

# REPORT FOR THE 2013 PHILIPPINE DEVELOPMENT FORUM SUBMITTED BY THE PDF WORKING GROUP ON RULE OF LAW

## I. Background

President Benigno S. Aquino III's Social Contract with the Filipino people envisions a country characterized by inclusive rapid economic growth anchored on good governance with strict adherence to the rule of law. This Social Contract has been translated into efficient, effective and responsive actions which are now embodied in the Philippine Development Plan (2011-2016).

In pursuing the gains of the Social Contract, the President issued Executive Order No. 43 laying down the priority areas for development. One of these is the attainment of "a just, comprehensive, and lasting peace within the bounds of our law." Consonant with the principles of efficiency, effectiveness, and focus, EO 43 has organized thematically the Cabinet into clusters in achieving the objectives of each priority area. One such cluster is the Security, Justice and Peace (the "Security Cluster") headed by the Executive Secretary.

*"The Security Cluster shall ensure preservation of national sovereignty and the rule of law; and focus on the protection and promotion of human rights and the pursuit of a just, comprehensive, and lasting peace. In particular, the Security Cluster shall pursue the following goals:*

- a) Protecting our national territory and boundaries;*
- b) Attaining a just and lasting peace;*
- c) Ensuring the welfare of the Overseas Filipino Workers (OFW);*
- d) Strengthening the rule of law;*
- e) Institutionalizing an efficient and impartial justice system that delivers equal justice to the rich and poor; and*
- f) Advancing and protecting human rights."*

The Philippine Development Forum (PDF) was organized to serve "as the primary mechanism of government to facilitate substantive policy dialogue among stakeholders on the country's development agenda." Consequently, several working and sub-working groups were identified for each cluster under EO 43 to identify reform measures and create a development policy agenda in line with the President's Social Contract. The Rule of Law Working group was first convened on April 27, 2011, after having been elevated from a Sub-Working Group within the Working Group of Good Governance and Anti-Corruption.

The USAID and the Philippine Department of Justice serve as co-convenors of the Rule of Law Working Group. This group functions as the primary platform for coordination among government stakeholders in the justice sector and development partners, and has, since its establishment, met five times. It acts as a bridge between the judiciary and executive branches of government in pursuing reform initiatives on common policy issues that crosscuts between the two and among other justice sector agencies in the executive department.

For the membership and meetings of the Working Group, please see Annex "A".

## II. Major Policy Issues and Progress

The main problem of the Philippine justice system is its slow, tedious and ineffective processes including investigation and resolution of complaints/cases, rehabilitation of offenders and dispute resolution. Investigation/case disposition rates have been persistently low. Weak case build up, lack of physical evidence and inadequate witness participation have resulted in low resolution and conviction rates for most cases and impunity for many human rights violations. Failure to locate and arrest the accused has resulted in high case archival. Offender

rehabilitation programs have failed to address the increasingly high re-offender rates. Besides criminal cases, civil proceedings in court linger for years due to case congestion. Procedural delays and technicalities have made justice a costly and unwieldy service and rendered the justice system vulnerable to politicization, influence and corruption. All these factors have obstructed effective delivery of justice for criminal acts, equal access to justice, public trust and confidence in the justice system. Ultimately these problems undermine the rule of law and good governance.

Weaknesses in the legal-institutional framework and resources are seen as root causes of such complex problems. Procedures have become very complicated resulting in excessive red tape and delays. The justice system has become highly fragmented from decades of traditional institutional turfing, weak coordination and functional compartmentalization among agencies. Existing laws and government structures/mechanisms are no longer responsive to transnational and technology-based crimes such as human trafficking, terrorism, money laundering, drug trafficking, smuggling and cybercrime. These emphasize the need to integrate, rationalize and modernize systems and procedures, as well as strengthen coordination and cooperation among government agencies and stakeholders.

Resource constraints in terms of funding, personnel, equipment and facilities remain a critical factor. Resource-demand gap has increased through the years caused by marginal increases or stagnation in resource levels in the face of fast growing population, globalization and technological advances, and rapidly increasing complexity and sophistication of crimes. Police to population ratio stands at one (1) to 690, far from the ideal one (1) to 500. Law enforcement agencies have very limited physical/scientific investigation capability in terms of facilities, equipment, technology and competency. Vacancy rates among prosecutors and judges remained at around 25% through the years. National penitentiaries are severely congested at more than double their optimal capacity. Other resource issues include personnel competency, integrity and productivity, lack of justice sector-wide perspective in financing and support, and inadequate resource management capability among justice agencies.

