree to BJS jurisdiction;
- cases involving the Agrarian Reform Law;
- cases involving labor disputes; and
- actions to annul judgment on a compromise.

The barangay chairperson, an elected official, heads a BJS in each barangay. The chairperson is assisted by 10 to 20 persons of known integrity and impartiality (the *lupon*). If the chairperson is unable to resolve a case filed under the BJS through mediation or arbitration, the matter is referred to a three-person conciliation commission selected by the disputants or, if they do not agree, selected by lot from *lupon* members. The composition of the *lupon* changes every 3 years with the election of the barangay chairperson.

DILG statistics suggest that the BJS has increased access to justice. It settled more than 4 million cases from 1980 to 2005, an average of about 160,000 cases per year. In recent years, the number has grown to about double that historical average. The percentage of mediated cases that were settled has remained consistently high.¹²⁶

A study has found that many people who submitted their dispute to the system would probably

¹²⁶ DILG Summary of Cases filed, actions taken, on Katarungang Pambarangay Implementation (January 1980–December 2005).

not have gone to court if there were no BJS.¹²⁷ This is consistent with findings in other countries, where most beneficiaries of community justice systems are people in need of justice services who would be reluctant to hire a lawyer and go to court. Thus, the BJS's principal value is that it provides access to justice for people whose needs the formal court system is less able to meet.

The BJS requires close coordination between two executive departments. DILG, which has administrative oversight over barangays, receives reports from the BJS on their caseloads and provides training for BJS operators. DOJ issues rules and regulations defining the operating policies and processes to guide the BJS. Coordination is required so DILG can effectively ensure that the BJS operates in accordance with DOJ rules.

One difficulty encountered by the departments overseeing the BJS is that they need to train new BJS officials every 3 years. Unless they are reelected after their 3-year term, BJS officials are no longer connected with the system, and newly elected officers take their place.

National Commission on Indigenous Peoples

The National Commission on Indigenous Peoples is empowered to hear and resolve on appeal all claims and disputes involving the rights of indigenous cultural communities and indigenous peoples and all cases pertaining to the implementation, enforcement, and interpretation of the Indigenous Peoples' Rights Act.

Customary law and justice systems are recognized under the Indigenous Peoples' Rights Act.¹²⁸ The law responds to the needs of more than 12 million members of indigenous cultural communities and indigenous peoples from at least 100 ethnolinguistic groups throughout the country. The act expressly recognizes that they have the

right to use their own commonly accepted justice systems, conflict resolution institutions, peace-building processes, and other customary laws and practices within their communities.¹²⁹

The commission hears a case only after remedies under customary laws have been exhausted or have failed, as certified by a council of elders or other leaders. The decision of a hearing officer is subject to review, at the request of a party, by the commission en banc. A final decision, like the decisions of other quasi-judicial agencies, may be appealed to the Court of Appeals.

The National Commission on Indigenous Peoples maintains a national office located in Metro Manila as well as 12 regional offices, 46 provincial offices, and 108 community centers nationwide. It has an annual budget of about P460 million (\$9.7 million) and a total staff of 1,500 employees.¹³⁰ The volume of cases pending in the administrative adjudication process of the commission is quite small—only a few hundred at the regional level and fewer than 100 at the national office. The small administrative caseload is an indication of the commission's success in encouraging reliance on customary remedies to resolve disputes within indigenous cultural communities and between indigenous peoples.

Alternative Dispute Resolution

The policy of fostering the resolution of disputes without courts is reflected in national legislation over the past half century.¹³¹ The Philippine Civil Code has long recognized compromise and arbitration as modes of settling disputes. Moreover, the Philippines was one of the first countries to ratify the New York Convention, thereby committing to the enforcement of foreign arbitral awards. The Administrative Code of 1987 directed every agency to encourage amicable settlement, com-

¹²⁷ The Asia Foundation, Gerry Roxas Foundation, Supreme Court, United States Agency for International Development. n.d. *The Barangay Justice System Review*. Manila.

¹²⁸ Republic Act No. 8371, 29 October 1997.

¹²⁹ This principle is subject to the important qualification that the indigenous law or practice must be compatible with the national legal system and with internationally recognized human rights.

¹³⁰ National Commission on Indigenous Peoples. Overview. www.ncip.gov.ph/agency_profiledetail.php

¹³¹ The five articles on arbitration in the Civil Code were supplemented in 1953 by Republic Act No. 876, the Arbitration Law. In 1978, Presidential Decree No. 1508 instituted a system of amicable settlement of disputes at the barangay level without need of judicial recourse. Republic Act No. 7160, the Local Government Code, amended this system in 1991 to authorize barangay officials to conduct conciliation and mediation proceedings to settle disputes in their territorial jurisdiction. The most recent legislative development is the Alternative Dispute Resolution Act of 2004.

promise, and arbitration.¹³² The Supreme Court has encouraged alternative dispute resolution as the “wave of the future.”¹³³

Alternative dispute resolution mechanisms are used to settle disputes filed before administrative agencies. In the mid-1990s, the Department of Agrarian Reform launched the use of mediation in the settlement of agrarian disputes. The Department of Environment and Natural Resources soon followed, joining in a collaborative effort with a private nongovernment organization to mediate environmental and natural resources conflicts. More recently, in April 2006, President Arroyo signed an executive order directing all executive agencies to promote the use of alternative dispute resolution processes in the settlement of disputes filed before them.¹³⁴ Even more recently, the Supreme Court adopted a program of referring cases already filed in court to mediators under the Philippine Justice Academy–administered court-annexed mediation program.

In 2004, Congress enacted the Alternative Dispute Resolution Act to encourage the use of alternative dispute resolution as an important means to “achieve speedy and impartial justice and declog court dockets.”¹³⁵ The law authorizes the establishment of an office in DOJ to assure appropriate standards in the conduct of alternative dispute resolution, and provides clear rules for judicial review. It also calls for a committee, chaired by the secretary of justice, to prescribe rules and regulations for the implementation of this legislation. As previously mentioned, these rules and regulations are, as

of this writing, awaiting the approval of Congress. Moreover, notwithstanding that international commercial business contracts regularly provide for private dispute resolution, there appears to be little demand for arbitration and similar mechanisms in the Philippines. Local lawyers and representatives of foreign investment groups have suggested that the public is uncertain about how arbitration proceedings and awards will be treated by the courts. They have also expressed doubts regarding state capacity to enforce arbitral awards.¹³⁶

Justice Sector Agencies Involved in Law Enforcement

Functions

More than 30 national agencies and LGUs throughout the country perform some law enforcement functions.¹³⁷ In the criminal justice system, law enforcement generally consists of two related functions—criminal intelligence and investigation, and police action.

Criminal Intelligence and Investigation

A number of executive agencies are engaged in criminal intelligence and investigation. The Anti-Money Laundering Council (AMLC), the Bureau of Internal Revenue (BIR), the Bureau of Customs, the Bureau of Immigration, NBI, the Office of the Ombudsman, PDEA, and PNP are some of the agencies that investigate allegations of violations

¹³² Administrative Code, book VII, ch. IV, § 3.

¹³³ See *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., Third Division*, G. R. No. 141833, 26 March 2003.

¹³⁴ Executive Order No. 523, Instituting the Use of Alternative Dispute Resolution in the Executive Department of the Government, 7 April 2006.

¹³⁵ Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, 2 April 2004.

¹³⁶ Ricardo J. Romulo, Romulo Mabanta Law Offices, interview by author and Debra Kertzman, 31 August 2007, Makati City; and John Forbes, American Chamber of Commerce in the Philippines, interview by author and Debra Kertzman 31 August 2007, Makati City.

