MU
PURPLE HOOD
LAW JOURNAL

MISAMIS UNIVERSITY
COLLEGE OF LAW
Ozamiz City, Misamis Occidental

Volume No. 1

ISSN: ____________________

Published by

MISAMIS UNIVERSITY - COLLEGE OF LAW

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An In Depth Look on the 2019 Southeast Asian (SEA) Games

Marlyn Wee, Angelic Tesio, Farris Mae Jornales and Victor Emmanuel Berroya

Every two years, Southeast Asian (SEA) Games takes place. This year is the 30th edition of the Southeast Asian Games in the Philippines after 14 years from the time when we last hosted it in year 2005.

The 2019 Southeast Asian Games (Tagalog: Palaro ng Timog Silangang Asya 2019), officially known as the 30th Southeast Asian Games or 2019 SEA Games and commonly known as *Philippines 2019* is a biennial regional multi-sport event hosted in the Philippines from 30 November to 11 December 2019. All 11 members of Southeast Asian Games Federation (SEAGF) take part in the Philippine 2019. This edition will be marked by the first major decentralization in the history of the Games, with competition venues spread in 23 cities across the country, divided into 4 clusters, all located on the island of Luzon (Metro Manila, Clark, Subic/Olongapo, and a fourth cluster consisting of standalone venues). This will be the Philippines' fourth time to host the games. Previously, it had also hosted the 1981, 1991 and 2005 editions of the games. This edition is most notable for being the first edition to include esports and obstacle course as well as having the highest number of sports in the history of the games, at a total of 56.[1]

As per SEA Games rules, every host nation has the discretion to introduce new sports and this year's event has set the record for having the greatest number of sports and events in SEA Games history.

Allow us to share to you some interesting things you ought to know with regards to this Philippines 2019 30th Southeast Asian Games.

Fourth SEA Games hosting by the Philippines

This is the fourth time that the Southeast Asian Games (SEA Games) will be held in the Philippines. Rizal Memorial Stadium was built for the 1981 edition of the regional meet which the Philippines ranked third. It hosted again in 1991 and landed second and the last was in 2005, where Philippines won its first overall championship – the first and last time the Philippines won the most medals in any SEA Games garnering 290 medals, with 112 Gold, 85 Silver, and 93 Bronze[2].

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1 *2019 Southeast Asian Games, available at https://en.m.wikipedia.org/wiki/2019_Southeast_Asian_Games?fbclid=IwAR0e2TL23A8aEbWOGYmMp5159gP6gY9EgCNzRAQt-Z-SpY3Vk7ek73MO1Z4 last accessed November 27,2019).*

2 *Amoranto, T. (November 28, 2019). "[OPINION] A former national athlete's two cents on the 2019 Sea Games fiasco". Retrieved from https://www.rappler.com/move-ph/ispeak/245957-opinion-former-national-athlete-on-sea-games-fiasco.*]

We Win as One: 30th SEA Games theme

The official slogan and theme song of this year's SEA Games is "We win as one".

Filipino heavyweights in the Arts wrote this song. The lyrics were written by Palanca-award winning writer and director Floy Quintos. The music was composed by National Artist Ryan Cayabyab featuring the voice of Philippines very own Tony awardee- Broadway star Lea Salonga. A meaningful line from the song that goes "we compete but the greatest feat is we win as one" encapsulates the ideals of the Asian countries participating in the games, while they come to compete against each other, they must uphold the common dream to be unified as nations so that when we win, we win as one.

Since 1985, Southeast Asian games have had a mascot in each edition, this 30th SEA Games will not be complete without its mascot, "Pami." Pami was derived from the Tagalog word pamilya, which represents every nation, sport, and person, coming together[3].

SEA Games torch and medals patterned from Sampaguita

From various metal alloys combined with wood, this year's 30th SEA Games torch is designed by renowned Filipino metal sculptor Daniel dela Cruz. The design of 2019 SEA Games torch is inspired by the Philippines' national flower, Sampaguita. The eight-ray Sun from the flag of the Philippines symbolizes unity sovereignty and independence. It also represents the eight provinces that fought against Spain during the colonial era. In the center is the SEA Games logo which depicts the shape of the Philippine archipelago. The Sampaguita, according to dela Cruz, is a representation of the simplicity, strength, and resilience of the Filipino people[4].

Sport and events to be contested

So far the biggest yet in history in terms of having the number of sporting events, this year's 30th SEA Games will have a total of 56 sports and 530 events this year. The sports are also divided into three categories: Compulsory, Olympic and Asian Games sports, and Regional and New

[3] *Nakpil, D. - CNN Philippines (November 19, 2019). "The 30th SEA Games: What you need to know". Retrieved from https://www.cnnphilippines.com/sports/2019/11/19/2019-SEA-Games-facts.html.*]

[4] *ANC 24/7 (October 18, 2019). "Design of 2019 SEA games torch patterned after Sampaguita | Dateline Philippines". Retrieved from https://www.youtube.com/watch?v=07g3_YEs2vg.*]

Sports. And the most number of medals come from athletics and swimming under the Compulsory category[5].

Events Venue

The opening ceremony of the 2019 Southeast Asian Games was slated on the evening of Saturday 30 November 2019 at the Philippine Arena, in Bocaue, Bulacan, which has a 55,000-seating capacity, the lighting of the cauldron by Manny Pacquiao and Nesthy Petecio from the New Clark City where the closing ceremony will also take place[6].

The 2019 SEA Games has three major sporting hubs namely, Clark, Subic, and Metro Manila. Some of the other sports will be held in other areas outside the three. The main sporting venue will be the world-class New Clark City Sports Complex, which houses a 20,000-seater athletics stadium, a 2,000-seater aquatics center, and an athletes' village. New Clark City will house the athletics and aquatic competitions, while some of the major sports like basketball, volleyball, and football, will be in Metro Manila.. [7]

SEA GAMES BUDGET: WORTH THE COST OR IMPROPRIETY?

The Philippines' budget for the hosting of the 30th SEA Games given to the Philippine Southeast Asian Games Organizing Committee (PHISGOC) was originally at 6 Billion, which was augmented by an additional 1.5 Billion which was secured by PHISGOC from sponsorship agreement.[8]

According to Rappler, coming from their source at Philippine Sport Commission PSC, about half of the 6 billion budget or around 2,957,717,195 was handled by the DBM, a quarter by PHISGOC amounting to 1,515,675,968, and the rest was split between Philippine Sports Commission PSC, Philippine Olympic Committee POC and the Department of Public Works and Highways DPWH. The PHISGOC budget was further broken down to 32% Venue, Talent fees at 4.8%, security and manpower at 8%, and the 3.7% goes to the infamous P50-million cauldron. [9]

This budget has been met with much criticism both from the members of the opposition and the general public. Some view the cost as necessary in order to put up a world class event, a sort of showcase of the economic gains

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[5] *Ibid.*

[6] [*PhilstarLIVE (Philstar.com). November 29, 2019. "Live updates: SEA Games 2019". Retrieved from https://www.philstar.com/sports/2019/11/29/1972873/live-updates-sea-games-2019.*]

[7] *Id.* at 152

[8] [Nepomuceno, A.-https://www.bworldonline.com (December 8, 2019). "Sports and politics at the SEA Games"]

[9] Punongbayan JC.- rappler.com. November 29, 2019 [Analysis: Following the money trail of the 30th SEA games]

that the Philippines has had under the administration of President Rodrigo R. Duterte. Others are of the opinion that the amount is way too excessive and would have been put to more productive use in the sectors in dire need of funding.

