

Chapter 8

Access to Justice: A Prerequisite to Prosperity*

I am greatly honored to have been invited by the Asian Development Bank (ADB) to attend this symposium it sponsored on judicial reforms and to deliver the keynote address on “Enhancing the Effectiveness and Accountability of the Judiciary.”

International Interest in Judicial Reforms

Let me start by recalling that on October 4-8, 2001, during the 9th Conference of Chief Justices in the Asia-Pacific in Christchurch, New Zealand, guest speakers from the United Nations and the World Bank spoke glowingly of the efforts of the Philippine Supreme Court to uphold judicial independence and integrity.^[1] As a Filipino citizen, I was singularly proud to be present at the conference and to hear this unsolicited tribute to the Philippine judiciary.

That was more than three years ago. Since then, various developmental agencies have made further endorsements of our Action Program for Judicial Reform^[2] (APJR). Aside from supporting the APJR with grants and loans, the World Bank has posted on its own website our blueprint for reform as a model that other developing countries may follow, should they desire World Bank assistance. The US Agency for International Development (USAID), the Canadian International Development Agency (CIDA) and the Australian AID (AusAID) have also given us generous assistance, particularly in computerizing the internal processes of the

judiciary and in making its information functions more transparent.

We are now at an advanced stage of negotiation for a Japanese government grant to build our Philippine Judicial Academy complex in Tagaytay, which is envisioned to be a center for continuing judicial education. Lately, the European Union has granted the Supreme Court some 2.3 million euros to help implement our “Access to Justice for the Poor” program.

Early on, the Asian Development Bank has given us ADB TA No. 3693-PHI aimed at “Strengthening the Independence and Defining the Accountability of the Judiciary.”

Role of the Supreme Court in Governance

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

Despite its sometimes mysterious ways, the Supreme Court is treated as coequal with the President and Congress. It is vested by the Constitution with the solemn duty to nullify any act of any branch of government, including those of the President and of Congress, on the ground of “grave abuse of discretion.”^[3] Pursuant to such plenary authority, the Court has, on many occasions, struck down laws that contravened the Constitution,^[4] executive and administrative orders issued without lawful authority,^[5] and mega-contracts entered into with

grave abuse of discretion by the officials concerned.^[6]

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

The Need for Transparency in Judicial Processes

Because of the all-encompassing and metamorphosing effect of the judiciary on the lives of our people, there has been an ever-growing call for more transparency on its part. In response, the doors of the judicial fortress have been partially opened and the gods have become a bit more accessible. Both their persons and their lives have been subjected to more rigid public scrutiny.

Verily, the judicial enclave has been invaded by the transparency requirements of the Constitution,^[7] the Ethical Standards Law,^[8] the Canons of Judicial Ethics^[9] and the New Code of Judicial Conduct for the Philippine Judiciary.^[10] The democratic space and libertarian spirit that the Supreme Court has repeatedly espoused in its judgments of other government institutions have seeped into its own functions and activities.

Indeed, the information revolution has penetrated the judicial fortress. Our people no

longer accept judicial doctrines they do not understand. Neither do they blindly defer to judgments that rest on unexplained rationale. For its part, media has persistently knocked on the ramparts of judicial fortifications and climbed the steep gorges of Mount Olympus. “[T]he invasive power and influence of media have penetrated the thick walls of the judicial fortress.”^[11]

Because of its vital role in the life of the nation, the judiciary has become the focus of many credible developmental agencies like the World Bank and the ADB. They realize that stability in the rule of law and predictability in the rendition of decisions are indispensable to investor confidence and economic development, and ultimately to good governance.

Notably, your forum today goes beyond a discussion of economic development and the traditional indices used to measure this nation’s stability and growth, like the gross domestic product, gross international reserves and credit-agency ratings.

In his letter inviting me to this symposium, ADB General Counsel Arthur M. Mitchell asked me to stress how a more effective and accountable judiciary contributes to poverty reduction, particularly (1) in leveling the economic playing field, (2) in providing access to opportunity and availability of food and shelter, and (3) in protecting the substantive and procedural due process of law. Indeed, access to justice especially by the poor is as essential to good governance as investor confidence in the economy.

