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## SYSTEM OVERVIEW AND CONCEPTUAL FRAMEWORK

### 1 INTRODUCTION

- 1.1.1 This chapter presents an overview of the criminal justice system and the conceptual framework and approach of the integration study. The framework derived guidance from many approaches, including the UNDP’s rights-based approach to access to justice as contained in the document: *Programming For Justice: Access to All, A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice*, and from public sector, institutional development, systems and capacity assessment and development approaches.

### 2 CRIMINAL JUSTICE SYSTEM OVERVIEW

#### 2.1 Definition

- 2.1.1 This study adopts the definition by the Supreme Court of the criminal justice system. In particular, Supreme Court defines the criminal justice system as:

*“the system or process in the community by which crimes are investigated, and the persons suspected thereof are taken into custody, prosecuted in court and punished if found guilty, provision being made for their correction and rehabilitation.”*

#### 2.2 Goals

- 2.2.1 The goals of the criminal justice system are:
- a) To make sure that there are no wrongful convictions and that the right person is identified and convicted of the crime he/she committed; that both suspect and victim have access to remedies; that they are provided with a speedy and impartial process that ensures the protection of their human and legal rights, and equal treatment before the law; that the appropriate remedy is applied to the convicted; and, that while serving sentence the convicted is accorded humane treatment and adequate support to enable him to develop or redevelop his capacity as a good and productive member of the community.

- b) To gain and sustain the trust and confidence of the community, and engage the community as an active and effective partner in solving crime, and in facilitating the provision of remedies particularly through restorative justice.
- c) Communities that have capacities to demand accessible, speedy, impartial and quality justice and in particular the appropriate remedies for their grievances.

## **2.3 Types of Crimes**

2.3.1 The law provides presumption of innocence of all suspects and detained persons until proven guilty in court.

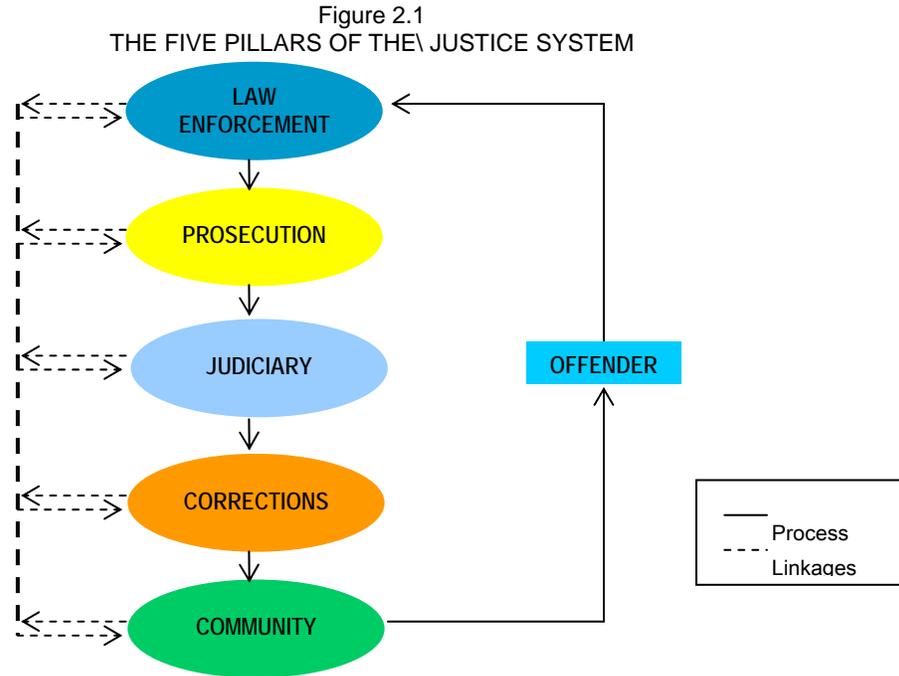
2.3.2 There are about 10 types of crimes as specified in the penal code and other laws (Annex A):

- a) Crimes against national security and law of nations
- b) Crimes against the fundamental laws of the state
- c) Crimes against public order
- d) Crimes against public interest
- e) Crimes related to opium and prohibited drugs (As amended by RA 6245)
- f) Crimes against public morals
- g) Crimes committed by public officers
- h) Crimes against persons
- i) Crimes against personal liberty and security
- j) Crimes against property
- k) Crimes against chastity
- l) Crimes against civil status of persons
- m) Crimes against honor
- n) Quasi-judicial Offenses
- o) Special crimes as provided for under special laws such as carnapping, hijacking, plunder, etc)
- p) Violations of city and municipal ordinances
- q) Crimes handled by special courts such as corporate crimes, heinous crimes, intellectual property rights violations, violation of forestry laws
- r) Crimes under the jurisdiction of the Barangay Justice System

2.3.3 These classifications are based on the classification of cases by the courts. There is no formally established common and operational classification of crimes within the criminal justice system other than that provided for in the penal code and other crime legislation. The unification and codification of criminal law and crime classifications will help in harmonizing information across the pillars of the criminal justice system.

## 2.4 Institutional Framework

2.4.1 While other countries have only 3 or 4 pillars of the criminal justice the criminal justice system of the Philippines comprises of 5 pillars with the formal inclusion of the community among the pillars of the criminal justice.



SOURCE: UNDP-SC, Survey of Inmates, CPRM Consultants, Inc.

2.4.2 In the Philippines responsibility for the criminal justice system is primarily with the national government with local governments performing supportive roles.

### LAW ENFORCEMENT

2.4.3 Law enforcement involves prevention of the commission of crime and the protection of the life, liberty and properties of citizens. The national government plays the primary role in law enforcement, particularly in policing.

2.4.4 The Philippine National Police (PNP) and the National Bureau of Investigation (NBI) are the primary law enforcement agencies of the national government. There are other 34 agencies performing police functions each of which usually has specific functional and geographical jurisdiction defined by law. But these 34 other government agencies have very limited policing competencies and resources and therefore utilize the police force of the PNP to carry out their operations.

- 2.4.5 The PNP maintains an extensive network of regional, provincial, city/municipal, district offices and police stations. The PNP delivery system is such that national units, regional offices, provincial offices, directly deliver police services to the community in addition to the city/municipal stations and their precincts also operated by PNP. The NBI also maintains its own network of regional and field offices. Within PNP and NBI are specialized task forces assigned to address special functions and type of crime and criminal incidences.
- 2.4.6 Local government units perform law enforcement functions as mandated in the local government code. The executive head of the local government (mayors and governors) have the power to enforce all laws and ordinances relative to the governance of the local government. He also exercises oversight functions over the PNP in his capacity as deputized representative of the National Police Commission. He formulates and implements the local peace and order plan and exercises general supervision over the police force in the locality. Local executive heads are also empowered to call on law enforcement agencies of the national government to suppress disorder, riot, lawless violence, rebellion or sedition or to apprehend violators of the law (Sec. 444).