Those in favor of the budget allocated for the SEA games point out that money has been saved by renting some of the venues instead of constructing them. This not only saved the government money, but valuable time as well. The facilities constructed would also become a revenue generating facility after the games which would benefit the national government.

Those on the other side of the fence are of the opinion that some of the structures, such as the cauldron, appear too costly for their intended purpose. They fear that these facilities may become white elephants after the conduct of the Biennial games. These people contend that the money used or loaned could have been used for more needed facilities and services.

50 Million Cauldron: Spending or Misspending?

On top of that is a 50 Million budget for a 50 meter cauldron that was supposed to be the landmark of the 30th SEA Games. The cauldron's design alone cost P4.4 million and among the last pieces of the late National Artist for Architecture Francisco "Bobby" Manosa. Its budget for the foundation is at P13.4 million; and P32 million for its construction and development of the monument's site. An additional P6 million was allotted for wrist tags. This would be used for the torch lighting ceremony to signal the opening of the SEA Games, and intends to keep the flame burning for the entire 11 days duration of the games. The government is spending 18Million to maintain this contraption.

A closer look at the 50 meter tower, it is built with metal bars and panes put together and inside this vertical structure that will hold the cauldron was a hollow space filled with gravel[10].

Controversy that swept the media that led to various opinions. Representatives favoring the expenditure said it may be "Imeldific" or with a touch of "grandiosity" but it is reasonable that the structure could symbolize the "coming of age" of the Philippines, where there is a strong economy and a "strong government".[11]

Senator Franklin Drilon commented on this which he termed unnecessary extravagance, he said, "about 56 classrooms could have been

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[10] (*Reports from Katrina Domingo of ABS-CBN News and Interview by Leila Salaverria with Senator Drilon, Senate Hearing, Manila, Philippines*).

[11] *Interview by Daphne Galvez with Albay 2nd District Rep. Joey Salceda in Manila, Philippines (November 19,2019).*

constructed with the funds, instead of building a multi-million cauldron that will only be used once to open the event."

House Speaker Alan Peter Cayetano, who is also the Chairman of PHISGOC justified that "it is a work of art, symbolic of the games competition spirit and that it is even cheaper than the 62 Million Singapore cauldron" he added, it has added value to areas of development and the SEA Games facilities can be used in the future.

Drilon however said he was concerned that without concrete post – games plans on the use of these facilities, they could turn white elephant and maintaining these structures will cost 150-200M per year. "I don't believe, with all due respect, that we could find anyone in the private sector who would be risking about P15 million a month as rental, in effect, in order to lease these facilities." They were not aware of any businessman who would risk P200 million a year as lease without any clear path to recovering the investment. [12]

Private foundation in SEA Games: Questionable or not?

The Philippine SEA Games Organizing Committee (PHSGOC)- a private foundation was incorporated only late last year (2018) and was chaired by Speaker Allan Peter Cayetano of the House of Representatives[13]. Yet it has been placed in charge of game preparations and management, rather than the two government sports agencies PSC and POC. Cayetano was still Foreign Affairs Secretary when he convinced Congress to put the budget for the Games amounting to P7.5 billion in the budget of the Department of Foreign Affairs (DFA). [14]

Cayetano himself personally appeared at the ongoing Senate floor deliberations on the 2020 national budget to answer all questions raised against the foundation. He explained that under memorandum of agreement, the Philippine Sports Commission (PSC) is authorized to provide financial support to Phisgoc.[15]

The foundation was created for the purpose of serving as a facilitator between Government and the private sector in the preparation and the conduct of the games. The SEA games charter allows this but is not

[12] P50-million giant 'kaldero' riles Drilon, available at *https://newsinfo.inquirer.net/1191504 /p50-m-giant-kaldero-riles-drilon,last accessed November 27,2019, and with reports from Katrina Domingo of ABS-CBN News).*

[13] (Cayetano justifies private foundation's funding for SEA Games available at *https://newsinfo.inquirer.net/1191830/cayetano-justifies-foundations-funding-for-sea-games#ixzz66WVIwSOo last accessed November 28,2019).*

[14] (JejomarBinay, Controversial Sea Games, Manila Bulletin, November 28,2019, at first page of Article).

[15] (Interview by Maila Ager with House Speaker Alan Peter Cayetano, Senate Hearing , Manila, Philippines)

mandatory. There is criticism because the same officials who were supposed to run the games are the ones running the foundation. Another thing is that the foundation approach doesn't require the usual accounting of public funds being coursed through it thus making it susceptible to malversation of public funds.

Philippines 2019 30th Southeast Asian Games: Backlashed for its Chaos and Catastrophe

Philippines 2019 30th Southeast Asian Games is now in its rocky start as it started on the wrong foot. Authorities in the Philippines have apologized after photos plague and become public showing the state of under preparedness for the 30th Southeast Asian (SEA) Games. Complaints and criticisms arises ranging from unfinished construction to airport delays, inadequate food and also "halal" foods for athletes, hotel accommodations and not enough rooms, and even transportation problems. The organizing committee has tried to play the problems down, labeling them as "inefficiencies or miscoordination."

The Philippines accommodating the 2019 Southeast Asian games will signal the country's readiness to host the larger Asian games in the next years. Based on the rocky and shaky opening of this year's tournament, hosting for the next years' larger Asian games seems like a pipe dream.

Some preliminary competitions have already kicked off days before the games will officially start on November 30, 2019, Saturday, but construction works continues as the list of complaints and criticisms from visiting athletes and administrator piles even higher. With long wait for shuttle services and lack of accommodations, a lot of participants have been forced to sleep on floors. Indonesia's weightlifting and football teams even decided to book their own hotels instead of counting on accommodations provided by the hosts. Some failed preparations added strain on athletes who were already coping with a crowded schedule. [16]

The logistical chaos has conveyed undesirable negative attention on the tournament and put organizers under extensive criticism and such undesirable negative attention has leaked onto social media. Insufficient facilities for athletes and other sporting venues themselves seem sadly unprepared. One social media user discerned a problem or two with this skating rink supposedly for the speed skating event still unfinished, dirty and has not been cordoned off from the public. There was also this first football match between Myanmar and Malaysia which kicked off without a scoreboard. Luckily without 1-1 draw, it was easy to keep track of the goals. Unhappy volunteers have been complaining in as well. There's this one user

[16] [Deutsche Welle (November 27, 2019). "The 2019 SEA Games: Chaos and disaster? | DW News. Retrieved from http://www.dw.com/en/newsasia.]

who posted a complaint online saying he was given nothing to drink during a tiring and chaotic 8-hour shift only to be handed a simple morsel after he had finished. [17]

Philippines 2019 30th Southeast Asian Games Opening Ceremony Features The Country's Finest

The 2019 30th Southeast Asian Games (SEA Games) may have a rocky start but the official opening ceremony gives a remarkable show that features the country's best of the best.