Because of the very limited time given me (20 minutes), I shall discuss this topic in broad bullet-type strokes, but with detailed footnotes on the hard copy of this address that will

be distributed to all of you later.

The Pro-Poor Bias of our Constitution and Laws

First, let me say that our very Constitution is pro-poor, pro-labor and pro-human rights. Having arisen from the ashes of an authoritarian regime, our 1987 Constitution is international in outlook,^[12] promotive of social justice,^[13] respectful of human rights,^[14] responsive to the role of women,^[15] protective of labor,^[16] and cognizant of the rights of indigenous cultural communities.^[17]

This Constitution spells out in neat detail the rights of persons accused of crimes^[18] and assures them of free access to the courts and adequate legal assistance, which “shall not be denied to any person by reason of poverty.”^[19] Furthermore, it provides in clear black-and-white provisions the so-called Miranda rights of the accused.^[20] In all criminal prosecutions, due process and the right to “competent and independent counsel” are guaranteed.^[21]

Furthermore, social justice is given high priority in our constitutional hierarchy.^[22]

Second, to implement these pro-poor constitutional mandates, Congress has passed several laws having the following aims:

- 1 To define the rights of persons arrested or detained^[23]

2. To protect women and children from domestic violence^[24]
3. To protect children from abuse, exploitation and discrimination^[25]
4. To penalize violations of basic human rights^[26]
5. To settle disputes amicably at the barangay level^[27]
6. To enhance the capability of low-income groups to acquire low-cost housing^[28]
7. To develop agriculture and empower small farmers^[29]
8. To accord protection to labor^[30]

The Supreme Court's Role in Fostering Social Justice

Third, even more directly, the Supreme Court has opened the justice system to indigents through these measures:

1. Exempting them from the payment of docket and other fees and transcripts of stenographic notes^[31]
2. Providing protection to and enforcement of the constitutional rights of the accused^[32]
3. Granting free legal counsel to indigents^[33]
4. Requiring lawyers to provide free representation to poor litigants^[34]

In addition, *pro bono* legal services are provided by several nongovernmental groups, like (a) the Integrated Bar of the Philippines, to which the Supreme Court gives an annual

grant to fund its Free Legal Aid Program; and (b) the Free Legal Assistance Group (FLAG), which focuses on public, rather than private, issues.

To attend to our Muslim brethren, the Supreme Court has authorized the organization of the Shari'ah Appellate Court,^[35] which was established by RA 6734 or the ARMM^[36] Law.

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

Ang Bagong Bayani-OFW Labor Party v. Commission on Elections,^[37] for instance, held that the Filipino-style party-list system was reserved for the poor and the marginalized. In the Decision that I had the honor to write, the Court observed thus:

“It is ironic, x x x that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted -- to give them not only genuine hope, but genuine power; to give them the opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct voice in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change. Verily, it invites those marginalized and underrepresented in the past -- the farm hands, the fisher folk, the urban poor, even those in the underground movement -- to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling and desecrating this social justice vehicle.”

Nowhere is the bias of the Court for the poor clearer than in its labor law decisions.

Under its watchful eyes and steady hands thrived and bloomed the seeds sown in 1940 by *Calalang v. Williams*.^[38] For sure, some of the battles^[39] that have been waged on this front still rage to this day. Accordingly, the Court has steadfastly ruled as follows:

1. Workers may be dismissed from work only upon (1) a just or authorized cause and (2) upon observance of due process.^[40]
2. Illegally dismissed workers are entitled to reinstatement, damages and back wages.^[41]
3. Strict technical legal requirements may be disregarded whenever they are used to deny substantial justice to workers.^[42]
4. Employees, though dismissed for a just cause, may be awarded separation pay on the grounds of equity and social justice, except when they have been dismissed for serious misconduct or some other cause reflecting on their moral character.^[43]
5. Workers' quitclaims and waivers are generally not binding and should not bar employees from claiming what is legally due them under the law.^[44]
6. Employees in the private sector can, subject to reasonable restrictions, picket and strike to protect themselves against exploitation and to seek better conditions of employment.^[45]
7. Local recruitment companies may be held liable for violation of the labor contracts of overseas Filipino workers.^[46]
8. The applicability of labor doctrines is extended to civil servants who have been dismissed from the service when less punitive penalties would have sufficed.^[47]

The foregoing discussion is by no means exhaustive.