#### PROSECUTION

- 2.4.7 The prosecution pillar conducts preliminary investigation of cases filed in the prosecutors' offices and prosecutes cases filed in the court against alleged offenders, after probable cause has been established.
- 2.4.8 Prosecution is the responsibility of the prosecution pillar which comprises primarily of two national government agencies, the National Prosecution Service, an organic unit of the Department of Justice and the Office of the Ombudsman. The Office of the Ombudsman is an independent agency responsible for the investigation and prosecution of graft and corruption cases and is empowered under the Constitution to have fiscal autonomy. The Public Attorney's Office under the Department of Justice provides a wide range of legal services including prosecution and defense. As a matter of policy PAO lawyers only intervene in cases that are already pending in court (Feliciano and Muyot, WB, SC, 2000).
- 2.4.9 A Chief State Prosecutor heads the NPS. Five (5) Assistant Chief State Prosecutors assist the Chief State prosecutor. The Office of the Chief State Prosecutor is composed of 119 State Prosecutors. Under the administrative supervision of the Chief State Prosecutor are 14 Regional State Prosecutors, 96 City Prosecutors, 79 Provincial Prosecutors, and 1,801 Assistant City and Provincial Prosecutors. All in all state prosecutors total 2,109. The number of prosecutors assigned in each city and province depends on the size of the province or city. In some cases, new cities are established without providing for additional prosecutor positions in the Office of the City Prosecutor.
- 2.4.10 The OMB has a total of 1,141 positions of which , 846 (74%) are filled and 295 (24%) are vacant. Of these 40 (03%) are managerial positions, 544 (48%) are technical positions, 167 (15%) are support to technical positions and 390 (34%) are administrative support positions. There are about 60 prosecutor and 150 investigator positions. In the year 2006 budget 40 new prosecutor positions and 200 new

investigator positions are provided. The OMB estimates that a total of 500 investigator and 200 prosecutor positions will be needed in order to establish workload ratios that achieve efficiency and speed in the processing and prosecution of corruption cases. Technical positions are composed of investigators and prosecutors. With the current staffing structure there is almost 1:1 ratio between technical and non-technical positions.

#### JUDICIAL SYSTEM AND DISPUTE RESOLUTION

- 2.4.11 Judicial power is vested in the Judiciary. The independence of the Judiciary is enshrined in the constitution which provides that the budget of the Judiciary is automatically released and should not be less than that of the previous year. The Philippines has established a four-tiered court system as the Judiciary.
- 2.4.12 The judiciary pillar adjudicates cases and renders judgment. The Philippine Judiciary is a 4-tiered court system consisting of the Supreme Court as the highest court of the land, the intermediate courts consisting of the Court of Appeals, Sandiganbayan, and Court of Tax Appeals; and the lower courts totaling 2080, consisting of 950 Regional Trials Courts, and the first level courts comprising of the 82 Metropolitan Trial Courts, 141 Municipal Trial Courts in Cities, 425 Municipal Trial Courts, and 426 Municipal Circuit Trial Courts.
- 2.4.13 The Philippine court system is founded both on codal and customary laws. The Shari'a Justice system formalized into the mainstream judicial system customary laws and justice among Muslim communities through the creation of 5 Shari'a District Courts, and 51 Shari'a Circuit Courts which exercise jurisdiction over cases involving persons, family and property relations of Muslim Filipinos. A study conducted on the Shari'a courts indicated that a significant proportion of cases under the jurisdiction of the Shari'a courts were settled outside of the court, many of them by the Shari'a judges themselves acting as community leaders. While there were noticeably low caseloads in the Shari'a courts, Shari'a judges were in fact burdened with cases handles under the informal system.
- 2.4.14 The Judiciary has 32,000 positions in its authorized staffing pattern of which only about 2,000 are justices and judges. The current judge-population ratio as of 2005 is estimated at 1:43,000.
- 2.4.15 In addition to the Judiciary, there are 23 quasi-judicial bodies in the national government that perform adjudication functions on cases pertinent to the functions of their mother departments. There is also the Barangay Justice System which adjudicates assigned cases at the barangay level before they are eventually filed in the courts, the Court Annexed Mediation System which have currently 28 pilot units, and private sector mediation organizations.
- 2.4.16 There are about 23 agencies in the national government that perform quasi-judicial functions and are specifically empowered to hear and decide on cases provided for by its mandate. These quasi-judicial agencies are under the administrative supervision of the President of the Philippines, but have independence with respect to their adjudicatory functions which are appealable only to the Court of Appeals,

except those of the Commission on Elections and the Commission on Audit whose decisions are appealable to the Supreme Court.

- 2.4.17 The Local Government Code provides for a barangay justice system, effective 1992, through the creation of a council of justice (*lupong tagapamayapa*) composed of the barangay chairman as head and ten to twenty members. The council is to be constituted every three years, coinciding with the tenure of the local government officials. A conciliation panel is constituted for every dispute brought before the *Lupon* consisting of three members to be chosen by the parties to the dispute from the list of the members. Supreme Court Administrative Circular No. 14-93 stipulates that all disputes are subject to barangay level conciliation as pre-condition to the filing of a complaint in court or any government office, except in the following certain disputes specified therein.
- 2.4.18 The Supreme Court established in 2000 a system of court annexed mediation. Through an administrative issuance the Supreme Court established a Philippine Mediation Center under the supervision of the Philippine Judicial Academy to establish court-annexed mediation units in the Court of Appeals and in the various lower courts in the country. There are at present 28 court-annexed mediation units that are operational.

#### CORRECTION

- 2.4.19 Responsibility for the maintenance of jails is shared between national and local governments. The correction pillar administers the prison and jail systems through corrective, rehabilitative and restorative measures. It also administers death penalty to offenders who are found guilty of committing heinous crimes.
- 2.4.20 Prisons and detention facilities are administered by various agencies. The Bureau of Corrections administer national jails, the Bureau of Jails Management and Penology administer city and municipal jails, while provinces also administer their own provincial jails. Police stations also maintain detention facilities in their respective police stations.
- 2.4.21 The Parole and Probation Administration, and Board of Pardons and Parole are the policy bodies responsible for recommending to the President the grant of parole and pardon. The Parole and Probation Administration also has responsibility of monitoring the conduct of prisoners on parole. The Department of Social Welfare and Development assumes responsibility for the restorative part of the correction system by maintaining centers for the care and restoration of such offenders as youth and women.

#### THE COMMUNITY

- 2.4.22 Criminal justice in many countries has in recent years begun to recognize the power of working with communities and organized groups in fighting criminality. But it is only in the Philippines that the community is formally recognized as a pillar of the criminal justice system (Menez-Zafra). But the definition and role of the community pillar under the system has somehow not been clearly defined.