The 2019 Southeast Asian Games officially opened with an outstanding ceremony at the Philippine Arena in Bocaue, Bulacan last Saturday, November 30. Tight security measures were set in place in the Philippine Arena that day. Participants, viewers in and out of the arena and even those at home watching on their screens were treated to a majestic spectacle of music and dance, fashion and design.

The program began with a colorful and boosting production number, as representatives from 12 schools and the noted Ramon Obusan Folkloric Group cascade in traditional dances from ethnic groups in Luzon, the Visayas and Mindanao[18]. It was followed by Asia's Nightingale Lani Misalucha who sang the national anthem. Aside from Misalucha, other top Filipino musicians and artists also performed in the opening ceremony, including Jed Madela, Aicelle Santos, Iñigo Pascual, KZ Tandingan, the TNT Boys, Christian Bautista, Ana Fegi, Elmo Magalona, Robert Seña and international Filipino-American singing superstar Apl.De.Ap of the group Black Eyed Peas. The large stage worked as the customary track oval welcomed the wonderful show's highlight which is the parade of participating countries: Brunei, Cambodia, Indonesia followed by Laos, Malaysia and Myanmar then Singapore, Thailand, East Timor, Vietnam and Philippines..

A breathtaking moment came when legends of Philippines sports consisting of Lydia de Vega-Mercado, Akiko Thomson-Guevarra, Efren 'Bata' Reyes, Paeng Nepomuceno, Eric Buhain, Bong Coo and Alvin Patromonio entered the stage bearing the Southeast Asian Games Federation Flag, the sight of them brings goosebumps and chills and brings back warm memories of their unparalleled wins. Its explosive peak was when boxing icon Manny Pacquiao, peeled off a white hood to disclose his face and sprinting a few steps, set ablaze a 50-meter cauldron 87 kilometers away.

[17] [Johnson, H. - BBC News, Manila (November 28, 2019). "Southeast Asian Games off to a rocky start in the Philippines". Retrieved from https://www.bbc.com/news/world-asia-50568612.]

[18] [*Custodio, A. – The Manila Times (November 27, 2019). "Dazzling show to mark SEA Games opening". Retrieved from https://www.manilatimes.net/2019/11/27/seag2019-news/dazzling-show-to-mark-sea-games-opening/659133/*.]

Addressing everybody involved in organizing the highly-secret inaugural ceremony, done indoors for the first time, Tolentino said: “You’re now part of history. It was daunting and challenging but you have made our country proud. Now, more than ever, I’m so proud to be a Filipino.” He added: “This is a defining moment for us Filipinos.”[19]

Not all may have witnessed the ceremony live at the arena but viewers surely made their voices heard on social media as loud roar overflows SEA Games 2019 Topic as the top trending issue in social media in the Philippines and worldwide during that time. From its world-class performances to extraordinary stage design and production, netizens voice out praises and cheers as Filipinos shared their thoughts on the opening ceremonies this year.

New Clark City Athletics stadium gets an Olympic Grade Class 1 mark

The hosting of the Philippines of the 30th Southeast Asian Games has opened doors of opportunity to showcase to the world that the country is still prime haven for tourists with its beautiful scenic spots and the friendly and hospitable qualities of its people, with its unique and diverse culture displayed during the presentation in the opening ceremony where the nobility of the indigenous people are highlighted in the different colourful performances. It has also reflected the steadfast and resiliency of its people amidst the controversies in its preparation and budget and has very well translated the Filipino attitude “to work last minute” positively, when it completed the New Clark Stadium and Aquatic Center in 18 months which will usually take 3 years.

The New Clark City Athletics Stadium is situated in a 270,000 square meters area in Capas, Tarlac, has a 20,000 seating capacity while the Aquatic center has a 2,000 seats. The Malaysian based contractor Meaning of True Development (MTD) Philippines has constructed it for Bases Conversion and Development Authority (BCDA), the owner. The Athletic Stadium designed by BUDJI + Royal Architecture + Design gets inspiration from Mt. Pinatubo, interestingly debris and organic lahar materials from Mt. Pinatubo were integrated in the stadium’s posts and façade during the construction. The ringed roof is specially designed to resemble the volcanic crater, while glass frames adorn the main entrance[20].

The Aquatic Center is designed like a “Parol”, Filipino Christmas lantern. By day, the special fiberglass roof resembles the capiz windows in old Filipino houses while by night, the roof appears like a lit parol. [21]

[19] [*Talao, T. – Tempo (December 1, 2019). SEA Games opens in a ceremony like no other". Retrieved from http://tempo.com.ph/2019/12/01/sea-games-opens-in-a-ceremony-like-no-other/* .]
[20] [http.//en.m.wikipedia.org.; www.newclarkcitystadium.com]
[21][www.newclarkcitystadium.com]

It is the Philippine's latest sports hub and is no ordinary as it was recognized as an Olympic Grade Class 1, the first in the country. This means that the stadium can now host tier 1 athletic competitions like SEA Games, Asian Games and the Olympic Games.

The stadium has a nine lane 400 meter track and field oval and a six lane warm up indoor and outdoor tracks, laid out with the International Association of Athletic Federation IAAF approved Rekortan M sandwiched synthetic surface system. [22]

It is world class with state-of-the-art facilities. MTD has donated a smart track digital diagnostic technology where the warm up track in the stadium are surrounded with magnetic nodes that serve as tracking technology that would pick up the motions of the athletes, document and analyse the data and give precise measurement on the speed, stride strength, jumps and agility of the athletes in real time.

The Aquatic Center is also IAAF certified as class 1 facility and meets the standards of Federation International de Natation (FINA), the international governing body of swimming, diving, water polo, synchronized swimming and open water swimming. [23]

Inside the New Clark Sports Complex is the Athletic Village with river parks. It has 525 rooms, 95 of which are for PWDs, gym amenities, conference rooms, kitchen and dining and other recreational facilities, which were used by the Athletes, game officials and international volunteers of the 2019 SEA Games. According to MTD President Nikko David, BCDA has plans to rent it to countries preparing for the Tokyo 2020 Olympics.