¹³⁷ Other national law enforcement agencies include the Airport Police Department of the Manila International Airport Authority, BIR, Bureau of Customs, Bureau of Immigration, Civil Relations Service, Dangerous Drugs Board, Department of Transportation and Communications, DILG, Illegal Gambling Unit of the Games and Amusement Board, Interagency Council against Trafficking, Interagency Council on Anti-Violence Against Women and Their Children, Joint Task Force Against Trafficking in Persons, Land Transportation Office, Metro Manila Development Authority, Metro Manila Land Transportation Coordinating Council, NAPOLCOM, National Anti-Crime Commission, National Anti-Kidnapping Task Force, National Council for Civil Aviation Security, National Drug Law Enforcement and Prevention Coordinating Center, National Intelligence Coordinating Agency, Optical Media Board, peace and order councils, People’s Law Enforcement Board, Philippine Center on Transnational Crime, Philippine Coast Guard, Philippine Ports Authority, Philippine Public Safety College, Presidential Anti-Illegal Recruiters Task Force, Presidential Anti-Organized Crime Commission and Task Force, Presidential Anti-Smuggling Task Force, and Presidential Task Force on Transportation Strikes and/or Mass Actions.

of the law and collect evidence to support the initiation of a case against the violator. The evidence collected by criminal investigators is turned over to agencies exercising prosecution functions. These agencies then determine whether there is probable cause to believe that a crime has been committed. The key objective in criminal investigations is to obtain sufficient evidence to file a case against the suspect in court. Criminal investigators must be able to handle and analyze evidence and coordinate closely with the prosecution to build a strong case that warrants conviction.

Police Action

Police action rests in the power to arrest suspects and conduct searches and seizures authorized by a judge or by law. NBI, PDEA, PNP, and a number of other agencies such as the Bureau of Immigration have been accorded the power to carry out these functions. Police actions must be carried out in accordance with legal provisions protecting citizens' due process. Violation of due process and citizens' rights results in the release of a suspect or the suppression of illegally obtained evidence and a loss of public faith in the justice system.

Major Agencies

The following sections examine the two major law enforcement agencies that conduct criminal investigations and exercise police action.

Philippine National Police

PNP has more than 125,000 positions, about 120,000 of which are for uniformed personnel. It is the only law enforcement agency maintaining an extensive network of regional, provincial, municipal, and district offices and police stations. LGUs and national government agencies, including other law enforcement agencies, depend on PNP officers to conduct arrests, seizures, and crime scene investigations.

More than 95% of the national government's appropriations for PNP are centrally managed, in-

Box 15: Coordination among Justice Sector Agencies

Coordination among law enforcement and other justice sector agencies can take place without interference in the performance of each agency's functions. An example of this is the collaboration between the Bureau of Internal Revenue and National Prosecution Service in developing a common set of evidentiary requirements to fulfill the probable cause standard in preliminary investigation of criminal tax evasion cases. This effort seeks to increase the number of complaints filed by the bureau that lead to a successful prosecution of criminal tax evasion.

cluding salaries for police in the field. Less than one-fourth of amounts supporting police operations in the field (investigation, intelligence, and maintaining police-community relations) is allocated to the field offices. As in the case of the courts, highly centralized administration is a source of inefficiency.

The local police receive resources from LGUs and are tasked to maintain peace and order within their jurisdiction. LGUs justify these contributions on the grounds that they rely on PNP officers to perform peace and order functions. The contributions may be in cash or in kind, may vary in amount from place to place, and might not be documented in a transparent manner.

Candidates enter PNP on the recommendation of local authorities. They advance by promotion from within, based on length of service, completion of training, examinations, and a clean record with regard to complaints. Mandatory retirement is at age 56 years, a limitation that results in rapid turnover and lack of continuity in leadership positions.

While police salaries have increased in recent years, low compensation remains an obstacle to attracting highly qualified candidates. Up to 60% of all police officers live below the poverty line and most live in squalid slums.¹³⁸

¹³⁸ Suerte Felipe, Cecille M. 2008. Transforming the PNP. *STARweek*. 12 February. www.newsflash.org/2004/02/sb/sb005484.htm. AFP. 2006. 60% of Police Force 'Live Below Poverty Line': PNP General. *Manila Bulletin*. 2 June. www.articlearchives.com/law-legal-system/constitutional-law-freedom-press/230758-1.html

Table 8: Offices in the Philippine National Police with Disciplinary Authority

Internal to PNP		External to PNP	
Office/PNP Key Official	Functions	Agency/Key Official	Functions
Director General (Chief, PNP)	<p>Impose any of the following administrative punishments, provided that in all cases the period will not exceed 180 days:</p> <ul style="list-style-type: none"> • Dismissal from service • Forfeiture of salary • Suspension • Any combination of the foregoing <p>Place police personnel under restrictive custody during the pendency of a grave administrative case filed against him, or after the filing of a criminal complaint, grave in nature, against such police personnel</p>	National Police Commission (NAPOLCOM)	Conduct pre-charge investigation on complaints and cases filed against police officers
		National Appellate Board (NAB)	Review and decide cases on appeal from decisions rendered by the Chief, PNP involving demotion in rank or dismissal from service
		Regional Appellate Board (RAB)	Review and decide cases on appeal from decisions rendered by the PNP Regional Directors and equivalent police supervisors involving demotion or dismissal from service, as well as appeal from the decisions of the City/Municipal Mayors and the People's Law Enforcement Board
Police Regional Director	<p>Impose upon any PNP member the disciplinary punishment of dismissal from the service</p> <p>Also impose any of the following administrative punishments, provided that all in cases the period will not exceed 60 days:</p> <ul style="list-style-type: none"> • Admonition or reprimand • Restrictive custody • Withholding of privileges • Forfeiture of salary • Suspension • Demotion • Any combination of the foregoing 	People's Law Enforcement Board (PLEB)	Hear and decide citizen's complaints or cases filed before the PNP erring officers where the offense is punishable by withholding privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period exceeding 30 days, or dismissal.
		City and Municipal Mayors	Recommend disciplinary action against police officers where the offense is punishable by the following, for a period of not less than 16 days but not exceeding 30 days, or by dismissal: <ul style="list-style-type: none"> • Withholding of privileges • Restriction to specified limits • Suspension or forfeiture of salary • Any combination thereof
		City and Municipal Peace and Order Council (POC)	Recommend, through the Mayor as chairman of the POC, the recall or reassignment of Chief of Police
Police Provincial Director	<p>Impose of the following administrative punishments, provided that in all cases the period will not exceed 30 days:</p> <ul style="list-style-type: none"> • Admonition or reprimand • Restrictive custody • Withholding of privileges • Forfeiture of salary • Suspension • Demotion • Any combination of the foregoing 	Office of the Ombudsman (OMB)	<p>Investigate and act on graft and corruption complaints or cases filed against police officers</p> <p>Issue the following Ombudsman Clearances:</p> <ul style="list-style-type: none"> • Clearance for retirement • Clearance for reinstatement for service • Clearance for promotion/confirmation for promotion • Clearance for travel/mission abroad • Renewal of clearance

continued on next page

Table 8 continued

Internal to PNP		External to PNP	
Office/PNP Key Official	Functions	Agency/Key Official	Functions
Chief of Police	Impose any of the following administrative punishments, provided that in all cases the period will not exceed 15 days: <ul style="list-style-type: none"> • Admonition or reprimand • Restriction to specified limits • Withholding of privileges • Forfeiture of salary • Suspension • Any combination of the foregoing 	Commission on Human Rights (CHR)	Conduct independent and collaborative fact finding missions and investigate cases involving violations civil and political rights by police officers Issue clearance to police officers as to violations of civil and political rights for purposes of promotion Issue certificate of training programs attended by police officers on human rights
Directorate for Investigation and Detective Management (DIDM)	Undertake pre-charge investigation on administrative cases filed against police officers	National Prosecution Service (NPS), Department of Justice (DOJ)	Prosecute cases of PNP members Provide legal assistance and services to police officers
Directorate for Intelligence/Intelligence Group	Conduct intelligence on PNP erring personnel	Sandiganbayan	Hear and adjudicate civil and criminal cases involving graft and corruption practices filed against police officers
Internal Affairs Service (IAS)	Conduct personnel and operations audits Investigate complaints and gather evidence in support of an open investigation on police misconduct File appropriate criminal cases against police members and assist in the prosecution of the case Assist the Office of the Ombudsman in cases involving PNP personnel	Regular courts	Hear criminal cases of other offenses and felonies committed by PNP members in relation to their office where the penalty prescribed by law is higher than prison correctional or imprisonment of 6 years or a fine of P6,000

Source: Government of the Philippines and UNDP. 2005. *Transforming the Philippine National Police into a More Capable, Effective and Credible Police Force*. Manila. pp. 6-68, 6-69, and 6-70.