- 2.4.23 The community pillar collectively imposes limitations on individual behavior of citizens that deters criminality and criminal behavior, for the common good of civilized and democratic society. Institutions such as the Barangay, government agencies, legislative bodies, the academe, and religious and civic organizations, among others, are involved in this pillar. It is however commonly understood to mean the organized civil society and community members that perform the role of both dutyholder and claimholder in the administration of justice. As dutyholder they have the responsibility to assist law enforcement and the courts in crime solving by providing information, by community participation in crime prevention and creating a culture of peace and by supporting the mobilization of resources for peace and order. As claimholders they are the beneficiaries of the justice system and they play critical roles in holding system dutyholders accountable.
- 2.4.24 Non-Government Organizations (NGOs) and Civil Society Organizations (CSOs) play an increasingly active role in the criminal justice system both as instruments of accountability and as partners in providing criminal justice support services.
- 2.4.25 The Constitution of the Philippines guarantees the provision of adequate legal assistance to the poor. Legal assistance refers to free judicial and non-judicial services provided by law practitioners or groups to indigent members of society. Judicial and non-judicial services include legal counseling, documentation or preparation of legal instruments, complaints, petitions and other pleadings, and representation to courts and quasi-judicial bodies. The country's social defense system comprises of the Public Attorney's Office which is the primary agency responsible for providing legal assistance to indigent parties. The courts also provide free legal assistance to indigent parties. But there are several government agencies and private groups providing legal assistance to the poor: Commission on Human Rights, The Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform, the Philippine Overseas Employment Administration. Each of these agencies handles cases pertinent to their functions. There are also several private organizations and civil society groups providing free legal assistance such as law firms, Integrated Bar of the Philippines, legal clinics in law schools of universities, anti-crime groups and alternative law groups.

### **3 NORMATIVE PROTECTION**

#### **3.1 Description**

- 3.1.1 UNDP refers to normative protection as individual, institutional and collective capacities to ensure that justice remedies to people, especially the disadvantaged, are legally recognized, either by formal laws or customary norms. Legal protection thus provides the bases, either or both in terms of formal laws or traditional practices, for the recognition of people's rights and the subsequent provision of remedies to their grievances and complaints within the scope of the criminal justice system.
- 3.1.2 Norms, which comprise formal and informal laws, are socially generated and have the capacity to provide protection. Formal laws are legislated in response to social demand. Informal laws on the other hand evolved through social interactions and are

enforced by non-governmental institutions. Laws establish the terms of reference for the social contract under which citizens live and work together and are governed by a state authority. These laws provide the rudiments of social order where standards of right and wrong are defined, individual rights are protected, and the systems of remedies and penalties are enforced through the coercive power of the State.

## **3.2 National Framework for Normative Protection**

3.2.1 The national framework for normative protection consists of the Constitution, legislation, court decisions or jurisprudence, and customary practices. In the Philippines, democratic governance and socio-economic development rest on a foundation of law which is recognized and valued by both citizens and state authorities. These laws, which are embodied in the Constitution, statutes, judicial opinions, and international instruments, comprise the body of official rules and regulations that govern the society and control the behavior of its members.

- The Constitution as the basic and supreme law of the country provides the general framework and principle by which a State is run. It is the standard by which other national legal instruments and governmental actions and decisions are based and measured.
- Legislation or statutory law is enacted by the legislature or the Congress of the Philippines. It comprises of statutes, codes, acts or legislative resolutions and decrees. Local governments are authorized by the constitution to formulate and pass in local ordinance pertaining to minor offenses such as traffic violations. These three sources of laws provide the legal infrastructure of the criminal justice system.
- Court decisions or jurisprudence is the link between the normative framework and the individual. They provide normative protection through the application of laws and international standards, especially those on human rights.
- Informal laws can either be written or unwritten. Customary norms and practices are the main sources of informal laws which likewise provide normative protection.
- International agreements like treaties, conventions, covenants and charters concluded between states are also sources of normative protection. They are often supplemented by protocols and often stated in declarations, standards, rules, guidelines, recommendations and principles.

3.2.2 International treaties and conventions are best exemplified by those pertaining to the promotion and protection of human rights. At the core of the international human rights system is the United Nations and its charter which was signed on 26 June 1945. The charter provides provisions that set the foundation for the international human rights system. In particular, under Article 55 of the charter member-nations commit to promote “universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” Article 56 of the charter provides that all members commit to take joint and separate actions in cooperation with the UN to ensure the achievement of the provisions of Article 55.