Philippine Athletes, their preparations and their drive to bring pride to our country

Sports are an inherent part of being a Filipino. From a young age, Filipinos are taught in school how to play, not only basketball, but a variety of other sports like volleyball, badminton, and football. Outside the classroom, many Filipinos also engage in sports like boxing, cycling, and martial arts like taekwondo.

The very heart of the preparations for the 30th SEA Games lies with the mettle and discipline of the 1,115 athletes, and the support from 753 coaches and officials who will form the Philippine delegation. According to the Philippine News Agency, the Philippine delegation will be the largest at the SEA Games, followed by Indonesia and then Singapore. The chairman of the

[22][http.//en.m.wikipedia.org.; www.newclarkcitystadium.com. With reports from Sambatyon E-goodnewspilipinas.com Nov.14., 2019, and Go, B- rappler.com Nov. 19, 2019.]
[23] *Ibid.*

Philippine Sports Commission, William “Butch” Ramirez, has high hopes for the performance of this driven and talented group. According to projections by sports association officials, the Philippine team is capable of bagging 90 to 100 gold medals in different events[24].

The Philippine athletes’ preparation for the 2019 SEA Games testifies to their talent as well as discipline. This bolsters the optimism about the Philippines’ chances of performing excellently at this international meet. One of the purposes is to nurture that identity, to inspire and raise aspirations enabling continued participation, supporting physical, educational and personal development to create a culture of winning in the country. In that way, Filipinos may find within themselves the determination to make a positive impact on the nation and enable them to achieve their goals and progress in life. To strengthen the unity of the Filipino people, amidst challenges, is the true victory.

Roger Casugay Heroic Acts win the hearts of the people

In the midst of the issues hounding the hosting of the games, a ray of hope emerged in the person of surfer Roger Casugay. Casugay was competing in La Union for the longboard surfing competition of the SEA games when he noticed his Indonesian competitor having difficulty during the event which almost led the latter to drown in the difficult waves. The Filipino surfer, instead of focusing on his event lent a helping hand and saved his fellow surfer from certain mishap. Although the Filipino missed the early chance to bag the gold, he nevertheless bagged it at a later final heat.

Casugay downplayed his heroic act saying that he was not a hero, adding that the Indonesian was a very good swimmer. All he did was calm him down. After the incident, the Filipino was commended Indonesian President Joko Widodo saying that, “Winning the competition and upholding sportsmanship is important, but humanity is above all. My appreciation for Roger Casugay, a Filipino surfer who lost the chance to gain gold to save an Indonesian athlete from falling during the competition”. The Palace also announced that it would bestow the Order of Lapu-lapu distinction on Casugay. The order was created by President Duterte to be given to government workers and private citizens for supporting his advocacies. Casugay was also given the honor of being the flag bearer for the closing ceremonies of the SEA games and was named as the Fair Play Athlete for this year SEAG[25]. This just goes to show what Sportmanship is. It is what makes a good athlete great.

[24] Lamudi News,Manila (December 11,2019). Retrieved from https:// www.lamudi.com.ph/ journal /filipino-athletes-sea-games-2019/.

[25] https://foxsports.ph/RogerCasugaytobebestowedwithnationalhonourforsavingcompetitor’slife

Jamie Lim: The Secret Behind The Stellar Double Success[26]

It's one thing to graduate as Summa Cum Laude in one of the most prestigious universities in the Philippines. It's another to bag a gold in this year's SEA Games. [27]

Then there are people like Jamie Lim, who are able to achieve this feat in a span of months. As she said, "Summa cum laude for mom, SEA Games gold is for dad,"— as her father was PBA Legend Samboy Lim, who won his Gold in the 1983 edition of Men's Basketball in the SEA Games. He unfortunately suffered a Cardiac Arrest in November of 2014, losing his ability to move, although he reportedly can hear.

Despite all that has happened, the UP Diliman Graduate and Asian Karate winner stated that everything she has reached was due to her parents. "It's just hard work, and focus, and discipline. Everything that I learned from my parents, I saw it from them," Lim said.

Jamie's accomplishment is brought on by the perfect mixture of hard work, good familial roots, and talent mixed into one. Like many Filipinos, she draws her strength from her family, looking at them and looking out for them. Although not everyone would be able to replicate such stellar achievements, one can certainly learn a thing or two from her. She has set an example; a beacon for young individuals in our country, showing them that learning to balance the work and social aspects of life can help you get and stay on top of your game, whether it be sports or academics. [28]

Rocking Closing Ceremony on Philippines 2019 30th Southeast Asian Games

The Philippines 2019 30th Southeast Asian Games ended on Wednesday night, December 11, with a rocking closing ceremony at New Clark Athletics Stadium in Capas, Tarlac, with Philippines as the overall champion - 149 gold, 118 silver and 120 bronze medals.

Just like the opening ceremony, the Philippines celebrated the closing ceremony the same way it opened the red carpet for all participating nations. Athletes from the 11 participating nations and viewers were treated to another spectacle. And marking the official end, thousands heard a medley of rock songs by former Journey lead singer, Arnel Pineda, who adds so much

[26]https://www.rappler.com/sports/specials/sea-games/246834-karatedo-up-summa-cum-laude-jamie-lim-philippines-gold-2019
[27]https://www.google.com/amp/s/www.philstar.com/sports/2019/12/09/1975656/jamie-lim-samboy-lims-talented-daughter-strikes-gold-sea-games-karatedo/amp/
[28]https://www.google.com/amp/s/www.philstar.com/sports/2019/12/09/1975656/jamie-lim-samboy-lims-talented-daughter-strikes-gold-sea-games-karatedo/amp/

spirit to the ceremony. Other highlights include drones and fireworks exhibition, and a mini concert by Arnel Pineda and the Black Eyed Peas.

Philippine Sports Commission chairman and PHI SEA Games Chef De Mission William 'Butch' Ramirez and Executive Secretary Salvador Medialdea accepted the overall championship acknowledgement for Team Philippines, which collected 149 gold, 117 silver and 121 bronze medals. Heroic Filipino surfer Roger Casugay, who was also the PHI's flag-bearer in the closing ceremony's traditional parade of athletes, was awarded the Fair Play Athlete for his selfless act of helping Indonesian competitor Arip Nurhidayat get out of dangerous waters during the semifinal of their surfing competition. Casugay eventually won the men's longboard event gold. Also awarded were swimmer Quah Zheng Wen of Singapore as Male Mega-Athlete for copping six gold and two silver medals while Nguyen Thi Anh Vien of Vietnam was named Female Mega-Athlete for her six gold and pair of silver medals in the pool. [29]

"This year, Christmas has come early," chairman of the organizing committee Alan Peter Cayetano said to thousands of flag-waving fans in the stadium after each country's athletes had paraded by. "We Southeast Asians, we Filipinos, have shown the world that we can do it with world class quality." [30]

Philippine Southeast Asian Games Organizing Committee (Phisgoc) Head and House Speaker Alan Peter Cayetano and Philippine Olympic Committee President Cong. Bambol Tolentino handed over the SEA Games flag to Vietnam who will be hosting the 31st Southeast Asian (SEA) Games in 2021 during the turnover rites that night.