PNP has a code of professional conduct and ethical standards, which provides guidance on individual behavior, organizational effectiveness, and respect for human rights and democratic principles. More specific guidance is contained in a police operations manual.

Citizen complaints of police misconduct may be brought before any of 10 agencies, including NAPOLCOM, the People's Law Enforcement Board, the Office of the Ombudsman, and the Commission on Human Rights. Each office and agency has its own disciplinary procedures. Almost all agencies conduct hearings. Each can initiate a complaint against officers.

Education and training are provided by the Philippine Public Safety College, which serves a number of organizations and offers bachelor's and master's degrees, and by the Directorate for Human Resources and Doctrinal Development within PNP. The National Police Academy provides basic training for all new entrants, who enter the ranks as police cadets.

Challenges. Current resource limitations pose serious problems for PNP. Maintaining an extensive network of offices and police stations requires huge resources. At present, however, field offices receive less than one-fourth of the amounts supporting police operations in the field. This amount is clearly insufficient to support them.

Box 16: Other Philippine National Police Functions

The Philippine National Police perform other functions aside from criminal intelligence operations, crime scene investigations, and making arrests. They are also required to patrol the streets to deter crime and manage traffic and civil disturbances.

The police are also required by law to create a women and children's desk in every police station to attend to the needs of women and children who have been victims of violence. These desks must be staffed by a female police officer who undergoes training on gender sensitivity, gender-sensitive counseling, human rights, women's and children's rights, and legal management of rape cases. In reality, however, there is no regular special training given to officers attending to these desks, and they are not always staffed by female police officers. In the evenings, they are often attended to by male officers, because of the small number of female police officers in the organization. Moreover, some police stations have been unable to designate a specific area for the desk, as space is limited.

Highly centralized administration makes it difficult for the center to monitor performance in the field. Salary disbursements and routine administrative tasks affecting local police must be made or cleared by PNP headquarters, and local police need to wait for such action or clearance before they can receive their salaries or proceed with their tasks. The limited resources allotted to field offices may not be disbursed on time because of inefficiencies inherent in a centralized administration system.

Other factors—such as LGUs contributing resources to the local police and playing a recommendatory role in the recruitment of police officers, and the Local Government Code authorizing LGUs to supervise the day-to-day operations of the police—make the police vulnerable to the control of local officials.

PNP is also adversely affected by unclear lines of authority. PNP, together with NAPOLCOM (the national commission to which the PNP reports in accordance with the Constitution) are placed under DILG. It is NAPOLCOM, and not DILG, which

Box 17: Resource and Capacity Limitations of the Philippine National Police

Police officers responding to crimes do not have the basic equipment and materials necessary to cordon off the crime scene. They have to wait for specialized teams who perform crime scene investigation. Due to budget limitations, there are very few such teams, and team members usually arrive about 2 hours late.^a Consequently, when these specialized teams arrive, they often find that the evidence has already been tampered with.

^a Government of the Philippines and UNDP. 2005. *Transforming the Philippine National Police into a More Capable, Effective and Credible Police Force*. Manila, pp. 5-56 and 5-57.

monitors PNP performance and serves as a forum for appeals from disciplinary actions. However, as explained in Section A.3.f., at the same time PNP field officers are under “operational supervision and control” of city and municipal mayors, and governors and mayors have the authority to choose PNP provincial directors and chiefs of police. A Supreme Court decision on the matter notwithstanding, there remains some confusion regarding the roles of DILG, NAPOLCOM, and LGU officials in relation to PNP. Such confusion is compounded by the fact that PNP officers may be subject to disciplinary proceedings before a number of agencies, all of which have their own sets of requirements and procedures, and all of which hold hearings.

Another challenge is how to encourage PNP officers to perform their functions in a manner that would result in a better functioning justice system. A UNDP study has noted that a number of police officers appear to believe that a case has been solved when a suspect has been arrested and that it is the prosecutor's responsibility to secure a conviction. This belief is reinforced by performance measures that allocate performance points based on the number of arrests made, and not the number of successful prosecutions resulting from arrests.¹³⁹

As a result, police have reportedly concentrated their efforts on arresting wrongdoers, at the

¹³⁹ Government of the Philippines and UNDP. 2005. *Transforming the Philippine National Police into a More Capable, Effective and Credible Police Force*. Manila, pp. 5-56 and 5-57.

Box 18: Police Officer's Duties after an Arrest

According to a United Nations Development Programme study,^a police officers in the Philippines hesitate to execute affidavits of arrest, which are required to be submitted with other evidence during an inquest investigation, because they believe that attending the suspect's trial to testify on these affidavits would take them away from making other arrests. Police have also reportedly complained about serving arrest warrants, which they perceive to be unnecessary or cumbersome.

^a Government of the Philippines and UNDP. 2005. *Transforming the Philippine National Police into a More Capable, Effective and Credible Police Force*. Manila, pp. 5-56 and 5-57.

expense of collecting and submitting the evidence required by prosecutors to obtain convictions.

Reform program. In 2005, PNP initiated a major reform effort, the PNP Integrated Transformation Program. The program identified 10 reform areas, including the development of institutions and policies that

- improve delineation of and coordination between law enforcement agencies;
- remove institutions that render PNP vulnerable to politicization, and adopt mechanisms for institutional continuity of reform;
- provide police stations with appropriate work tools and strengthened capacity to conduct crime research;
- upgrade physical facilities and equipment in police field operations;
- improve staffing, recruitment, selection, personnel administration, career development, promotion, police remuneration and education, performance monitoring and evaluation, and police discipline; and
- strengthen the administrative and financial capability of PNP, and develop an integrated crime information and communication system.

Thus far, PNP has met a number of milestones identified in its reform program, includ-

ing the establishment of a school for leadership and values formation, activation of education and training boards, implementation of a PNP anticorruption plan, creation of regional and provincial recruitment boards, development of livelihood programs for PNP officers and their families, and establishment of an internal audit unit under the PNP chief.

National Bureau of Investigation

Created in 1936 and modeled after the US Federal Bureau of Investigation, NBI, which operates within DOJ, has 1,730 positions, primarily for plainclothes investigators. It maintains 15 regional and 21 district offices.

NBI agents are generally respected as skilled criminal investigators who can manage major cases and complex issues such as fraud, computer crime, organized crime, and international investigations. The agency can investigate any crime upon its own initiative or upon the request of a government agency. NBI also has the mandate to conduct investigations in civil cases in which the government has some interest. It traces the whereabouts of missing persons and conducts autopsies.

NBI is responsible for maintaining a state-of-the-art criminal laboratory and an extensive criminal records database. These, together with its technical expertise, are available exclusively to all law enforcement and prosecution agencies, as well as courts and other government offices. NBI is also tasked with training local government officers to conduct effective crime investigation and detection when such training is requested.

Challenges. NBI draws its financial resources principally from the national government budget. The budget process currently does not allow NBI to prioritize and allocate resources in line with a strategic plan or assessment of performance. Rather, the Department of Budget and Management provides a budget ceiling that allows a limited amount from which allocations can be made. The budget consists mainly of mandatory personnel services items and current levels of expenditure for maintenance and other operating expenses.

¹⁴⁰ Center for Public Resource Management. 2003. Strengthening the Other Pillars of Justice through Reforms in the Department of Justice: A Diagnostic Report Submitted to UNDP. Manila. pp. 3-21.

NBI also generates revenue from fees for requests for clearances from its criminal records database. These fees are deposited with the National Treasury. Although NBI is authorized to draw from this fund, releases are actually subject to approval by the Department of Budget and Management.¹⁴⁰

NBI's operations are highly centralized, and all decisions and approvals on budget allotment, cash allocations, and actual spending are controlled by the central office.