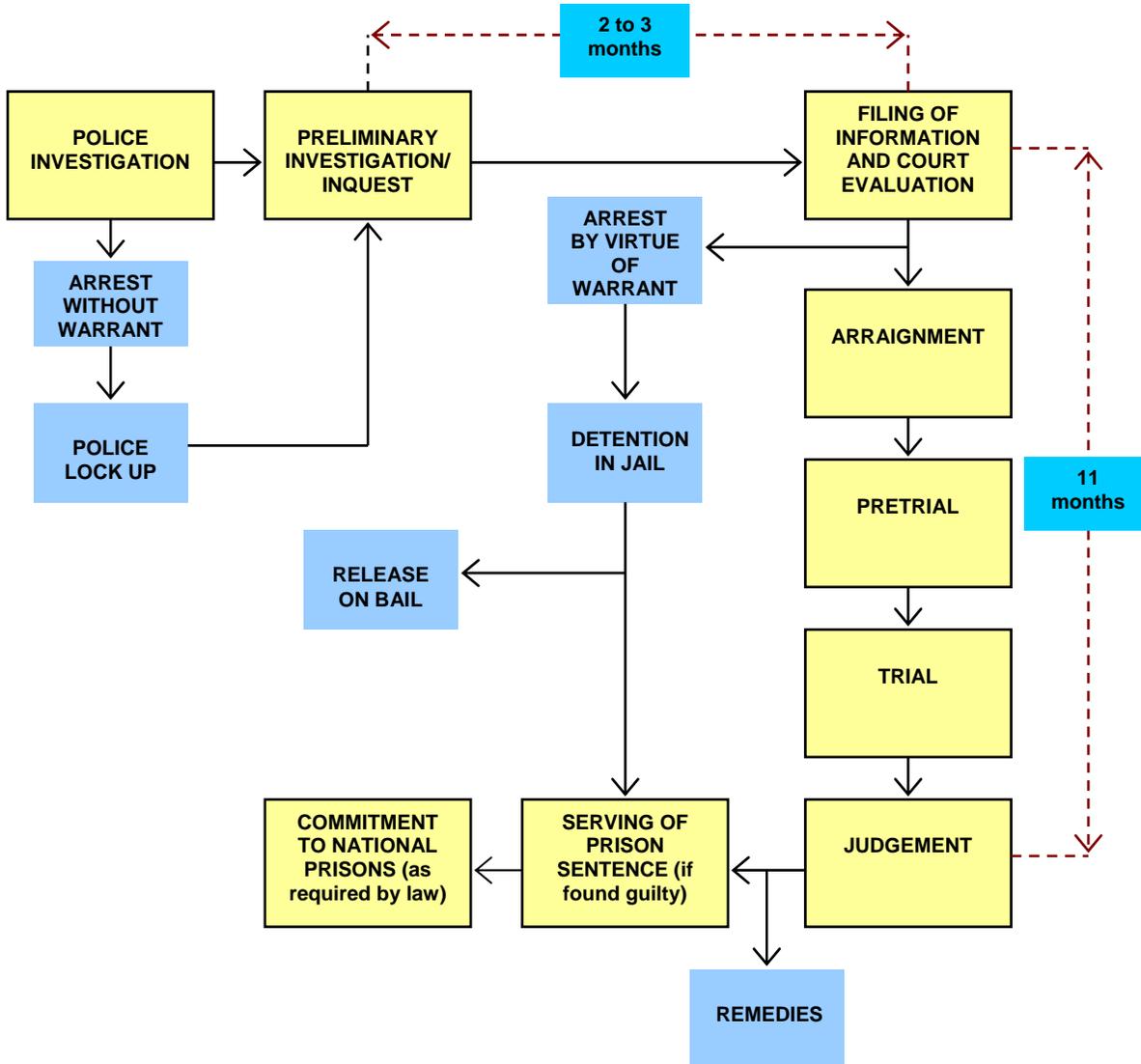
- 3.2.3 The Philippines is signatory to twenty-three (23) human rights treaties and protocols. Thus, the government is bound to comply with and ensure the implementation or observance of the provisions of these treaties and protocols. International treaties provide protection and promote access to justice by providing (a) international obligations for states; (a) other standards that are not binding to the states as such but give normative guidance on specific issues (e.g., resolutions, declarations, guiding principles, etc.) and may be indicative of a growing internal consensus to further develop the international legal framework; (c) an additional forum for access to justice (e.g. communications and inquiry procedures initiated through treaty bodies and regional courts and commissions, in cases where national mechanisms are ineffective); (d) mechanisms to monitor states compliance with treaty obligations; and (c) an additional forum to create or influence national norm making.
- 3.2.4 The legal system has certain elements consisting of the (a) rules, which can be international or domestic, constitutional or ordinary, procedural or substantive, formal or informal in nature; (b) processes through which rules are made, applied, interpreted and enforced in practice (i.e., rule-making, rule-enforcing, and rule-changing); and (c) the relevant actors and institutions , whose mandate, functions, programs and concerns are involved with and related to the rules and processes of the systems.

### **3.3 The Formal Legal Protection System**

- 3.3.1 The criminal justice system is the mechanism society uses to maintain social control or enforce the standards of conduct necessary to protect individuals and the community. This system operates through the pillars of the justice system, which starts with discovering of the commission of a criminal act, investigating, identifying and apprehending suspects, conducting preliminary investigation to establish probable cause, and prosecution in the courts, processing of the case in the court, rendering of judgment, serving of sentence and release after completion of the sentence. The process is and should always be controlled and influenced by laws and interpretations of law.
- 3.3.2 The criminal justice system adopts the prescribed and established criminal procedures, rules and regulations. Figure 2.2 provides an overview of these procedures based on the Rules on Criminal Procedures of the Rules of the Court. The processes involved in the investigation and prosecution of criminal cases comprise the following:
- Police Investigation
  - Preliminary Investigation
  - Issuance of the Prosecutor's Resolution
  - Filing of the Information in Court
  - Arrest of the Accused and Posting of Bail
  - Arraignment [Plea of Guilty or Not Guilty to the Offense Charged]
  - Pre-Trial
  - Trial

- Sentencing or Judgment

Figure 2.2  
 CRIMINAL PROCEDURES IN THE PHILIPPINES, SUMMARY



3.3.3 Police investigation is done *motu proprio* or upon filing of complaint in the police station. Investigation is undertaken through surveillance, interview of persons with knowledge of facts directly or indirectly connected with the offense (including the suspects who consent to be questioned), entrapment operations, search and seizure and arrest, interrogation of suspects in police custody and gathering of physical evidence on the case. The police report is prepared and a case is filed with the Prosecutor’s Office within the geographical jurisdiction.

3.3.4 As a general rule, no person may be taken into custody except only by virtue of a warrant of arrest issued by a competent court. Arrest without warrant by a peace

officer or a private person may only be allowed under the following circumstances specified in the Rules of Court:

- When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

3.3.5 Alleged offenders subject to such arrest are detained in police lock-up jails for custodial investigation. Persons under custodial investigation have the following rights enshrined in the Constitution:

- He must 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;
- 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;
- Any confession or admission obtained in violation of the foregoing shall be inadmissible in evidence against him.

3.3.6 A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

3.3.7 Except in cases of lawful arrest without warrant, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.

3.3.8 A preliminary investigation is essentially a judicial inquiry since there is the opportunity to be heard, the production and weighing of evidence, and a decision rendered on the basis of such evidence. In this sense, the investigating prosecutor is a quasi-judicial officer. A preliminary investigation is intended:

- to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime and from the trouble, expense and anxiety of a public trial; and
- to protect the State from having to conduct useless and expensive trials.

- 3.3.9 The conduct of a preliminary investigation is a substantive right, which the accused may invoke prior to, or at least at the time of plea, the deprivation of which would be a denial of his right to due process.
- 3.3.10 In brief, in the investigation of criminal complaints, the private complainant or the police files a complaint-affidavit with the prosecutor's office, alleging that a certain person has committed a criminal offense. As part of due process, the respondent, who is accused of committing such an offense, is allowed to file a counter-affidavit. The prosecutor handling the case usually conducts a hearing to verify the allegations contained in their respective affidavits, and evaluate the supporting documents. In areas where there are no prosecutors, lower court judges conduct preliminary investigation.
- 3.3.11 At this stage, the prosecutor has to establish the standard of "probable cause", meaning that based on the allegations of the complainant and the respondent, there is reasonable ground to believe that a crime has been committed, and that the accused is probably guilty thereof. The finding of probable cause is contained in a document called a "resolution". If the reviewing official (the city or provincial prosecutor) approves of the resolution, then the proper information is filed in the proper court. (The "information" is a formal accusation or charge against a person who is believed to have committed the crime). If the imposable penalty is below six years, then the case is filed with the Municipal Trial Court. If the imposable penalty is more than six years, then the case is filed with the Regional Trial Court.
- 3.3.12 Inquest on the other hand is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court.
- 3.3.13 Unless otherwise directed by the City or Provincial Prosecutor, those assigned to inquest duties discharge their functions during the hours of their designated assignments and only at the police stations/headquarters of the PNP in order to expedite and facilitate the disposition of inquest cases. The inquest proceedings must be terminated within the period prescribed under the provisions of Article 125 of the Revised Penal Code, as amended. The periods prescribed are:
- 12 hours, for crimes or offenses punishable by light penalties, or their equivalent;
  - 18 hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and
  - 36 hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.
- 3.3.14 Criminal actions are instituted by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In cases where the preliminary investigation is conducted by the investigating judge, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor. The latter shall then review the resolution of the investigating judge on the existence of probable cause, and may affirm, modify or