The magnitude and viciousness of human rights violations in our recent history have spurred the Court to strengthen the protection of the people's fundamental rights. It has been uncompromising in (1) penalizing judges who failed to inform uneducated accused persons of their rights to counsel;^[48] (2) annulling lower court judgments in which the judge failed to conduct a "searching inquiry" whenever the accused had waived their right to be heard and plead guilty to the charge against them;^[49] (3) voiding judgments that do not conform with the constitutional standards as to form and substance;^[50] and (4) extending the protection of the Universal Declaration of Human Rights to everyone, including aliens.^[51]

Restoration of the Death Penalty

Notwithstanding the restoration of the death penalty^[52] -- declared by the Court to be constitutional^[53] despite my unyielding personal opinion that it was not^[54] -- the Court has been strict in reviewing death sentences imposed by lower courts. As a result, less than one third of such judgments have been affirmed.^[55] Recently in *People v. Mateo*,^[56] the Supreme Court held it "wise and compelling" to have the Court of Appeals (CA) review all death and life sentences before elevating them to the Supreme Court.

Consistent with *Mateo*, the Court amended certain portions of the Revised Rules of Criminal procedure -- Sections 3(c),^[57] 3(d)^[58] and 10^[59] of Rule 122; and Sections 12^[60]

and 13^[61] of Rule 124 -- to simplify the appeal of capital offenses by requiring a notice of appeal only to the CA.

Death convicts must be given the same opportunity for multiple review as those convicted of lesser crimes.

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

Also because of our labor laws, many businessmen complain that they are hampered in disciplining erring employees who could harass them through never-ending strikes, pickets, attacks coursed through the media, or continuous complaints to the National Labor Relations Commission.

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

Conclusion

To sum up the balancing role of the judiciary in our government, may I quote my recent book *Leveling the Playing Field*:^[62]

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

By your conference theme today, “Challenges in Implementing Access to Judicial Reforms,” I believe that you would agree with the afore-quoted job description of our highest court. Indeed, there can be no prosperity or progress without affording justice and peace to all, especially to the underprivileged and the disadvantaged. May I congratulate the ADB and all the participants in this symposium for a reassuring interest in strengthening the indispensable nexus between justice and development.

Maraming salamat po.

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Keynote address I delivered during a symposium on “Challenges in Implementing Access to Justice Reforms,” delivered on January 27, 2005. Sponsored by the Asian Development Bank, the symposium was held at the ADB headquarters in Mandaluyong City, Philippines, during the 10th Annual Meeting of the General Counsels of the ADB on January 26-28, 2005.

[1]

Upon his physician’s advice, Chief Justice Hilario G. Davide Jr. was unable to attend. In his place, I represented the Supreme Court of the Philippines.

[2]

For a detailed treatment of the APJR, please refer to Panganiban, *Reforming the Judiciary* (2002), pp. 3-106.

[3]

§1 of Article VIII of the Philippine Constitution states:

“x x x. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.”

[4]

The Court nullified RA No. 8180, the first Oil Deregulation Law, because it violated the Constitution. Specifically, it found that three provisions of the law obstructed the entry of new oil companies into the Philippines, thereby perpetuating a monopoly of the so-called Big Three oil companies -- Petron, Shell and Caltex. *Tatad v. Secretary of Energy*, 346 Phil. 321, November 5, 1997.

The Court also voided Sections 26 and 31 of Republic Act 6975, which had empowered the Commission on Appointments to confirm public officials' appointments that the Constitution did not require to be confirmed. *Manalo v. Sistoza*, 371 Phil. 165, August 11, 1999.

Several portions of RA No. 9189 were declared unconstitutional for being repugnant to Section 1 of Article IX-A of the Constitution, mandating the independence of constitutional commissions, such as the Commission on Elections. *Macalintal v. Comelec*, 405 SCRA 614, July 10, 2003.

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

[5]

Executive Order No. 284, which had allowed government officials to hold multiple positions in government was declared unconstitutional for being contrary to Section 13, Article VII of the Constitution. *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, February 22, 1991.