There is a high vacancy rate in NBI, reportedly due to strict requirements and unattractive remuneration.¹⁴¹ Candidates must be college graduates, and senior officers must be members of the bar. The NBI Academy provides an intensive 16-week training program for candidates. Entry-level investigators receive a little over P15,000 (\$360) a month.

Some consider NBI to need modernization. Originally established to conduct investigations requiring a high level of technical skill, NBI lacks the resources to purchase the facilities and equipment to fulfill this role. Inferior equipment for technical services and lack of transport and communication facilities hamper NBI's capacity to carry out investigations that will lead to the identification, apprehension, prosecution, and conviction of criminals. Legislation to reorganize and modernize the agency was introduced in the Senate in June 2007.¹⁴²

Common Challenges

There is a measure of unclarity and overlap in the roles of PNP and NBI, with some duplication of functions in investigative work. PNP and NBI have similar mandates to conduct criminal investigations, perform searches and seizures, and arrest offenders. When a crime has been committed, an aggrieved person can seek assistance from both PNP and NBI, which may result in the two organizations pursuing parallel investigations. Separate investigations may produce inconsistent results, which can lead to institutional and operational conflict.

The unclear lines of authority affect the efficiency and effectiveness of all other law enforcement agencies and offices with law enforcement functions. There is a need to clarify the role and functions of sector departments such as BIR, the Bureau of Customs, the Bureau of Immigration, and other executive offices with regulatory and law enforcement functions as compared to conventional police institutions such as PNP and NBI.

As in other organizations in the justice sector, the overwhelming share of the budget allocated to law enforcement goes to salaries, leaving only limited amounts for maintenance and other operating expenses and almost nothing for capital investment. In 2008, the primary law enforcement agency, PNP, was allocated P40.7 billion (\$8.6 million) from the national budget.

Justice Sector Agencies Involved in Prosecution

The prosecution of alleged offenders is primarily the responsibility of NPS. However, criminal violations of anticorruption laws filed at the Sandiganbayan are prosecuted by the Office of the Special Prosecutor, attached to the independent Office of the Ombudsman.¹⁴³ Violations under the lower courts' jurisdiction are prosecuted by the deputy ombudsmen and NPS members supervised by the former. The Commission on Elections has exclusive authority to prosecute all election offenses.

Apart from their main function, agencies engaged in the prosecution of criminal offenses also undertake preliminary investigations. A preliminary investigation is an inquiry or proceeding that determines whether there is sufficient ground to believe that a crime has been committed and that the suspect is probably guilty and should be held for trial. It is different in nature from a criminal investigation undertaken by the police or law enforcement agencies. Courts treat the prosecutor's finding of probable cause with the highest

¹⁴¹ The study in footnote 140 states that 48%–55% of positions were vacant in 2002.

¹⁴² An Act Reorganizing and Modernizing the National Bureau of Investigation and Providing Necessary Fund Therefor, and for other Purposes. Senate Bill No. 262, 14th Congress. www.senate.gov.ph/lis/bill_res.aspx?congress=14&q=SBN-262

¹⁴³ Constitution, Art. XI, § 5.

respect.¹⁴⁴ A prosecutor's finding of probable cause binds the suspect to trial.¹⁴⁵

National Prosecution Service

NPS is an integral part of DOJ. Unlike other offices attached to DOJ, such as the Office of the Solicitor General or PAO, it is subject to the direction of the DOJ secretary and has no autonomous power of decision. It is headed by a chief state prosecutor who is appointed by the President.¹⁴⁶ Besides the Office of the Chief State Prosecutor, it has 135 city prosecution offices, 81 provincial offices, and 115 provincial suboffices. It has an authorized workforce of more than 4,000 positions, which is divided almost equally between prosecutors and support personnel. The authorized total number of prosecutors is less than the number of lower courts. However, the reality is that prosecutors are even scarcer, because 27% of 2,415 prosecutor positions are vacant, mostly in the field offices.¹⁴⁷ Legislation has been introduced to increase the compensation and retirement benefits of prosecutors to help overcome this problem.¹⁴⁸ About 10% of support staff positions are also vacant.

The NPS budget (P1.572 billion [\$3.34 million] in 2007) comprises 77% of the total DOJ budget. Budgeting is centralized within DOJ. Neither NPS headquarters nor regional offices have financial management capabilities or responsibilities. Consistent with the pattern throughout the justice sector, almost all of the budget is consumed by personnel services. About 12% is available for maintenance and other operating expenses, with only 4% for capital outlays. Appropriations for maintenance and other operating expenses cover NPS facilities in Manila, as well as the operating expenses of field offices in court buildings and

halls of justice that are owned and maintained by the Supreme Court. While the Supreme Court maintains and administers the halls of justice, NPS and other agencies with offices in the halls of justice maintain their own furniture and equipment, as well as the space allotted by the judiciary to these offices.

As with the courts and the police, local governments augment national government appropriations for prosecutors. These contributions may be in cash or in kind, may vary in amount from place to place, and are not usually documented in a transparent manner that allows the precise amounts to be taken into account in the calculation of the NPS budget. A common way that LGUs augment the NPS budget is to provide support staff members to NPS field offices—more than 600 in total.¹⁴⁹

New prosecutors are recruited largely from recent law school graduates. The entry-level monthly salary is P23,422 (approximately \$500). There is no systemized training program; new prosecutors learn on the job. There is an ongoing effort to update obsolete manuals for prosecutors. A training site has been made available to NPS, but the building remains vacant, without the personnel, program, furniture, or equipment necessary to make it a usable training facility.

Workloads are heavy. A prosecutor handles an average of 230 preliminary investigations and prosecutes about 460 court cases per year. The annual average disposition rate increased from an average of 76% in 2005 to about 80% in 2007. NPS plans to increase its disposition rate to 85% by 2010.

Although it is tasked to investigate administrative complaints against prosecutors, NPS lacks the management systems and information

¹⁴⁴ *People v. Court of Appeals*, G. R. No. 126005, 21 January 1999, 301 SCRA 475 (1999).

¹⁴⁵ *Drilon v. CA*, G. R. No. 115835, 5 July 1996, 258 SCRA 280 (1996).

¹⁴⁶ Presidential Decree No. 1275, 11 April 1978. The chief state prosecutor must be a professionally trained member of the legal profession of proven integrity and competence, with at least 5 years of experience in the legal profession prior to appointment.

¹⁴⁷ The Government's Medium-Term Development Plan observes, "many prosecutors are still leaving to become private practitioners or judges" and "more than 500 prosecutors are needed to expedite the resolution of cases." Government of the Philippines, National Economic and Development Authority. 2004. Chapter 17: Basic Need: Rule of Law. In *Medium-Term Development Plan, 2004–2010*. Manila, p. 192. Also available: www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapterx17_Law.pdf

¹⁴⁸ Senate Bill nos. 212 and 213, 14th Congress, First Regular Session, 30 June 2007.

¹⁴⁹ Management Services Office, DOJ, Government of the Philippines. 2007. *DOJ Annual Report CY 2007*. Manila. www.doj.gov.ph/image/doj%202007%20annual%20report.pdf

Box 19: Preliminary Investigations

The National Prosecution Service undertakes two common types of preliminary investigations.

An inquest investigation is conducted by prosecutors when the accused has been caught in the act of committing a crime. It is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without an arrest warrant, to determine whether they should remain in custody and be charged in court.^a The city or provincial prosecutor designates prosecutors assigned for inquest duties and furnishes the Philippine National Police with a list of their names and their schedule assignments. If there is only one prosecutor assigned in the area, all inquest cases are referred to him or her. The inquest process must be terminated within the period prescribed by article 125 of the revised Penal Code:

- 12 hours for crimes punishable by light penalties (a fine equivalent to not more than \$4.25) or their equivalent,
- 18 hours for crimes punishable by correctional penalties (a fine exceeding \$4.25 but not more than \$126.66) or their equivalent, and
- 36 hours for crimes punishable by afflictive (a fine exceeding \$126.66) or capital penalties or their equivalent.

Regular preliminary investigations are conducted by the prosecutor before the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months, and 1 day, without regard to the fine.^b

^a DOJ Cir. No. 61, 21 December 1993.