- reverse the finding of the judge. The prosecutor shall order the release of an accused who is detained if no probable cause is found against him.
- 3.3.15 In the case of a capital offense, (i.e., the possible sentence could be death or life imprisonment), the complaint has to be resolved within 90 days from the time that the case is assigned to the prosecutor. In all other cases, whether they are cognizable by the Regional Trial Court or the Municipal Trial Court, these cases must be resolved within 60 days from assignment.
- 3.3.16 The Speedy Trial Act also provides certain time standards within which the case should be decided, as follows:
- From the time of the filing of the information to arraignment - 30 days
  - From the time of arraignment to the first trial day - 30 days
  - From the first trial day to the termination of trial - 180 days
  - From the termination of the trial to the issuance of the decision - 90 days
- 3.3.17 Ideally, a criminal case pending with the lower courts should take no more than eleven (11) months to finish, from the time the charge is filed, to the time that the decision is promulgated.

### **3.4 Alternative Justice and Informal Norms of Protection**

#### BARANGAY JUSTICE SYSTEM

- 3.4.1 The Local Government Code provides for the creation of a Katarungan Pambarangay System or Lupong Tagapamayapa to assist in the settlement of disputes arising from potential litigants who reside in the same barangay, municipality or city. Most civil disputes and criminal cases punishable by imprisonment not exceeding one year or by a fine not exceeding Php5,000, based on the provisions of the Local Government Code of 1991) arising between potential litigants residing in the same municipality or city, may be brought to the Katarungan Pambarangay. The Barangay System is the most important mechanism in reaching amicable settlement. It is constituted every three years, chaired by the Barangay Chairman, and composed of 10 to 29 appointed members of the barangay.
- 3.4.2 The Barangay Justice System is expected to contribute to the decongestion of court dockets. The following are its notable features:
- Disputes are settled through mediation and conciliation precedent to court action rather than through litigation and adjudications
  - Conciliation is compulsory since it is a condition precedent to court action
  - Lawyers are banned from the conciliation proceedings
  - No cost or fees charged for services rendered in connection with the proceedings
  - Conciliators are chosen and appointed by the Barangay Captain from among the peers and neighbors of the disputants

## QUASI-JUDICIAL AGENCIES OF THE EXECUTIVE BRANCH

- 3.4.3 There are several agencies in the executive branch performing quasi-judicial functions which, although not considered as courts of justice, are empowered to hear and decide on cases provided by their respective mandates. These quasi-judicial agencies are under the administrative supervision of the President of the Philippines, but have independent with respect to their adjudicatory functions which are appealable only to the Court of Appeals, except those of the Commission on Elections and the Commission on Audit.

## ALTERNATIVE DISPUTE RESOLUTION

- 3.4.4 Republic Act 9285 (2004) institutionalizes the use of an alternative dispute resolution (ADR) system in the Philippines, to promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. The law likewise directs the active promotion on the use of ADR as an important means to achieve speedy and impartial justice and de-clog court dockets.
- 3.4.5 The law defines ADR as any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, in which a neutral third party participates to assist in the resolution of issues. ADR includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination of these schemes. There is a current court-annexed mediation system in the Judiciary which took off from the case congestion and delay reduction strategy of the APJR (Action Plan for Judicial Reform) and from learning derived from international experience.

## INFORMAL/TRADITIONAL LEGAL SYSTEMS

- 3.4.6 The 1997 Philippine Constitution provides that the state shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies (Art. XIV, sec.17).
- 3.4.7 Republic Act 8371 or the Indigenous Peoples' Rights Act was passed, recognizing the indigenous peoples' justice system and conflict resolution institutions. This is in recognition, for example, of the traditional justice systems of the indigenous communities in the Cordilleras and among the Lumads of Mindanao, whose traditional practices serve as alternative dispute mechanisms. While the systems among the indigenous peoples' justice systems vary in approaches and methodologies, common to these traditional practices is the participation of the community members in settling disputes.
- 3.4.8 PD 1083, enacted prior to the adoption of the 1987 Constitution, provides for the codification of Muslim Personal Laws and the establishment of a Shari'a Justice System. By creating a formal system for informal norms of justice, the state recognizes the uniqueness in their thinking of Muslim Filipinos of what is just and lawful in civil relationships, from the thinking of the rest of the country as embodied in our civil laws. Criminality however, is still within the purview of the criminal code and other laws and not within the ambit of the Shari'a justice system.

3.4.9 Muslim justice is based on religion. Muslim tradition involves strong roles played by religious leaders in informally settling disputes. Justice is guaranteed to all regardless of any social and political biases. Thus the judgment is based solely on the Word of Allah and the teachings and learning from the life, actions and words of Muhammad as the Prophet. Above all human matters or considerations, which include man-made laws, is the divine law and the principles of Allah communicated to man. This is the basis of justice, and it is administered to all.

3.4.10 Among the Muslims, informal settlements particularly on cases involving family and property matters are preferred over the formal (court) processes. Shari'a court judges themselves have assumed the role of customary elders that citizens can seek help to resolve conflicts, an indication of the pervasive informal nature of Muslim dispute resolution traditions that are deeply imbedded in practice.

### 3.4 Laws on Vulnerable Sectors

3.4.1 The Philippines has enacted certain laws that will benefit the vulnerable sectors of the society. Table 2.1 lists some of these major pieces of legislation and the specific target marginalized groups of each of the laws.