[29][ABS-CBN Sports (December 11, 2019). "PHI ends SEA Games hosting in style". Retrieved from https://sports.abs-cbn.com/seagames/news/2019/12/11/phi-ends-sea-games-hosting-style-64303 .]

[30] [Staff Report - The Filipino Times (December 11, 2019). "Cayetano on SEA Games closing: 'Christmas came early'". Retrieved from https://filipinotimes.net/news/2019/12/11/cayetano-sea-games-closing-christmas-came-early/ .]

BLOODY CLEANSING: POLICE KILLINGS AND THE PHILIPPINE WAR ON DRUGS

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Abstract

In this paper, we explore how the fight on the long-standing drug-related problem in the Philippines is overstated in its scale and scope by President Duterte when he took office where he vowed to provide fast and effective approach of bringing to an end the drug menace in the country to an end but which led to extrajudicial deaths of thousands of people in the country without undergoing due process. Furthermore, police officers who were known as peace keepers seemed to be the ones who did more on "harming" than "helping" innocent people. Most still do their jobs but are much concerned about quotas and making arrest than keeping peace. This has become a campaign of quantity over quality. In 2018, at about 5,000 of the killings have been associated with the anti-drug campaign. This campaign of the President to cleanse the Philippines off of illegal drugs has now become a bloody purging. In their quest to do their duty, police officers and peace keepers who are being assigned to implement such program have violated the Constitutional rights of the drug personalities.

Introduction

"If I become president, there would be no such thing as bloodless cleansing," Rodrigo Duterte said in a speech during a forum at De La Salle University, Manila in 2016. He has been blunt about his disgust in the use of illegal drugs and have vowed to eradicate it in two to six months of his reign. This platform have catapulted him into power. He cites, that the rising criminality in the country is perpetrated by these drug users. Should there be a need to kill the users and pushers, he will do it (Corrales, 2016). As his supremacy began on July 2016, the Oplan Tokhang or Double Barrel Project started concomitantly with the Philippine National Police (PNP), Philippine Drug Enforcement Agency (PDEA) and the Local Government Unit as its partners.

The war on drugs dubbed "Oplan Tokhang" is the first program of the Duterte Administration. The term is derived from the Visayan words "*toktok*" and "hangyo", meaning to knock and make an appeal.[31] Its mission is to eradicate the use and trade of illegal drugs in the country by appealing to the suspected drug pushers and users to surrender and consider reformation. The Command Memorandum Circular No. 16-2016 issued by the National

[31] Romero (2018). Duterte promotes Oplan Tokhang brains. Retrieved April 15, 2019 from https://www.philstar.com/nation/2018/11/14/1868349/duterte-promotes-oplan-tokhang-brains

Police Commission (NPC) have defined the mission of the Double Barrel Project that is to clear all drug affected barangays across the country, conduct no let up operations against illegal drugs personalities and dismantle drug syndicates (National Police Commission, 2016).

Not so long after the implementation, Oplan Tokhang reaped sour feedbacks and some bitter results. It has been blamed for the outbreak of extrajudicial executions and human rights abuses. The PNP asserts that they were only forced to shoot the suspected drug users and suppliers who have resisted to their arrests. This act of retaliation of the PNP have caused several casualties such as the death of young men Carl Arnaiz (19) and Kian de los Santos (17). These young suspected drug personalities were alleged to have resisted to the arrest of the police officers. The news of the death of the two created a wild uproar from those who are opposed to the "War on Drugs" campaign of the Administration. This process of knock-and-plead have elicited police abuses and corruptions, violating the rights of the accused suspected drug users and peddlers.

As the pandemonium of criticism about the War on Drugs campaign continues, this research takes a look at the casualties of this bloody cleansing and the violations committed by the personalities assigned to implement the Project. Are the Constitutional rights of the drug personalities preserved as they are subjected to interrogation in the knock-and-plea process? Have the police officers given the suspected drug users and peddlers the chance to be heard?

Extrajudicial Executions on the War on Drugs in the Philippines

Extrajudicial executions are unlawful and deliberate killings carried mostly by police officers as ordered by the very top of government. Extrajudicial executions violate the right to life as enshrined in both the Philippine Constitution and International law.

In a report published by Amnesty International, while Philippine police are expected to be the first ones to uphold the law, protect human rights and social justice, it appears that people are slowly hanging back from asking assistance from them because of their credibility and they build up negative feelings towards the people considering the reported extrajudicial killings done by police officers. Police image is slowly being destroyed that instead of drawing the public closer, the situation only got worse and it pushed them farther.

Senator Risa Hontiveros even cited the Duterte's Administration as bloody, abusive and prone to corruption inasmuch as Philippine police were found out receiving cash payments in exchange for executing alleged drug users and dealers without evidences and undergoing proper trial process, planting evidences at crime scenes, falsifying their subsequent incident reports and shooting unarmed people including those who are ready to surrender.

Oplan Tokhang (Operation Knock and Plead)

As earlier bstated, the word Tokhang was derived from two Visayan words “Toktok” (knock) and “Hangyo” (plead). The Oplan Tokhang was first introduced during Dela Rosa’s stint at the Davao police station where he and his men will visit houses of suspected drug dealers and users and persuade them to surrender themselves to the government and quit from their participation in the illegal drugs. Oplan Tokhang, or the Project Double Barrel was implemented nationwide through the Command Memorandum Circular 16 or CMC 2016-161.[32]

The Command Memorandum Circular entitled “PNP Anti-Illegal Drugs Campaign Plan Project “Double Barrel” observes the two approaches: PROJECT TOKHANG as the lower barrel approach and PROJECT HIGH VALUE TARGET (HVT) as the upper barrel approach. The former is for the barangay level while the latter aims to target big-time drug syndicates[33]. The lower barrel approach is the conduct of PROJECT TOKHANG in any drug-affected barangays all over the country in coordination with the Local Government Units (LGUs) principally the Provincial/ City/ Municipal/ Barangay Anti-Drug Abuse Councils (ADACs), Non-Government Organizations (NGOs), stakeholders, and other law enforcement agencies. This concept involves the conduct of house to house visitations to persuade suspected illegal drug personalities to stop their illegal drug activities.

Since July 1, 2016 a total of 7080 people were killed of which 2,555 were due to police operations. Given this huge number, it seems that the operation went out of control (Tamayo, 2016). The statistics might be interpreted as an evident guarantee of his strong determination to solve drug crisis in less than a year, but it also conveys the violent consequences of his authoritarian style of leadership.