^b Revised Rules on Criminal Procedure, Rule 112, §1, para. 2.

technology needed to maintain communication with its field offices, monitor performance, and manage case flow. A case management system is under development, and a code of ethics is nearing completion. DOJ has formed a Management Services Office that has created the Organizational Development Program for NPS. The program outlines the reform priorities of NPS, including the establishment of an internal management unit, a reporting and performance monitoring system, acquisition of reference materials for prosecutors and a case monitoring system, and a human resources management and training program. Close coordination and cooperation with the judiciary and other justice sector agencies is envisaged to address issues of information sharing, program management, and administration of the halls of justice that contain field prosecutors' offices.

Issues Relating to Preliminary Investigations

The probable cause determinations that precede the judicial phase of criminal prosecutions form a substantial part of the workload of agencies responsible for prosecuting criminal offenses. The

purpose of a preliminary investigation is to "secure the innocent against hasty, malicious and oppressive prosecution, to protect him or her from open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and to protect the state from useless and expensive trials."¹⁵⁰ However, it has been noted that

There is generally no time limit for prosecutors to resolve a preliminary investigation, or for the secretary of justice to issue a final decision on appeal. Consequently, some preliminary investigation cases have taken over a year before they are finally resolved at the secretary of justice's level or are filed in court.¹⁵¹

Justice Sector Agencies Engaged in Public Defense

The Constitution guarantees the right to competent and independent counsel to every person under investigation for the commission of an offense. This includes the right of a person who cannot afford counsel to be provided with one.¹⁵² The Constitution further provides that in all criminal

¹⁵⁰ *Trocio v. Manta*, G. R. No. 34834, 15 November 1982, 118 SCRA 241 (1982), citing *Hashim v. Boncan*, 71 Phil. 216 (1941).

¹⁵¹ Guevara, E. and A. Habaradas. 2007. Process Map on the Prosecution of Tax Evasion in the Philippines: Report Submitted to the Asian Development Bank. Manila, p. 69. See also Annex 4 of the report, which tables the age of tax evasion cases resolved by the investigating prosecutor and pending appeal with the chief state prosecutor and the DOJ secretary.

¹⁵² Constitution, Art. III, § 12.

prosecutions, the right of the accused includes “the right to be heard by himself and counsel.”¹⁵³

Accordingly, the state has a duty not only to prosecute alleged offenders, but also to provide counsel for poor persons who are accused of committing crimes. In practice, poor defendants make up the majority of those who are subjected to the criminal justice system. PAO is the principal organization responsible for assuring that the poor have a competent and independent legal defense in criminal proceedings.

PAO is administratively a part of DOJ. However, it requires a degree of autonomy, given its responsibility to act independently as an adversary to NPS (which is also a part of DOJ) in representing persons under investigation or charged with the commission of offenses. That autonomy was granted in legislation enacted in 2007 specifying that “PAO shall be an independent and autonomous office, but attached to DOJ... for purposes of policy and program coordination.”¹⁵⁴

The chief public attorney is required to have the same qualifications as the chief state prosecutor and can be dismissed only for cause. PAO staff members are also required to have the same qualifications as their counterparts in NPS and enjoy protection against arbitrary dismissal.¹⁵⁵ At present, PAO has an authorized staff of 1,850, including about 70 vacant positions. Slightly more than half of the staff members are attorneys. However, the authorizing legislation provides for increased compensation for PAO attorneys and an increase in staffing so that there can be a PAO attorney for every court.

Beyond its responsibilities within the criminal justice system, PAO is one of the many public and private organizations that provide legal services to the poor. In 2008, PAO provided assistance to some 4.8 million poor clients in a range of criminal, civil, and administrative cases.¹⁵⁶

PAO represents a majority of poor defendants in criminal cases. If a PAO attorney is not available

to represent a poor defendant, the trial court may appoint an individual “*counsel de oficio*” under Rule 138 of the Rules of Court. These appointed attorneys do not necessarily have special expertise or experience in the field of criminal justice.

Justice Sector Agencies Involved in Detention, Corrections, and Rehabilitation

A number of agencies under the executive branch manage, operate, and oversee the Philippine corrections and rehabilitation system. Table 9 sets forth their responsibilities.

In 1996, a review committee chaired by DOJ with representation from other concerned agencies and civil society recommended legislation to integrate jail and prison administration and consolidate the functions of the two key corrections agencies, the Bureau of Corrections and Bureau of Jail Management and Penology (BJMP), into a new Bureau of Correctional Services in DOJ. However, Congress has not acted on this recommendation.¹⁵⁷

Detention and Corrections Facilities

Law Enforcement Detention Facilities

Arrested persons are most often initially confined in police detention facilities maintained by various law enforcement agencies. These facilities are not part of the corrections system. This initial confinement is subject to specific time limits in the law, requiring that police detention not exceed a period of 12 to 36 hours, depending on the gravity of the offense.¹⁵⁸ However, in practice, suspected offenders who are not released from police custody may wait for weeks and even months in police holding cells before being transferred to detention in a district, city, municipal, or provincial jail, where accused persons who are unable to post bail are detained.

¹⁵³ Constitution, Art. III, § 14.

¹⁵⁴ Footnote 93, § 2.

¹⁵⁵ Footnote 154, § 5.

¹⁵⁶ Canlas, J. 2007. PAO Gets a Boost with New PAO Bill. *Manila Times*. 9 April.

¹⁵⁷ Executive Order No. 324, 12 April 1996, established the review committee that developed the legislative proposal.

¹⁵⁸ Revised Penal Code, Art. 125, Act No. 3815 (1938).

Box 20: Access to Justice in the Philippines

Access to justice is most commonly associated with access to the courts and provision of legal counsel to those who cannot afford one.

If a member of a poor family in the Philippines is accused of a crime, the family is likely to be unable to pay the legal fees, even if the counsel for the accused provides services for free. The Free Legal Assistance Group (FLAG), a nongovernment lawyers' organization that provides free legal assistance, estimated that the typical cost of a criminal case that is handled *pro bono* can be as high as P70,300 (\$1,496), which "represents the subsistence budget for an entire Filipino family of six for an entire year," and is three times more than the average annual savings of a Filipino family according to official government statistics.^a In addition, the poor would have difficulty in posting bail pending trial, providing travel costs for witnesses to attend trial hearings, or complying with documentary requirements.

It goes without saying that paid counsel would add to the costs. FLAG reports that private legal practitioners charge an acceptance fee at the start of their engagement and an appearance fee for attending hearings. Acceptance fees are usually more than P10,000 (\$213) while appearance fees amount to P1,000 (\$21).^b

Aside from PAO, private sector groups offer free legal services. The Integrated Bar of the Philippines and law school-based legal aid clinics, where senior law students supervised by qualified attorneys appear before courts to represent indigent clients, are prominent legal aid providers.

A Supreme Court rule exempts the poor from paying docket and other fees, including fees for the transcript of court proceedings kept by the court stenographer.^d Under the Action Program for Judicial Reform, the Justice on Wheels Program was established. Three mobile courts were deployed to bring court stations to remote areas and detention facilities far from courts. Under Chief Justice Reynato Puno's leadership, a multisector summit was held to enable the Supreme Court to consider reforms that would increase access to the courts for the poor. The Supreme Court provides relevant protections to the rights of the accused and

free legal counsel to the poor in the Rules of Court.^e The Code of Professional Responsibility of Lawyers provides that lawyers cannot reject the case of the defenseless or the oppressed, refuse to serve the needy, or decline an appointment as counsel *de oficio* or a request from the Integrated Bar of the Philippines to render free legal aid.^f

It bears noting, however, that access to justice in the context of the Philippines means more than free legal assistance or court-related assistance for the poor. The Constitution also promotes the rights of what are perceived to be the most vulnerable sectors in Philippine society, accords a high priority to social justice, guarantees full respect for human rights, and ensures the fundamental equality of women and men. It is replete with policies favoring labor, and recognizes the rights of indigenous cultural communities within the framework of national unity and development. In this context, access to justice refers to defending or promoting the rights of the groups identified in the Constitution as being in need of special protection—women, children, indigenous peoples, labor, and the urban poor.^g The constitutional mandate "does not require a judge to exhibit sensitivity to parties of a case at the expense of impartiality. Rather, it merely requires a judge to provide special protection for those particularly identified in the Constitution as marginalized," and the challenge is how the judiciary can apply "this...legal framework to concrete cases involving vulnerable sectors with predictability and consistency."^h

^a Lawyers' League for Liberty. 2004. Study on Addressing Affordability Constraints on Access to Justice by the Disadvantaged: Focus on Free Legal Service. Manila: Supreme Court of the Philippines.