Table 2.1  
 LAWS ON THE PROTECTION OF VULNERABLE SECTORS

SECTOR	PHILIPPINE LAW	
Victims of unjust imprisonment/ detention and victims of crimes	RA 7309	An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes
Arrested persons/detainees	RA 7438	Defining Certain Rights of Persons, Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof
Senior citizens	RA 9257	Expanded Senior Citizen's Act of 2003
Women	RA 7877	Anti-Sexual Harassment Act of 1995 Declaring Sexual Harassment Unlawful in the Employment, Education, or Training environment and for Other Purposes
	RA 6725	An Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment, Amending for the Purpose Article One Hundred Thirty-Five of the Labor Code, as Amended
	RA 6955	An Act to Declare Unlawful the Practice of Matching for Marriage to Foreign Nationals on a Mail-Order Basis and for Other Similar Practices, Including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor

SECTOR	PHILIPPINE LAW	
	RA 7192	An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation- Building and for Other Purposes
	RA 7322	An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector, Amending for the Purpose Section 14-A of Republic Act 1161, as Amended, and for Other Purposes
	RA 8353	An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes
Women and children	RA 9208	Anti-Trafficking in Persons Act of 2003 An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for Other Purposes
Persons with disabilities	RA 7277	Magna Carta for Disabled Persons An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society and for Other Purposes
Urban poor	RA 7279	Urban Development Housing Act of 1992 An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establishing the Mechanism for its Implementation and for Other Purposes
Indigenous peoples	RA 8371	Indigenous Peoples' Rights Act of 1997 An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Minorities/Indigenous Peoples, Establishing the Implementing Mechanisms, Appropriating Funds Therefor and for Other Purposes
Migrant workers	RA 8042	An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of the Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes

## 4 CONCEPTUAL FRAMEWORK OF THE STUDY

### 4.1 Study Perspective: Human Rights and Access to Justice

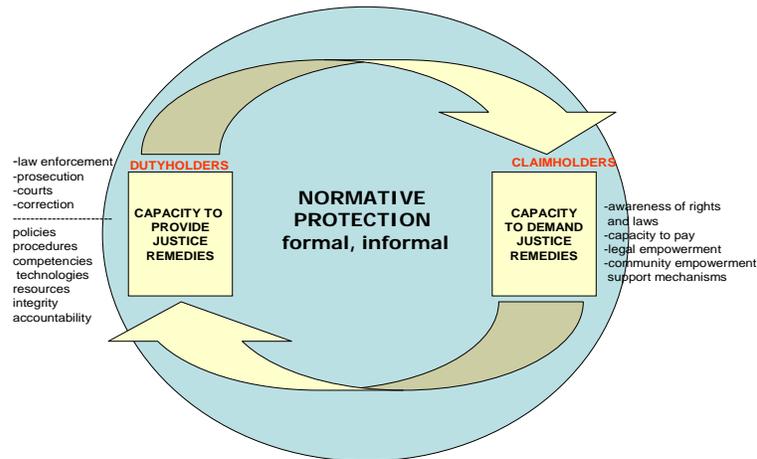
#### FUNDAMENTAL HUMAN RIGHTS AS BASIS FOR EQUAL JUSTICE

- 4.1.1 In 1948 the United Nations passed a resolution which contained the Universal Declaration of Human Rights. The resolution enunciates that all human beings are born free and equal in dignity and in their rights. And since all human beings are equal, if their rights and dignity are infringed upon, they are entitled to equal justice.<sup>1</sup>

#### NORMS OF PROTECTION AND EQUAL CAPACITIES BETWEEN DUTYHOLDERS TO PROVIDE REMEDIES AND CLAIMHOLDERS TO DEMAND THE PROVISION OF REMEDIES – THE CORE FOUNDATION FOR ACCESS TO JUSTICE

- 4.1.2 But achieving access to equal justice requires fundamental elements: a) that the formal and informal norms of protection are established in law or tradition and are understood in a common way; and b) that the two key players in the justice system – the dutyholders and claimholders have equal capacities: the dutyholders the capacity to provide remedies and the claimholders the capacity to demand that remedies are provided (Figure 2.3)

Figure 2.3  
FRAMEWORK FOR ACCESS TO JUSTICE



- 4.1.3 The UNDP Practitioner’s Guide identifies the capacity of the dutyholders to provide remedies through formal and informal mechanisms as another key element in

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<sup>1</sup> UNDP, 2005, Ibid.

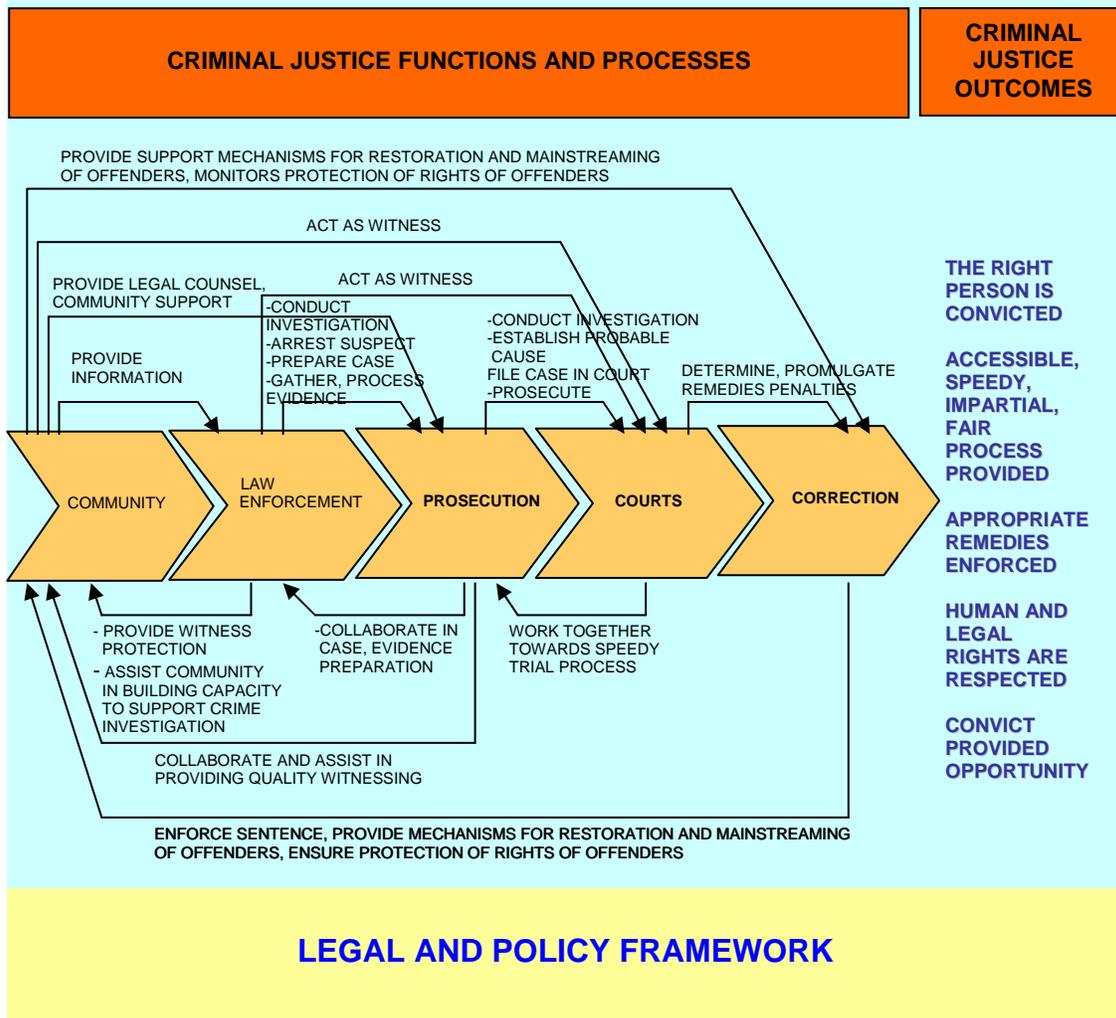
- successfully providing a rights-based access to justice. Capacities involve such factors as institutions and functions (law enforcement, prosecution, courts, and corrections), their policies and procedures, resources and competencies, their institutional coordinative relationships as well as their integrity and accountability. All these affect the accessibility of the means to obtain remedies and the speed, impartiality and quality of remedies. They also provide the foundations for effective mechanisms in insulating the system from discrimination and politicization.
- 4.1.4 The role of informal mechanisms in providing remedies also form an important integral part of the criminal justice system – community-based conflict resolution, mediation, conciliation and arbitration, and the traditional Islamic and indigenous peoples community-based mediation of disputes. Many of these informal and traditional norms of protection have been formalized into law now forming part of the formal system of justice. The 56 Shari'a district and circuit courts established in Mindanao formalizes Islamic traditional and customary laws into the formal justice system.
- 4.1.5 The establishment of 23 quasi-judicial bodies in the national government to mediate, arbitrate or conciliate disputes within the functional jurisdiction of departments also formalizes customary dispute resolution mechanisms. The adoption of community policing and community-police partnerships integrates formal and non-formal components into a more cohesive crime prevention and solution mechanism.
- 4.1.6 The framework posits that equal access to justice would be difficult if the community and citizens, particularly the poor and vulnerable groups themselves lack the capacity to demand remedies. Claimholders comprising of the aggrieved parties or victims, as well as those accused must have the capacities such as:
- a) Awareness and sufficient understanding of the remedies available and how to obtain them;
  - b) Legal empowerment by having access to quality legal counsel;
  - c) Capacity to pay or support in the payment of the cost of litigation; and
  - d) Where necessary, have support from the community in cases where political empowerment is necessary to obtain justice against the powerful.