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

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

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

[6]

Some recent contracts are as follows:

The AMARI Contract. The Court ruled that the Joint Venture Agreement between the Public Estates Authority (PEA) and the Amari Coastal Bay and Development Corporation for the reclamation of certain portions of Manila Bay had violated the constitutional ban on the sale of reclaimed foreshore lands to, and the reclamation of stillsubmerged foreshore lands by, a private corporation. *Chavez v. Public Estates Authority*, 433 Phil. 506, July 9, 2002; 403 SCRA 1, May 6, 2003; and 415 SCRA 403, November 11, 2003.

The PIATCO Contract. It was held that the "Build-Operate -Transfer" Contract for the construction and operation of Terminal III of the Ninoy Aquino International Airport (a) violated the anti-monopoly provisions of the Constitution, because it gave the Philippine International Air Terminals Company, Inc. (Piatco) the exclusive right to operate a commercial passenger terminal within the island of Luzon; and (b) transgressed the fair competition essence of the law in granting Piatco substantially more benefits than those allowed by the bidding rules. *Agan v. PIATCO*, 402 SCRA 612, May 5, 2003 and January 21, 2004.

The MEGA PACIFIC Contract. In setting aside the Contract for the supply of automated counting machines for the elections, the Court held, among others, that the Contract had been awarded in contravention of the bidding rules laid down by the awarding agency itself, the Commission on Elections. *Information Technology Foundation v. Comelec*, 419 SCRA 141, January 13, 2004, and February 17, 2004.

The SAGE Contract. The contract granting a private company, the Sports and Games and Entertainment Corporation or SAGE, authority to operate on-line Internet gambling was voided, because the charter of the government-owned Philippine Amusement and Gaming Corporation (Pagcor) prohibited it from delegating its franchise to other entities. *Jaworski v. Pagcor*, 419 SCRA 317, January 14, 2004.

[7] The Constitution provides as follows:

“Art. II, Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”

“Art. III, Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”

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

[8] RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).

[9] The Canons, suppletory to the New Code of Judicial Conduct for the Philippine Judiciary, states:

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

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

[11] Panganiban, *Transparency, Unanimity & Diversity* (2000), p. 57.

[12] §2 of Article II of the Constitution:

“Sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”

[13] §§9 & 10 of Article II of the Constitution:

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

“Sec. 10. The State shall promote social justice in all phases of national development.”

[14] §11 of Article II of the Constitution:

“Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.”

[15] §14 of Article II of the Constitution:

“Sec. 14. The State recognizes the role of women in nation-building, and shall

ensure the fundamental equality before the law of women and men.”

[16]

Article II of the 1987 Constitution is replete with state policies favoring labor, as shown by the following:

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

"Sec. 10. The State shall promote social justice in all phases of national development."

"Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare."

Section 3 of Article XIII (Social Justice) likewise provides as follows:

"Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of opportunities for all.

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

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

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

[17]

§22 of Article II of the Constitution:

"Sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."

[18]

§14 of Article III (Bill of Rights) of the Constitution:

"Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

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

[19]

§11 of Article III of the Constitution.

[20]

§12 of Article III of the Constitution:

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

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

incommunicado, or other similar forms of detention are prohibited.

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

[21] §14, supra; and §16 of Article III of the Constitution states:

“Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”

[22] Selected sections of Article XIII are reproduced below:

“Sec. 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

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

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

“Sec. 3. (supra)

“Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. x x x .

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

“Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

No resettlement of urban and rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

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

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

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

x x x

x x x

x x x

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

x x x

x x x

x x x

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

x x x

x x x

x x x”

[23] RA 7438 is an “act defining certain rights of person arrested, detained or under custodial investigation as well as the duties of the arresting, detaining and investigating officers, and providing

penalties for violations thereof.”

[24] RA 9292 (Anti-Violence Against Women and Their Children Law).

[25] RA 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Law). *See also* RA 8353 (Anti-Rape Law), RA 9231 (Child Labor Law) and RA 9208 (Anti-Trafficking in Persons Law).

[26] Articles 124-133, Title II (Crimes Against Fundamental Laws of the State), Chapter One, Book II of the Revised Penal Code. Specifically, the crimes punished are arbitrary detention, delay in the delivery of detained persons to the proper judicial authorities, delaying release, expulsion, violation of domicile, malicious procurement of search warrants and abuse in the service of those legally obtained, prohibition, interruption and dissolution of peaceful meetings, interruption of religious worship, and offending religious feelings. *See also* RA 7438 and RA 9292.