From the words of the President Duterte in a media interview, “Until the last pusher is out of the street, I’ll be very frank with you, until the last drug lord is killed, this campaign will continue until the very last day of my term,” This would only mean more deaths, arrests, police visits and extrajudicial executions until the end of his term. Even the President himself admitted that several innocent civilians, including children, were killed by the police in some of the anti-drug operations. Nevertheless, he apologized to the public

[32] Command Memorandum Circular Number 15-016 entitled PNP Anti-Illegal Campaign Plan Project Double Barrel dtd July 1, 2016, National Headquarters, Office of the Chief, Philippine National Police, Camp Crame, Quezon City.

[33] Dizon (2017). PNP Memo Cited as Proof Killings were Authorized retrieved from: https://newsinfo.inquirer.net/ 875614/ pnp-memo-cited-as-proof-kills-authorized

but at the same time he insisted that the campaign will continue until the end of his term.

Police Abuses and Corruption

> "If you know of any addicts, *go ahead and kill* them yourself as getting their parents to do it would be too painful."
>
> - President Duterte, Republic of the Philippines

The blunt words uttered by the President seemed to only encouraged police officials to do as they wish to and give them license to kill in order to please him in exchange for rewards and medals even if it means abandoning the Bill of Rights conferred to individuals.

Human rights groups such as Amnesty International and Human Rights Watch, in their respective reports, have claimed instances when police executed drug suspects, planted fake evidences such as guns, spent ammunition and drug packets at the scene on their victims' bodies to establish evidence in their involvement in drug activities, falsifying incident reports to justify unlawful killings, and where during operations that police claim are "buy busts," but witnesses and family members describe such as raids. In several crimes that Human Rights Watch investigated, suspects in police custody were later found dead and classified by the Philippine police as "found bodies" or "deaths under investigation" and some were tagged as "*nanlaban* (fought back)" to suggest they only acted in self-defense and justify their killing of suspected drug offenders. There are no trials, so there is really no evidence to show that the people being killed are in fact drug dealers or drug addicts.

Additionally, Philippine police is widely regarded as one of the most corrupt official. This accusation was reinforced where report of last year, three police officers were involved in the abduction and killing of a South Korean businessman on the guise that they were conducting raid of illegal drugs then killed him afterwards . In connection with that, they took advantage of the situation and were able to extort money from the wife. It was also in last year where some of the retired and even in active service police officials were accused and convicted of being part of the country's illegal drug trade.

The "State-Sponsored Extrajudicial Killings in the Philippines" which was cited by Reuters from a retired intelligence officer's account and an unpublished 26-page report at which point it manifest from there how police officers received under-the-table payments to kill not just suspected drug offenders, but also for 10,000 pesos a head-rapists, pickpockets, swindlers, gang members, alcoholics and other "troublemakers".

Vigilante-Style Killings

> "My order is shoot to kill you. I don't care about human rights, you better believe me."
>
> - President Duterte, Republic of the Philippines.

Duterte has repeatedly called for the Philippine National Police to target suspected drug users and drug dealers with extrajudicial violence, which could be considered inciting law enforcement to commit murder.

With all the pressure received by police officers from the high levels of government, some would resort to vigilante-style killing where Philippine National Police assert that some of the questionable cases are killings perpetrated by "unknown gunmen" or "vigilantes" when in fact it has a direct link to the police with police officers either hiring paid killers to kill specific individuals or disguising themselves and carrying out the killings as investigated by the Amnesty International. In a 2016 interview by Inquirer Philippines, Ronald dela Rosa reminded the police, "You shoot to kill if the criminal fights back or is armed. Would you want to die? Shoot to kill instead of you ending up killed." (Inquirer.net, May 2016).

In one of the interviews by Rappler, a self-confessed vigilante and an alleged member of hired vigilante divulge to them the murder methods in executing out a suspected drug offender. They said they were backed up by a police and they received orders from at least one official. A group of at least 4 to 6 men would watch the target closely for days, and gather information about him or her from the neighborhood. When the target turns out to be "positive," a team that will carry out the killing is selected where vigilantes sometimes use a van or a motorcycle with unregistered plates-a practice known commonly as "riding in tandem." More than that, some of these unknown assassins would barge in houses with masks and target people in their homes which are done usually at night.

Violations on the Constitutional Rights of the Drug Personalities

> "No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him."
>
> *— Section 12 (2), Article III, 1987 Philippine Constitution*

Police personnel assigned to operate the Oplan Tokhang are called "tokhangers." These men are chosen personally by each Police Chief to keep away scalawags in the operation (Malonzo, 2018). During the tokhang, the tokhangers visit the houses of the suspected drug personalities listed in the watch list. The New York Times attests that there is a difference in how the

Tokhang is operated between affluent neighbourhoods and poorer districts. Tokhangers in the former community sometimes politely knock on the door and hand out pamphlets detailing the consequences of drug use to the housekeeper who answers. While police officers in the latter would grab teenage boys and men off the street, run background checks, make arrests and sometimes shoot to kill (Berehulak, 2016)

In 2016, reports show that during a tokhang operation, one policeman apprehended the Bertes men, father and son, who were the suspected drug personalities listed in the watch list. The two were known to be smokers of shabu, a cheap form of methamphetamine. Police officers raided their house in a metropolitan Manila slum after they have received reports of drug activities. They were arrested and taken to a police station where, investigators say they were severely beaten, then shot to death. The police alleged that the Bertes men tried to escape from detention by seizing the warden's gun. However, forensic examination conducted by the investigators found that these men had been incapacitated by the beatings before they were shot to death. (Paddock, 2016).

The 1987 Constitution safeguards the rights of the accused from any "torture…violence…or any other means which vitiate [his] free will." [Article 3, Section 12 (2)] In *People v. Judge Ayson*[34], the rights of the accused enumerated in Section 12 of Article 3 are available only during custodial investigation. This investigation commences when a questioning initiated by law enforcement officers are conducted after a person has taken into custody. Likewise, R.A. 7438 defines custodial investigation to include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he has committed.

The case above shows how the police officers infringed upon the Constitutional right of the Bertes men as they have experienced torture and violence from the police through several beatings. The moment they were brought to jail (or detention office) for further interrogation, this action is deemed proper to be called as a custodial investigation. In this matter, should they needed to be invited to the office of the police, they could have been granted with the right to a competent and independent counsel preferably of their own choice. This is tantamount to the violation of Section 12 of Article 3 of the 1987 Philippine Constitution. The Bertes men could have been informed of these rights.