## **4.2 Integration Approach**

- 4.2.1 The study starts with the recognition that the integration of the criminal justice system is in the inter-connectivity of and inextricable relationship among the functions of its pillars and that these functions are actually connected through seamlessly linked and sequential processes and operating within the context of a sound and effective legal framework (normative protection).
- 4.2.2 Such that to achieve the stated goals, the pillars of the criminal justice system must be linked, each with appropriate capacity to perform its component functions and each is performing these functions well. The defined functional linkages provide the framework for the subsequent assessment and identification of reform recommendations.

4.2.3 The study looks at the entire criminal justice system in relation to the outcomes that it must achieve and at the same time considers each of the 5 pillars as integral components of the system.

Figure 2.4  
 FUNCTIONALLY INTEGRATED CRIMINAL JUSTICE SYSTEM



- 4.2.4 The study focuses on the institutional capacity components in each pillar that directly contributes to the overall effective functioning of the integrated criminal justice system. These are the resources (human, financial, logistical and technological), operating rules and procedures in criminal cases, human competencies and human values (such as integrity, impartiality, honesty and sense of duty). This approach is depicted in Figure 2.4. Within the context of a reforming and/or evolving system, leadership and management quality become critical factors of a well-functioning integrated criminal justice system.
- 4.2.5 After assessing the directly contributing capacity components, the study proceeded to the underlying capacity components of the each pillar – the mandates and functions, institutional structures, administrative and financial management policies, processes and practices; institutional administrative relationships, and support operating systems. These are also reviewed in terms of their implications on such issues as independence and politicization; human competency, motivation, and integrity values; capacities to attract and retain quality personnel; capacities for continuing competency and institutional improvement; and other related issues.
- 4.2.6 The capacity assessment of each of the 4 pillars and the corresponding reform recommendations were undertaken deriving guidance from the CPRM capacity assessment and development framework for individual institutions. The framework which is depicted in Figure 2.5 is anchored on the view that each pillar contributes to the overall performance of the criminal justice system in accordance with its capacity. The assessment attempts to answer the following question:
- What capacities must be built within each pillar in order for it to contribute to a well-functioning criminal justice system that provides access to justice within the context of human rights?*
- 4.2.7 The framework identifies the various areas and components in an organization that determines or affects its capacity to perform its functions and achieve its mission or mandate:
- a) structure, functions and functional linkages
  - b) production and delivery systems or mission-critical systems
  - c) behavioral systems
  - d) management and development systems
  - e) core resources – financial, technological, physical and human