^b Footnote a.

^c Constitution, Art. III, § 14.

^d Rules of Court, rule 3, § 21 and Administrative Matter No. 04-2-04-Supreme Court.

^e Rules of Court, rules 112–127.

^f Code of Professional Responsibility, canon 2, rule 2.01 and canon 14.

^g Lawyers' League for Liberty, note ^a *supra*.

^h Candelaria, S. and C. Olmedo. 2006. Courts and Social Context Theory: Philippine Judicial Reform as Applied to Vulnerable Sectors. *Ateneo Law Journal*. 50 (823) pp. 829–830.

Local Detention and Corrections Facilities

District, city, municipal, and provincial jails house prisoners awaiting trial and convicts serving sentences of 3 years or less. Three separate agencies are in charge of these institutions.

- **Bureau of Jail Management and Penology.** This bureau, an agency within DILG, is responsible for the management and operation

of about 1,100 district, city, and municipal jails. These are facilities for the detention of those against whom criminal charges are pending as well as those serving sentences of 3 years or less. The bureau's 2007 authorized staffing pattern consists of almost 7,000 positions, more than 98% of which are for uniformed personnel, a

Table 9: Agency Jurisdiction for Confinement and Correction of Offenders

Agency	Facility	Jurisdiction
Bureau of Corrections, Department of Justice	National penitentiaries, prisons, or penal farms	National prisoners or those who are serving sentences of more than 3 years
Bureau of Jail Management and Penology, Department of the Interior and Local Government	District or city jails	Detainees who are in trial or awaiting judgment or sentencing, or are serving sentences of 1 day to 3 years
	Municipal jails	Detainees who are in trial or awaiting judgment or sentencing, or are serving sentences of 1 day to 6 months
Philippine National Police, Department of the Interior and Local Government	City jails	Detainees who are in trial or awaiting judgment or sentencing, or are serving sentences of 1 day to 3 years
	Municipal jails	Detainees who are in trial or awaiting judgment or sentencing, or are serving sentences of 1 day to 6 months
Provincial Government	Provincial jails	Detainees who are in trial or awaiting judgment or sentencing, or are serving sentences of 6 months and 1 day to 3 years
Department of Social Welfare and Development	Regional rehabilitation centers	Children in conflict with the law undergoing suspended sentences
Local Social Welfare and Development	Youth detention homes	Children in conflict with the law undergoing trial, intervention, and diversion proceedings

prisoner–guard ratio of nine to one. The number of detainees in BJMP-managed jails has increased considerably in recent years, 35,000 in 2000 to more than 62,000 by 2005. About 10% are women and 2% are minors. Metro Manila jails reportedly hold 400 times more prisoners than their official capacity. A rehabilitation center in Cebu that was built for 400 was overcrowded with 2,600 detainees until recently.¹⁵⁹ It is striking that more than 95% of the jail population has not been sentenced, and fewer than 5% of detainees are serving sentences following conviction in court.

- **Philippine National Police–controlled jails.** Prior to BJMP’s creation in 1991, the management of local corrections facilities was under the jurisdiction of PNP. Stagnant budgets and a growing jail population have impeded the transfer of functions to BJMP, so that about 750 municipal jails remain under PNP control.
- **Provincial jails.** The Local Government Code authorizes provincial governments to operate jails for detainees awaiting trial and for those serving sentences of 3 years or less. There are 79 provincial and 25 subprovin-

cial jails whose wardens are appointed by provincial governors and that operate separately from BJMP and PNP jails.

National Penitentiaries

The Bureau of Corrections, an integral part of DOJ, operates seven national penitentiaries for the incarceration of prisoners serving sentences of more than 3 years. The bureau also operates a juvenile training center, completed in 2003, and a drug treatment and rehabilitation center built in 2002. As with jails, the population of facilities operated by the bureau is growing. The capacity of the nation’s prisons is 19,600, but occupancy exceeds 25,000. The bureau has about 2,400 authorized positions, of which 60% are in custodial roles, a prisoner–guard ratio of 3.64 to 1.

Parole and Probation Administration and Board of Pardons and Parole

Transition from jail or prison to society is the task of the both of these executive agencies under the direction of DOJ. The Board of Pardons and Parole acts on proposals for the release of a prisoner and determines the individual’s suitability for reintegration into society. It also makes recommenda-

¹⁵⁹ Mercado, J. 2007. Justice as Circus. *Philippine Daily Inquirer*. 30 October. p. A10.

tions to the President for the exercise of executive clemency. Once the bureau approves probation or parole, the Parole and Probation Administration supervises the release of the individual.

Agencies for Children in Conflict with the Law

Under the law, a child in conflict with the law is deprived of freedom only as a last resort. Under Republic Act No. 9344, detention should be replaced by alternative measures as much as possible pending and after trial. Children who are found guilty of a crime but are not criminally liable are required by law to go through an intervention program. Children who are found to be criminally liable but have committed an offense punishable by imprisonment of not more than 6 years may undergo a diversion program as an alternative to detention. Intervention and diversion programs are administered by the local social welfare and development department and include restorative measures such as restitution, community service, counseling, or training in lieu of entering the normal criminal justice process.

Department of Social Welfare and Development

The Department of Social Welfare and Development, through its regional offices, operates 11 regional rehabilitation centers for children in conflict with the law. These regional youth rehabilitation centers house children who are found guilty of committing a crime but whose sentences are suspended by the court. Juvenile reception centers, which reportedly house over 20,000 children, have been criticized for being overcrowded and unsanitary.¹⁶⁰

Local Government Unit Youth Detention Centers

Under Republic Act No. 9344, local governments are mandated to run youth detention homes where children in conflict with the law may be detained pending trial. To date, there are 24 youth

detention homes all over the country managed by various LGUs. They have served a total of 741 children during the first semester of 2009.

Challenges

Detention and corrections facilities suffer from extreme congestion. The problem is due largely to the detention of individuals whose cases are under investigation or who are awaiting trial. Detainees spend time in corrections facilities while their trials are ongoing. Those whose trials are beset by delays languish in jail, notwithstanding the constitutional guarantee that all persons are innocent until proven guilty. At provincial jails, more than 15% of detainees waited more than 5 years for the final hearing in their court cases.¹⁶¹ These detainees' right to due process, which is accorded protection not only by the Constitution but also by several laws, has been violated.

It is worth noting that there is no limit to the length of time a detainee awaiting trial may be kept in jail. At BJMP-managed facilities, more than 95% of the jail population has not been sentenced, and fewer than 5% of detainees are serving sentences following conviction in court.

Record management and monitoring capacities are weak, and the length of stay of many detainees and prisoners cannot be tracked. Consequently, many individuals have reportedly stayed in detention longer than the sentence that could have been imposed had they been promptly tried and prosecuted, or longer than those who have finished serving their sentences.

The above difficulties demonstrate how issues cross institutional lines within the justice system. If preliminary investigations or trials were conducted more quickly, the number of detainees occupying detention and prison facilities might decrease. Improved record management and sharing between justice institutions would also help track the length of stay of detainees and prisoners and might result in the prompt release of those who have stayed in detention longer than the actual sentence.

¹⁶⁰ Footnote 159.