Equally, these suspected drug users and pushers are presumed to be innocent until proven guilty through concrete and convincing evidence and by final judgement of the court.[35]

[34] 175 SCRA 216[34],

[35] See Section 14 (2), Article 3 of 1987 Philippine Constitution

It seems now that the very men whom we thought to be executing the law in utmost prudence and are the vanguards for the protection of the rights of both criminals and common men alike are now the same men we must have to be wary about. From the words of Robert Kennedy, "whenever men take the law into their own hands, the loser is the law. And when the law loses, freedom languishes."[36]

> "No person shall be deprived of life, liberty… without due process of law xxx."
>
> — *Section 1, Article III, 1987 Philippine Constitution*

Furthermore, a word referring to a bloody fight has rung the bell of the news media and the public since 2016. *"Nanlaban"* a Tagalog term which means resisted is a case called by the police when a suspect resists their arrest and ends up dead. In the Philippines, like all other countries, the police policy should be the elimination of threat with the least possible loss of life (Rahuba, 2016). The aim is to shoot to disarm or incapacitate the suspect and not to kill. But the opposite happens here. Could it be that the police have followed obediently the orders of then Chief of Police, Ronald "Bato" dela Rosa? "Shoot to kill if the criminal fights back… Make them fight back." (Inquirer.net May 20, 2016)

Their obedience has been tested when Cruz, 34 was shot dead by armed men in his house while fixing a transistor radio. Families of the deceased purports, that Cruz was not a drug pusher but a user of shabu. He had surrendered months before the incident, as he responded to the call of the President Duterte, for what was supposed to be a drug-treatment program. The police report, however, showed that the suspect ran inside the house then pulled a firearm and successively shot the lawmen, compelling the same to return fire in order to prevent and deter Cruz's unlawful aggression (Berehulak, 2016).

Another *"nanlaban"* case is that of Francisco Maneja Jr.. Police claimed that Maneja with his alleged cohort George Huggins were caught in a buy-buyst operation inside a tricycle along Boulevard in Malate, Manila. They were alleged to have transacted with undercover police officers inside the tricycle. Maneja Jr., purportedly pushed one of the undercover policemen out of the tricycle while Huggins supposedly fired at Police Officer 1 Orlando Gonzales (Cayabyab, 2018).

In his affidavit, Maneja Jr., declares that a man flagged him down while he was in a tricycle queue which he was supposed to transport sacks of rice to the Malate police station. He was grilled and beaten to give details about the whereabouts of two alleged drug personalities. He claimed that he was later

[36] Thomsen, B. (2010). *The Dream That Will Not Die: Inspiring Words of John, Robert, and Edward Kennedy*

handcuffed and brought to his tricycle, and then taken with another person to the site where the alleged shootout took place. The police shot Maneja in the chest. Fearful about the state of his life, he played dead to avoid being murdered by policemen until reporters arrived at the scene. When he moved, he heard someone say "*Huwag kayong lalapit dyan, may baril yan* (Don't come near him, he has a gun)," to which he responded "*Wala po akong baril, tulungan niyo po ako, parang awa niyo na* (I don't have a gun, help me, have mercy)."[37]

The judgment of Manila Regional Trial Court Branch 40 Judge Alfredo Ampuan have cleared Maneja Jr. from the police allegation that he fought back. The Court finds the narrative of the police officers involved to be "doubly doubtful" as the police officers made an inventory of the drugs at a nearby hospital and not at the crime scene. The RTC have concluded that their defense is not convincing enough to convict the accused.

Although the cases cited above have led to two different fate, both have mirrored what the police can do in violating the rights of the accused drug dealers and/or users. The police who attended to them have deprived them of their Constitutional right to liberty. Their freedom to be heard until final judgement of the court convicts them.

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable xxx."
>
> — *Section 2, Article III, 1987 Philippine Constitution*

As Berehulak (2016) purports in The New York Times, there is a colossal difference in the Tokhang house-to-house set-up between neighbourhoods consisting of affluent families and districts composed of poorer individuals. The latter would experience harassment and worse, the peace-keeping officials would barge in the house and ask for the drug personality listed.

The set-up of the Project is, the police would conduct house-to-house visitation to persuade the drug users/peddlers listed on their watch list. Some instances, they would be encouraged to surrender to their office (Command Memorandum Circular Number 16-2016). While the intention of the Project is laudable that is to curb illegal drug use, the implementation poses a greater risk of violation of the rights of the accused. Reports confirm that this house-to-house visitation deprives the suspected drug personalities on the watch list of their freedom to be secure in their houses. Furthermore, there implementation of the Project posits difference from what the guidelines suggest than what actually transpires. What the PNP circular merely requires

[37] Cayabyab, M. (2018). 'Nanlaban survivor wins drug case.' The Philippine Star Global. https://www.philstar.com/nation/2018/09/02/1847847/nanlaban-survivor-wins-drug-case

for the house visit is the collection and validation of information and proof on suspected illegal drug personalities (Delizo, 2019).

Conclusion and Recommendation

Extrajudicial executions and other forms of abuses of government functions particularly in the law enforcement is a critical and ongoing problem in the Philippines that should be forthwith resolved. The presence of it is becoming more of an issue as society grows. Hence, this matter must be stopped and the law enforcement agencies must be reminded of who they are serving– not themselves but the public in which the criminals are not an exemption to such duty. Human as they are, they also possess rights granted by the Constitution, just like how other individuals must be protected.

In light of the foregoing and as a solution, research study suggests that in order to better improve and curtail the incidents of police misconduct, body-worn cameras offer benefits not just for the law enforcers but the public as a whole. It offers real-time information about their contact and support with members of the community, and response to calls or emergencies. Other potential benefits of the technology are better transparency because it would document events and support accounts articulated by officers and community members and quicker resolution to act on citizen complaint. In return it would help bring back or increase public trust and confidence towards law enforcers.

Much has been said about the importance of the protection of the Constitutional rights of the accused. For a campaign to swerve towards a bloodless cleansing of illegal drugs, cognizance of the Constitutional rights of the accused must be given much weight.

The Legality of Publishing a Drugs Watch List against Suspected Persons Involved in Drugs

Jann Peter Rocas & Vel Justin Inot

In the bid to fight a war on drugs, the current Philippine administration, headed by President Rodrigo Duterte, has put up and published a Drug's Watch list containing the names of suspected persons involving drugs especially to counter Narco-politicians.

Rodrigo Duterte as Mayor.[38]

Before he became President of the Philippines, Rodrigo Duterte was already a household name for his feats as the feisty Mayor of Davao City. Tales were heard of how he rid the streets of Davao from lawless elements and instilled discipline into minds of the Davaoenos. One such story involved a tourist who was apprehended for smoking in public. Such tourist did not heed the warnings of police officers and was made to swallow the cigarette butt by the mayor who was made aware of the incident.[39] Another interesting story about Duterte's Davao is its implementation of the speed limit which caught non-Davaoenos off-guard while driving around the city. It was one of the first cities in Mindanao to strictly implement such limit[40].

Despite the mayor's strict ruling style, most of the Davaoenos are not afraid and are actually proud of him. Evident of this is the fact that the family has been ruling the city for decades already. After the mayor ran for President and won, his daughter took the reins of the city from him and won as the new mayor, for the second time; her brother also won as vice mayor. The people do not mind that there are news and rumors of extrajudicial executions for they believe the safety and security of the innocent constituents outweigh the due process rights of lawless elements.