Figure 2.5  
 CAPACITY FRAMEWORK FOR A FUNCTIONALLY INTEGRATED CRIMINAL JUSTICE SYSTEM

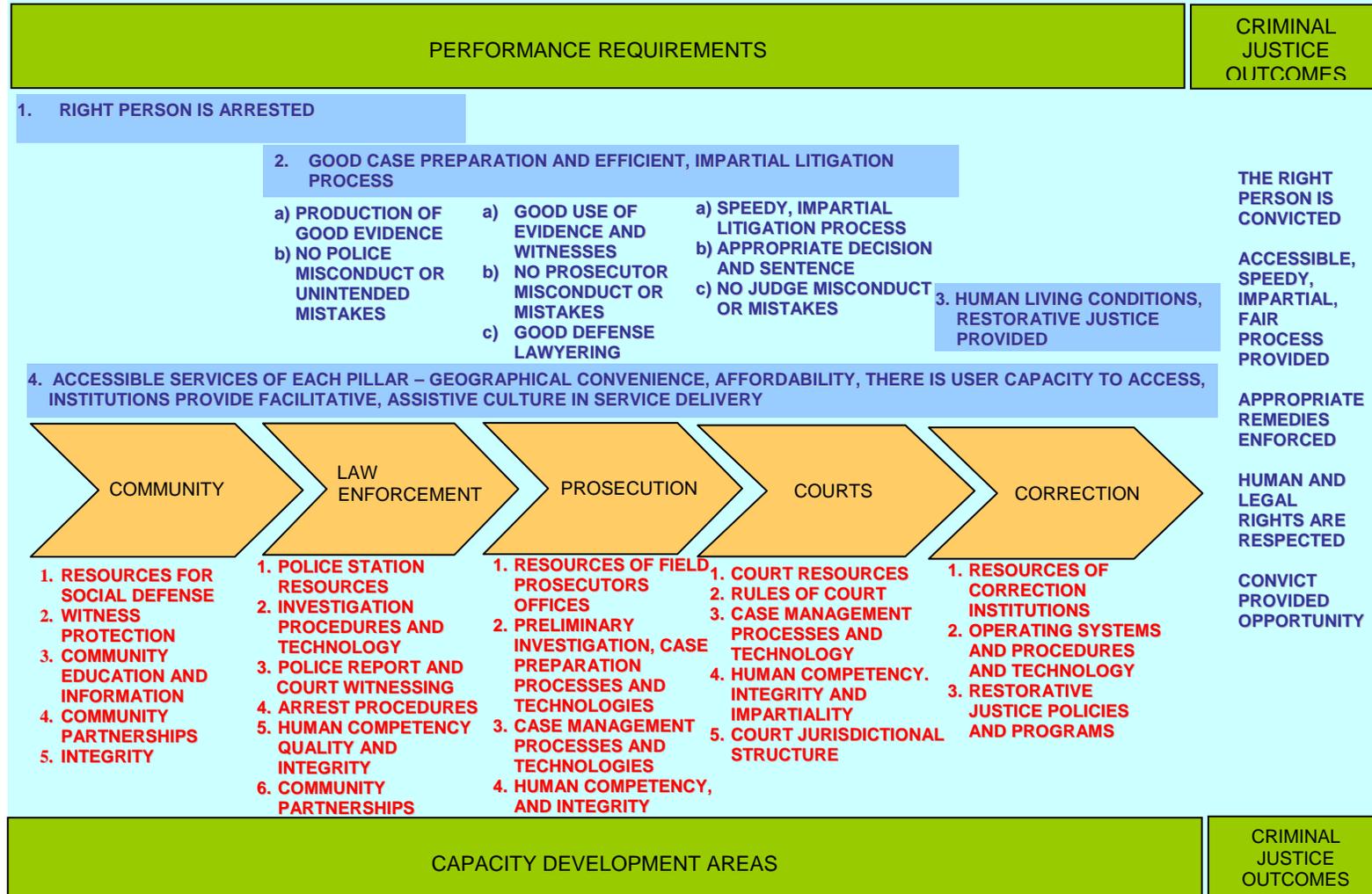
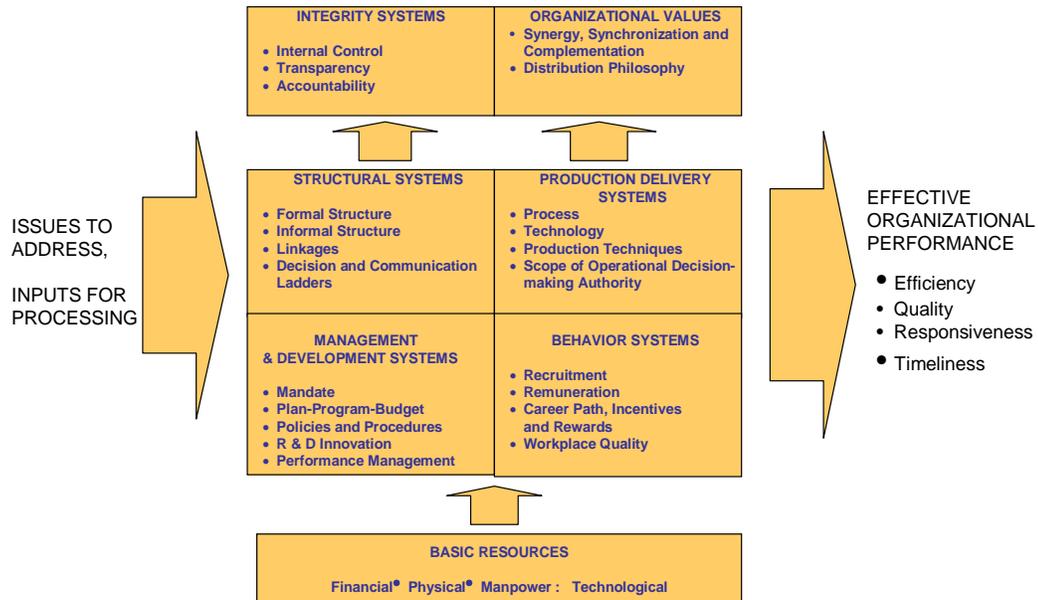
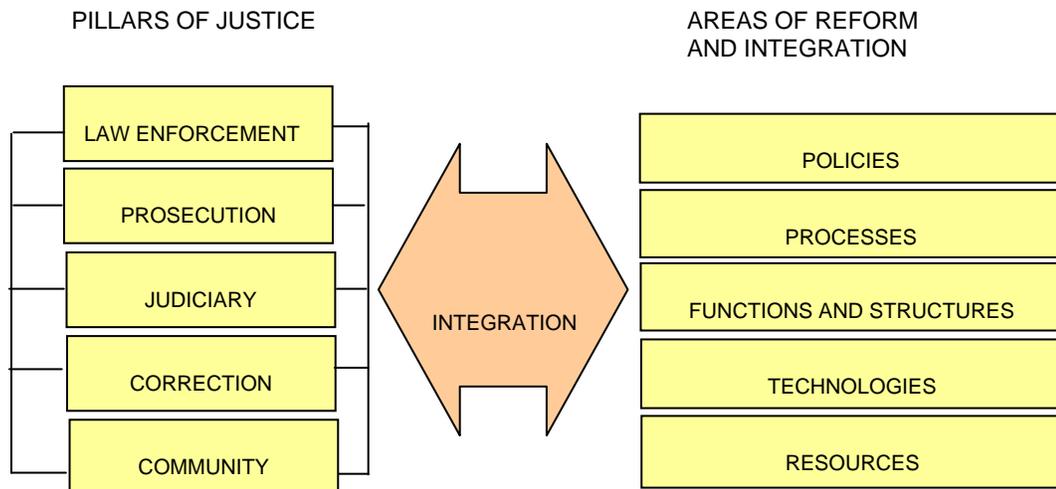


Figure 2.6  
 CAPACITY ASSESSMENT AND DEVELOPMENT FRAMEWORK



4.2.8 Utilizing the capacity assessment and development framework the study analyzed the various reform areas identified in the previous studies and identified pillar-specific as well as system wide reforms that will be needed in order to achieve integrated reform impacts in the five pillars of the criminal justice.



4.2.9 Reforms will be identified in the indicated reform areas both at the individual pillar level and system-wide level toward achieving a system integration holistic reform impact on the criminal justice system. An implementation strategy which will provide the proper sequencing of the inter-pillar reforms and the general implementation organizational and operational arrangements will be formulated.