¹⁶¹ Supreme Court, UNDP, CPRM Consultants. 2003. *National Survey of Inmates and Institutional Assessment: Final Report*. Manila. <http://apjr.supremecourt.gov.ph/pubreports/Survey%20of%20Inmates%20Final%20Report.pdf>

Resource limitations have made it impossible to provide adequate space, sanitation, and health care to detainees and convicts serving their sentences. Agencies involved in corrections and rehabilitation rely primarily on the national government budget to fund expenses. The lack of fiscal resources has made it difficult for corrections institutions to support the burgeoning population in their facilities, let alone rehabilitation programs, notwithstanding that legislation creating BJMP contemplated the buildup of capabilities for humane treatment and rehabilitation of detainees.¹⁶² Corrections institutions have limited ability to foster the rehabilitation of prisoners or to protect their human rights while incarcerated. Improving these conditions will require a sub-

stantial investment beyond the limited resources provided in the normal budgets of organizations responsible for such facilities.

Legislation proposed to improve the management structure of the corrections system has not been enacted. The objective of professionalizing the operation of the jails has been frustrated by funding limitations that have left many jails still under the control of PNP. Also, the number of detainees continues to grow faster than the budget for BJMP. Yet it is difficult for the field of corrections to compete with other priorities for the attention of budget decision makers. Periodic decongestion actions to release some prisoners have not changed the basic dynamic of continuing overcrowding in jails.

¹⁶² Section 63 of Republic Act No. 6975, 13 December 1990, expressed the expectation that heads of jails will assist in rehabilitation, exercise, care, human rights, and spiritual and physical well-being of detainees.

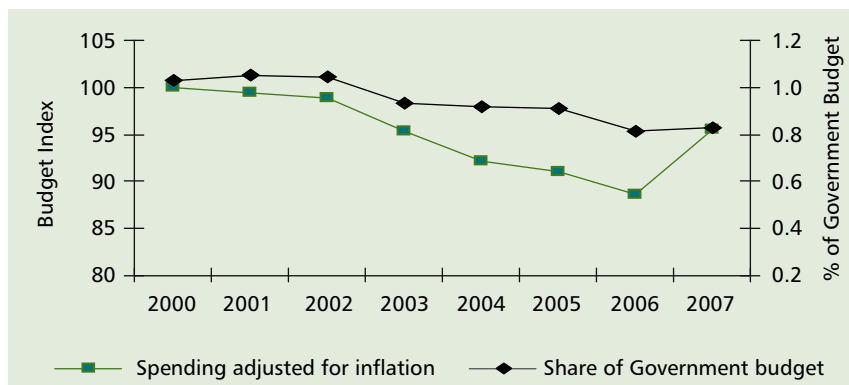
Common Challenges to the Justice Sector

The justice system of the Philippines is a highly sophisticated network of institutions that, working together, can assure the fair and timely resolution of disputes and equal protection of rights, foster a culture of lawfulness, and advance the rule of law. Since 1986, justice sector reform in the Philippines has been characterized by the flourishing of new and restructured institutions with responsibilities for the administration of justice, as well as new courts, new executive branch agencies, and reorganizations that have created new responsibilities and new requirements for inter-institutional coordination. However, resource limitations and poor management have combined to impede the institutional development and efficiency of many of these new and restructured organizations.

Resource Constraints

In recent years, the judiciary's budget has been insufficient to meet the demands of the courts' increasing workload. As previously mentioned, while there have been annual increases in recent years in the judiciary's obligated budget, its value in real terms and its share of the National Expenditure Program have actually decreased, as shown in the figure.

Suppressed Spending for the Judiciary
(budget adjusted for inflation and indexed to 100 in 2000)



Note: The budget was adjusted for inflation and indexed to 100 in 2000.

Source: ADB. 2008. *Report and Recommendation to the President. Proposed Program Cluster, Loan for Subprogram 1, and Technical Assistance Grant, Republic of the Philippines: Governance in Justice Sector Reform Program*. Manila. p. 12.

Nonjudicial agencies suffer the same budgetary constraints as the judiciary. In general, while annual budgetary allocations have increased in nominal terms, their real value has decreased. Between 2000 and 2007, the total budget in real terms for nonjudicial agencies dropped by about 5%; DOJ experienced the largest decline, about 15%.

Inadequate budgetary resources have led justice sector agencies to prioritize recurrent expenses (primarily personnel) and fund all other expenses with whatever resources remain. Consequently, more than 80% of justice sector agency budgets go to salaries, leaving less than 15% for maintenance and other operating expenses and less than 3% for capital investment. This deviates from the profile of the national government budget, which devotes 32% to expenses for personnel services and about 58% to maintenance and other operating expenses.

Since the budgets of institutions in the justice system leave little for investment in modernizing technology and equipment or for maintenance, management systems and infrastructure tend to be inadequate. Readily available technology is not being put to use. Weak ability to implement appears to be one reason why well-designed reform initiatives have often experienced disappointing results, or why implementation has been delayed. Improved capability should help increase the productivity of investment and control costs. Building institutional capability involves costs, especially for organizations whose budgets have been almost entirely consumed by personnel expenditures, leaving inadequate sums for maintenance and investment. There is no obvious way in which the needed capability can be built at current funding levels. The justice system needs to escape from this vicious circle into a pattern of increased productivity sustained with adequate resources.

Delays in Justice Administration

A major, persistent challenge to the justice system is the enduring perception of delay in the delivery of justice. The Constitution and various laws impose time limits on the judiciary, but generally have no counterpart provisions for other agencies involved in the administration of justice. This absence is particularly felt in phases where the likelihood of delay occurring is strong, such as dur-

ing the police investigation, preliminary investigation, and during the enforcement of judgments. Thus, even if the courts kept well within the time limits imposed by the Constitution and laws, the perception of delay in the delivery of justice would continue to exist. The interrelated nature of justice sector agency operations requires that delay be decreased and prevented in all investigations, dispute resolutions, and enforcement.

In courts, a number of initiatives have been introduced to reduce delay, but some have never been fully implemented. The courts, the bar, and other justice organizations must give practical effect to any rule changes by integrating appropriate costs and benefits into the incentive structures found in the day-to-day operations of the justice system. New rules must diminish opportunities for delaying tactics, reward timeliness, and protect officials who apply the rules. The benefits of delay reduction need to be publicized to sustain a new demand for and expectation of timeliness in the administration of justice.

NPS' lengthy, complex procedures for the determination of probable cause are a recognized cause of delay in the criminal justice arena. Allowing simplified, rapid determinations of probable cause with safeguards against obvious abuse, together with broad discretion to decline prosecution in cases with poor prospects for conviction, could leave prosecutors with more manageable workloads and relieve the courts of large volume of criminal cases in which there is no active prosecution, cases that ultimately are archived. Expediting probable cause determinations would also reduce extended periods of detention for accused individuals.

Finally, delay in criminal prosecution and the court process can be decreased if law enforcement agencies gather evidence sufficient to prosecute a case and to obtain a conviction. To this end, PNP and other law enforcement agencies must view their role in the criminal justice process as integral to obtaining a conviction, rather than simply arresting a suspect.

Capacity to Undertake Reforms

It is clear that the reforms have introduced many improved procedures, such as the courts' updated

rules of civil and criminal procedure, as well as improved management systems, such as computerized information systems. However, the design of modern systems, the formulation of plans for facility enhancement, and skillfully crafted action plans have often failed to produce the intended results, in part because of inadequate ability to implement them. The justice sector has been slow in scaling up from pilot programs and making changes operational for general application. Current examples include the creation of model police stations by PNP, the implementation of court decongestion measures, and the uniform application of case management systems.

Successful implementation of justice reforms will demand that participating organizations be able to do what they say they will do: relate budgets to strategy, meet objectives, adapt to changing circumstances, monitor performance, and report on results. This will require improved management systems and qualified, trained people to implement those systems. Currently, management systems are weak, due to the inadequacy of budgets across the sector.

Lack of capability also makes it more difficult for justice sector agencies to overcome internal resistance to changes that threaten to reallocate work, authority, and resources. This will require special efforts to assure adequate communication, preparation, and alignment of incentive structures with new policies and programs. Capability for change management is needed.

Improving institutional capability requires supporting improvements to the justice sector's information and case management systems and the procurement and maintenance of equipment, technology, and facilities. Information systems are essential to provide timely and accurate assessments of performance regarding service to the public, management of work, and implementation of reforms. Computerized systems need to reflect decisions already made on information that should be collected and shared, appropriate data standards, and what business processes should be linked among institutions. It is particularly important that justice sector agencies be able to communicate through compatible systems between headquarters and field offices and between organizations that need to work together. The development of an information system for the justice

sector will facilitate more effective information sharing.