[27] RA 7160 (The Local Government Code) and PD 1508 (The Katarungan Pambarangay Law).

[28] RA 7835 (The Comprehensive and Integrated Shelter Financing Act), RA 6846 (The Social Housing Support Act), RA 6846 (The Social Housing Support Fund Act) and RA 7279 (The Urban Development and Housing Act).

[29] RA 7695 (Magna Carta of Small Farmers).

[30] PD 442, as amended (The Labor Code) and RA 8042 (The Migrant and Overseas Workers Act).

[31] §21 of Rule 3 of the Rules of Court and AM No. 04-2-04-SC.

[32] Rules 112-127 of the Rules of Court.

[33] §7 of Rule 116 and §13 of Rule 122 of the Rules of Court. The Court also appoints the Public Attorney’s Office to represent the poor in all relevant litigations.

[34] Canon 2 of the Code of Professional Responsibility states:

“Canon 2 — A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

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

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

Canon 14 of the same Code reads:

“Canon 14 — A lawyer shall not refuse his services to the needy.

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

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

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

- a) he is not in a position to carry out the work effectively or competently; or
- b) he labors under a conflict of interest between him and the prospective client, or between a present client and the prospective client.

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

[35] AM No. 99-4-06-SC, June 8, 1999.

- [36] Autonomous Region in Muslim Mindanao.
- [37] 412 Phil. 308, June 26, 2001.
- [38] 70 Phil. 726, December 2, 1940. The case laid down the definition of “social justice,” which is immortalized in countless decisions. Said the Court:
 “Social justice is ‘neither communism, nor despotism, nor atomism, nor anarchy,’ but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. x x x.”
- [39] In Chapter VIII of my book *Battles in the Supreme Court* (1998 ed.), I narrated my efforts to accord greater benefits to workers whose services had been terminated for cause but without due process.
- [40] *Bolinao Security and Investigation Service, Inc. v. Toston*, GR No. 139135, January 29, 2004; *Mendoza v. NLRC*, 310 SCRA 846, July 20, 1999; *Pascua v. NLRC*, 351 Phil. 48, March 13, 1998; and *Pacific Maritime Services, Inc. v. Ranay*, 341 Phil. 716, July 21, 1997.
- [41] *Paguio Transport Corporation v. NLRC*, 356 Phil. 158, August 28, 1998; *Mabuhay Development Industries v. NLRC*, 351 Phil. 227, March 25, 1998; *Magcalas v. NLRC*, 336 Phil. 433, March 13, 1997; and *AHS/Philippines, Inc. v. Court of Appeals*, 327 Phil. 129, June 14, 1996.
- [42] *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 364 SCRA 204, September 16, 2003; *Philimare Shipping & Equipment Supply, Inc. v. NLRC*, 378 Phil. 131, December 23, 1999; *Samar II Electric Cooperative, Inc. v. NLRC*, 337 Phil. 24, March 21, 1997; *Aurora Land Projects Corp. v. NLRC*, 334 Phil. 44, January 2, 1997; *The New Valley Times Press v. NLRC*, 211 SCRA 509, July 15, 1992.
- [43] This rule was laid down by the Court en banc in *Philippine Long Distance Telephone Co. v. NLRC*, 164 SCRA 671, August 23, 1988. See also *Gabuay v. Oversea Paper Supply, Inc.*, GR No. 148837, August 13, 2004; *Philippine National Construction Corporation v. NLRC*, 366 Phil. 678, May 18, 1999; *United South Dockhandlers, Inc. v. NLRC*, 335 Phil. 76, February 3, 1997; and *Del Castillo Jr. v. NLRC*, 176 SCRA 229, August 10, 1989.
- [44] *Emco Plywood Corp. v. Abelgas*, GR No. 148532, April 14, 2004; *Anino v. NLRC*, 352 Phil. 1098; *Alcoseco v. NLRC*, 288 SCRA 129, March 26, 1998; *Agoy v. NLRC*, 322 Phil. 636, January 30, 1996; *Cariño v. ACCFA*, 124 Phil. 782, September 29, 1966.
- [45] *Pasvil/Pascual Liner, Inc. Workers Union v. NLRC*, 370 Phil. 473, July 28, 1999; *National Federation of Sugar Workers v. Ovejera*, 199 Phil. 537, May 31, 1982.
- [46] *ABD Overseas Manpower Corporation v. NLRC*, 350 Phil. 92, February 24, 1998; *PI Manpower Placements Inc. v. NLRC*, 342 Phil. 414, July 31, 1997; *Zurbano Sr. v. NLRC*, 228 SCRA 556, December 17, 1993.
- [47] *Neeland v. Villanueva Jr.*, 364 SCRA 204, August 31, 2001.
- [48] *Gamas v. Oco*, AM No. MTJ-99-1231, March 17, 2004.
- [49] *People v. Besonia*, GR Nos. 151284-85, February 5, 2004; *People v. Bodoso*, 398 SCRA 64, March 5, 2003; *People v. Aranzado*, 365 SCRA 649, September 24, 2001; *People v. Durango*, 386 Phil. 202, April 5, 2000; *People v. Nadera Jr.*, 381 Phil. 484, February 2, 2000; *People v. Abapo*, 385 Phil. 1175, March 31, 2000; *People v. Tizon*, 375 Phil. 1096, October 28, 1999; and *People v. Bello*, 375 Phil. 277, October 13, 1999. The Court stressed that the accused must be properly accorded their fundamental right to be