Despite such pervasive issues and constraints, the justice sector plays a vital role in the good governance and economic development agenda of the Administration in its pursuit of intensified efforts against corruption and tax violations. Broad-based and inclusive economic growth will depend on the efforts of the government to strengthen the country's legal/ regulatory framework on competition, and improve contractual enforcement and protection of property rights, both critical factors for economic justice and investor confidence.

In response to these policy issues, the priority policy areas of the Rule of Law Working Group are aligned with the key result areas (KRAs) set out in the Justice Sector Coordinating Council (JSCC) work plan<sup>1</sup>.

1. Good governance in the justice sector;
2. Detection, prevention and reduction of crime;
3. Speedy resolution of investigations, complaints and cases;
4. Restorative justice; and,
5. Greater, equal and inclusive access to justice.

The members are addressing these KRAs by various reform projects as discussed during the Rule of Law Working Group meetings. The main progress made include the following:

1. Good governance in the justice sector: Integrity development efforts including the establishment of agency-specific codes of conduct and establishment/enhancement of accountability mechanisms; various automation projects including the National Justice Information System, biometric criminal records and border management systems, police

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<sup>1</sup> The JSCC work plan is subject final review for approval by the lead institutions of the justice sector.

databases, and case management systems; extensive program/project development efforts; enhancing efficiency and accountability through performance management and disciplinary mechanisms; various capacity development programs/projects; and strengthened sector coordination and stakeholder collaboration through the Justice Sector Coordinating Council, PDF working group and other fora.

2. Detection, prevention and reduction of crime: Updating and codification of criminal laws; enhancing methods and procedures in criminal intelligence, investigation, case build up and prosecution; strengthening physical, scientific and electronic evidence gathering; establishment of regional crime laboratories; strengthening border management capability through immigration enforcement; improving capacity among law enforcers in terms of equipment, facilities and competency; and strengthening/review of the juvenile justice system.
3. Speedy resolution of investigations, complaints and cases: Case/backlog decongestion through improved operating procedures and performance management efforts in the Judiciary; procedural reforms including the new Judicial Affidavit Rule; strengthening small claims courts; enhanced procedures and reglementary periods in preliminary investigation and review in the DOJ; and improving capacity of the courts and prosecutors in terms of equipment, facilities and skills.
4. Corrections and restorative justice: Various correctional reforms; improvements in the jail and prison systems including additional funding, personnel, facilities and equipment; jail and prison decongestion program and activities; enhancing the parole and probation systems; and strengthening/mainstreaming restorative justice in the corrections system.
5. Greater, equal and inclusive access to justice: Termination of collecting legal fees in the National Prosecution Service; intensified measures against human trafficking, extralegal killings, crimes against women/children and other human rights violations; strengthening alternative dispute resolution mechanisms; and enhancing the government's legal framework for economic justice.

### **III. Challenges Identified**

The justice sector faces various challenges in carrying out the various reform efforts. The change in leadership at the highest levels made coordination more challenging for a period of time. Nevertheless, with the appointment of Chief Justice Maria Lourdes C.A. Sereno, leadership is now in place and she is identifying and prioritizing her reform agenda for the judiciary. Coordination is also being established with the new DILG leadership following the unfortunate and untimely death of DILG Secretary Jessie Robredo.

Other challenges include the lack of personnel and/or capability in certain agencies, resource constraints and heavy workload resulting to delays and sustainability problems, limited program/project scope, time, personnel and funding, procedural and procurement delays, policy and geographical constraints, shifting priorities and management approaches, lack of political will, adherence to old/traditional practices and resistance to change, lack of capital/operating funds to sustain the work when external funding/support ends, collaboration issues with and among stakeholders, and inadequate monitoring and evaluation mechanisms.

### **IV. Policy Recommendations**

In line with the priorities set out by the President's Social Contract and the PDP, the Working Group submits the following policy recommendations:

1. Address procedural delays, congestion, constraints and cost in the justice system particularly on investigation, court adjudication and corrections through vital reforms in the legal-policy framework including laws, systems and procedures;
2. Improve justice sector capability and access to justice by mitigating resource gaps, optimizing resource management, addressing inefficiencies and corruption, building core competencies, maximizing information technology, mainstreaming restorative justice, strengthening alternative dispute resolution, and institutionalizing collaboration with partners/stakeholders; and
3. Strengthen economic justice including the legal framework on competition, contract enforcement and property rights.

For the priority action areas, programs and projects, please refer to Annex “B”.