Efficient case management not only helps track individual cases, it improves the efficiency of all the concerned organizations and helps them rationalize their priorities and workload distribution. While a pilot case management system has been launched for the courts and one is under study by NPS, case management has not been developed for other organizations.

Inadequacies in facilities and equipment also impede efficient performance throughout the justice system. Many people working in the justice sector lack the most basic tools needed to perform efficiently. Investment in information and case management systems is directly relevant here. Agencies that lack computers and internet access will have obvious difficulties contributing to information and case management systems. Inadequate storage facilities can result in evidence, files, and other essential information being lost. The decentralization of financial and administrative management in the courts, approved in 2004 but not yet operational on a nationwide basis, can help the judiciary address this situation. However, comparable and even more pressing needs exist in other justice sector institutions, which also need to be addressed.

Oversight and Accountability

Organizational challenges to strong institutional capability include the proliferation of agencies with overlapping responsibilities and others with multiple oversight responsibilities. For example, duplication of functions among law enforcement agencies inevitably creates inefficiencies. This is compounded by other law enforcement agencies' reliance on PNP personnel to provide operational support. In addition, the authority of DILG, LGUs, NAPOLCOM, and others to perform sometimes duplicative oversight diminishes clarity in lines of authority and consumes resources that might better be used to meet substantial needs for capital investment and maintenance.

Another organizational challenge is posed by the fragmentation of responsibility for the system of detention, correction, and rehabilitation. At present, BJMP, the Bureau of Corrections,

other DOJ entities, and the Department of Social Welfare and Development all have partial responsibilities for the care and rehabilitation of offenders. Conditions in overcrowded jails and prisons warrant early attention as a human rights issue.

Public doubts about the integrity of the justice system and about the sincerity of justice organizations in fighting corruption suggest the need for a stronger effort to enhance accountability than has been evident in past reforms. In some cases, disciplinary actions have been taken against judges, lawyers, and police officers, helping give credibility to the system. However, previous reforms have not adequately addressed the apparent lack of transparency and consistency in the response of the justice organizations to corruption allegations.

The support given to a consortium of civil society organizations to monitor the process for appointment of Supreme Court justices has been one innovation in past reform efforts to enhance accountability of the justice system. The recent determination of that civil society consortium to expand its activity to judicial appointments is a step toward greater accountability.

Fiscal Autonomy and Accountability

Cash-strapped institutions or underpaid employees in the justice sector are more likely to seek extrabudgetary resources, potentially jeopardizing integrity in pursuit of independence. The supplemental financing, through cash or in-kind support, provided to some justice organizations by local governments is also troubling. For the most part, this support is not transparent, and it creates the risk of dependence on the generosity of local officials who may have official or personal interests that involve the justice system.

Justice organizations that have been able to collect and retain fees for services have obtained some relief. Yet reliance on fees for operating expenses provides agencies a perverse incentive to impose higher fees. Also, because fees reflect services for which the public will pay, they may not be a practical way to help meet many resource needs. For example, the courts can collect filing fees from litigants, but BJMP cannot collect fees from prisoners.

A principal challenge to the judiciary is its continuing lack of fiscal autonomy despite the constitutional provision guaranteeing such autonomy. The executive branch remains involved in the fiscal management of the judiciary, and may continue to stay involved until its capability for fiscal management is enhanced and its accountability mechanisms are improved.

Human Resources Management

Efforts to change behavior need incentives. Justice agencies should be able to articulate clear standards of good performance, reward those who surpass standards, and penalize those who disregard them.

Training and other human resources practices must seek to build a culture of shared purpose and public service to answer the need for collaboration between organizations.

Beyond training, allocating work to make the most effective use of valuable human resources and provide greater job satisfaction remains a challenge. It is possible, for example, that some administrative functions now performed in the chambers of individual judges could be done more efficiently by a small professional staff for an entire hall of justice. The consolidation of some support services could increase opportunities for career development and advancement by specialists. Imaginative career development possibilities, applying expertise in a variety of institutional settings, could help to retain valuable staff members whose skills and experience might otherwise be lost. Greater flexibility in position descriptions and hours of work could also help increase productivity and contribute to more satisfying jobs.

Access to Justice

The impact of the justice system on the broader population, especially on the poor and disadvantaged, poses specific challenges.

The poor are likely to lack awareness of their rights and to be deterred because justice organizations are inconveniently located. The poor can be intimidated by costly and opaque processes and discouraged by extended delays that they cannot

afford. The concept of an access-to-justice network at the community level, currently under discussion, appears to have considerable promise. Building capability at the community level with the involvement of community residents is difficult, but it can be an instrument of legal empowerment, and thus contribute to broadened participation in economic and social development.¹⁶³

This network can assist in coordinating fragmented efforts by PAO, IBP, various universities and legal clinics, and others that provide legal assistance and services to the poor. Meeting great demand with limited resources requires efficiency in coordinating the delivery of legal services and also in assuring that potential recipients know where to turn and what are the implications of their various choices.

One other dimension of access to justice is public access to legal information. The evolution of electronic publishing has widened the public availability of Supreme Court decisions. Publication of all appellate court decisions, not just those of the Supreme Court, on the courts' own websites will make them more accountable to the public for the quality and consistency of their decisions and will also provide a source of valuable information about how the courts are likely to decide various issues. In this way, publication of more judicial decisions could foster greater consistency, increase legal certainty, and discourage frivolous appeals. In turn, greater legal certainty and predictability would be a factor in encouraging investment and other economic activity in the Philippines.

Alternative dispute resolution mechanisms have increased access to justice, and have reduced the volume of litigation to some extent. Expanding the availability of these mechanisms is still another challenge. At the time this report was being prepared, the Alternative Dispute Resolution Act of 2004 was in limbo, pending completion of the process for issuance of the implementing regulations and related modifications of the Rules of Court. The entry into force of this modern legislation could give impetus to growth of alternative dispute reso-

lution services, expanding access to justice while diminishing the existing burden on the courts.

Conclusion

This report has documented the strong tradition of support for the rule of law in the Philippines, the continuing efforts over the past two decades to restore the institutions of the justice system, and the current state of the administration of justice. From this review, it is clear that the principal challenge in the coming years will be to consolidate and build on the achievements of the previous reforms with an intense focus on implementation.

The delivery of justice is a process and duty shared by all justice sector agencies. Although each justice sector agency plays a specific role in a system of checks and balances, each must also recognize that its performance and the attainment of its ultimate objective depend on other agencies' performance. Coordination, particularly on the ground, is necessary to improve efficiency in justice administration. To ensure that coordination does not decrease the integrity and autonomy of each agency, sufficient capability for accountability and oversight needs to be put into place.

It is necessary to concentrate on measures that will demonstrably improve the performance of the entire justice system and the quality, scope of access, and timeliness of the public services it provides. Achieving this will require a substantial improvement in the ability of the justice organizations to manage for results and adapt to change, and will require a significant financial investment in capacity building and increased accountability for timely implementation of planned actions. In turn, the effort to improve the ability to manage improved performance and increase accountability—and the commitment of resources this will require—is likely to be sustained only if there is a political consensus that the benefits of improved justice system performance outweigh the costs and risks.

¹⁶³ See the discussion of legal empowerment, good governance, and poverty reduction in ADB. 2001. *Law and Policy Reform at the Asian Development Bank*. Manila. www.adb.org/Documents/Others/Law_ADB/lpr_2001.pdf. See also Golub, S. 2006. Legal Empowerment: Impact and Implications for the Development Community and the World Bank. *The World Bank Legal Review: Law, Equity, and Development* 2. Washington, DC. p. 167.

Background Note on the Justice Sector of the Philippines

This report is part of the efforts of the Asian Development Bank to support justice sector reform. It provides an overview of the sector, identifies key constraints and issues confronting it, and undertakes a preliminary assessment of reform initiatives by justice sector agencies—mainly the judiciary—through 2009.

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