informed of the precise nature of the accusation against them and of the consequences of pleading guilty to the charge. According to them that right, is an integral aspect of the due process clause under the Constitution.

[50] *Velarde v. Social Justice Society*, GR No. 159357, April 28, 2004; *People v. Ferrer*, 406 SCRA 658, July 18, 2003; *Yao v. Court of Appeals*, 344 SCRA 202, October 24, 2000; *People v. Dumaguing*, 340 SCRA 701, September 20, 2000; *Madrid v. Court of Appeals*, 388 Phil 366, May 31, 2000; *People v. Bugarin*, 339 Phil. 570, June 13, 1997. Section 14 of Article VIII of the Constitution states that “[no] decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.”

[51] *Domingo v. Scheer*, GR 154745, January 29, 2004.

[52] RA No. 7659, effective December 31, 1993.

[53] *People v. Echegaray* 335 Phil. 343, February 7, 1997.

[54] In my Dissenting Opinion in *Echegaray*, I argued passionately that based on the age, language and socio-economic profiles of convicts then in death row, RA 7659 had militated against the poor and the powerless in society.

[55] This has been consistently shown by court statistics as reported in several of my books. See Chapter 21, *Leveling the Playing Field* (2004); Chapter 14, *The Bio-Age Dawns on the Judiciary* (2003); Chapter 22, *Reforming the Judiciary* (2002), Chapter 14, *A Centenary of Justice* (2001); Chapter 16, *Transparency, Unanimity & Diversity* (2000); Chapter 6, *Leadership by Example* (1999) and Chapter 4, *Battles in the Supreme Court* (1998).

[56] *People v. Mateo*, GR Nos. 147678-87, July 7, 2004, p. 24.

[57] §3(c) of Rule 122, as amended, now reads:

“(c) The appeal in cases where the penalty imposed by the Regional Trial court is *reclusion perpetua*, life imprisonment or where a lesser penalty is imposed for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by notice of appeal *to the Court of Appeals* in accordance with paragraph (a) of this Rule.”

[58] §3(d) of Rule 122 as amended:

“(d) No notice of appeal is necessary where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule.”

[59] §10 of Rule 122, as amended:

“Sec. 10. Transmission of records in case of death penalty. - In all cases where the death penalty is imposed by the trial court, the records shall be forwarded for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter.”

[60] §12:

“Sec. 12. Power to receive evidence. – The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three months, unless extended by the Chief Justice.”

[61] §13:

“Sec. 13. Certification or appeal of case to the Supreme Court. – (a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.

“(b) Where the judgment also imposed a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed and the accused appeals, the appeals shall be included in the case certified for review to the Supreme Court.

“(c) In cases where the Court of Appeals imposed reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.”

[62]

Published in December 2004, p. 59.