Perhaps the president's demeanor is his greatest selling point. The people think he is a strongman who is not afraid to make tough calls when warranted. The people hopefully believed this and much still do as his popularity rating remains high.[41]

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[38] Rauhala, E., (2016, Sep 28). *Before Duterte was the Philippines' president, he was 'the Death Squad mayor', The Washington Post,* Retrieved from https://www.washingtonpost.com/world/asia_pacific/before-duterte-was-the-philippines-president-he-was-the-death-squad-mayor/2016/09/28/f1d1ccc4-800b-11e6-ad0e-ab0d12c779b1_story.html

[39] Rappler.com, (2015, Sep 3), *Duterte forces smoking tourist to swallow cigarette butt, Rappler.com,* Retrieved from https://www.rappler.com/nation/politics/elections/2016/104625-duterte-forces-tourist-swallow-cigarette-butt

[40] Capistrano, Z.I.M., (2017, Dec 14), *What happened to Davao City's implementation of speed limit?, DavaoToday.com,* Retrieved from http://davaotoday.com/main/politics/what-happened-to-davao-citys-implementation-of-speed-limit/

[41] Felongco, G. et. al., (2018, Nov 13). *Philippines President Duterte's report card: Why he remains popular, Gulf News Asia.* Retrieved from https://gulfnews.com/world/asia/

Public shaming.

In Tanauan City in Batangas, a certain mayor, Antonio Halili, has been making the rounds in the news for a similar treatment of crime suspects. In one instance, an apprehended suspect of stealing dried fish was made to walk around the city bearing the placard “Ako'y magnanakaw. 'Wag akong tularan.” In another incident, drug pushers were made to walk around the city bearing signs saying “Ako’y pusher, huwag tularan.”[42] Human rights advocates and the Commission on Human Rights-CALABARZON were quick to call out such scheme by the mayor saying it violated the human rights of suspects such as their rights against other cruel, inhuman and degrading punishment. They also said it violated the suspects’ right to be presumed innocent as the suspects have already been prejudged without having the courts decide on his case. Futhermore, the CHR said Mayor Halili could be liable for violation of the anti-torture law and for violation of the Code of Conduct of Ethical Standards for Public officials and Employees.[43]

In his defense, Mayor Halili said that it is a means of instilling discipline among the constituents and also it is part of the radical change that people are seeking since the conventional justice system is slow to deter crime around the city.

Extra-judicial Killing.[44]

Foremost among President Duterte’s campaign promises while running for President is the War on Drugs. It is a crackdown on illegal drugs which he claims is deterrent to the country’s economic and social progress. After winning as President, one of the first projects of the new Philippine National Police Chief is the Operation Tokhang wherein the police go to suspected users/pushers homes and ask politely that they surrender in peace in order to be put in rehab. Indeed one of Duterte’s first statements as the President is to go and kill off drug users and dealers which may be taken by others to mean that he encourages the extra-judicial killings of suspects both by vigilantes or by the police officers.

The War on Drugs has been relatively successful in quantity as the numbers of surrenderers and apprehended suspects greatly increased. On the

philippines/philippines-president-dutertes-report-card-why-he-remains-popular-1.15419401012 74

[42] ABS-CBN News, (2016, May 18), *Mayor orders drug suspects to do walk of shame, ABS-CBN News,* Retrieved from https://news.abs-cbn.com/nation/regions/05/18/16/mayor-orders-drug-suspects-to-do-walk-of-shame

[43] Luistro, M.A., (2015, June 30), *City mayor’s ‘walk of shame’ punishable by law?, The Filipino Connection,* Retrieved from https://thefilipinoconnection.net/city-mayors-walk-of-shame-punishable-by-law/

[44] Xu, M., (2016, Dec 16), *Human Rights and Duterte’s War on Drugs, Council on Foreign Relations,* Retrieved from https://www.cfr.org/interview/human-rights-and-dutertes-war-drugs?fbclid=IwAR24AvWfQu_xzvJmkKOAMIKRju43Zuin7Xm3qNKrMTJgUQuxJc3t2trm3iY

other hand, such war has also produced huge casualties who were suspects killed by vigilantes, and those killed in police operations. This prompted opposition from critics, human rights advocates, the Commission on Human Rights and even international governments who claim that operations of the government have infringed upon the human rights of suspects. They believe a lot of those killed were summarily executed without proof of guilt of their involvement with drugs.

MASA MASID.

A Memorandum Circular has been released by the Department of the Interior and Local Government as a revision of the guidelines on the Implementation Mamamayang Ayaw sa Anomalya, Mamamayang Ayaw sa Iligal na Droga (MASA MASID).

The MASA MASID program hopes to put in place heightened community involvement at the barangay level to combat illegal drugs, corruption and criminality which encourages multi-sectoral partnership of different agencies The program has good merits and intention as it encourages the help of the community to promote their community's safety by means of being more aware of their surroundings. However, the program does have its shortcomings. The program is prone to abuse for malicious reports and set-up as persons can report an individual with no involvement to any crime as a means to ruin their reputation and cause mental trauma. This can also be abused by politicians to report their contenders and opponents as a means to persuade the public in favor of them. This is especially the case since the program allows anonymity in their reports as the guideline for the program's mode of reporting states:

> "*Reports shall be coursed through hotline, drop box, electronic mail, Short Message Service (SMS), or directly reported to any member of the MMG.*"[45]

The particular modes of reporting that allows anonymity are electronic mail and Short Message Service or SMS. Anyone can just purchase a disposable prepaid sim or employ the use of a disposable email and use that as the mode for malicious reports.

Reporting of such criminality and other threats to public safety and order, especially if it involves the reputation of the people should be made clear and the reporter should not maintain anonymity. One may ask for the person who made the report's names to be undisclosed to the public if

[45] DILG Memorandum Circular 2017-112, *Revised Guidelines on the Implementation of Mamamayang Ayaw sa Anomalya, Mamamayang Ayaw sa Illigal na Droga (MASA MASID)*, August 29, 2017. Retrieved from https://dilg.gov.ph/PDF_File/issuances/ memo_circulars/dilg-memocircular-2017829_c78b9c48df.pdf

personal safety in a concern. Such if an anonymous report should be received that it should be taken with a grain of salt. Additionally, drop boxes are also at risk for theft if such boxes are placed in unsecured places that may lead to a preemptive retaliation from people who were negatively affected by criminality in the area. And if such submitted reports contain the names of the innocent, then we now have endangered the people in our community.

The MASA MASID program is now being used by the government spearheaded by the DILG to create a Drugs Watch List of Persons involved in the pushing, selling and using drugs. Their intent is to reduce the supply and use of drugs in the streets. The administration has focused on finding out persons in official posts that are suspected to be involved in illegal drugs in a bid to cleanse the Government of Narco-politicians and corrupt officials. Narco-politicians are those who are involved or is funded by illegal drugs.

These watch list are on the barangay level but **PDEA Director General Aaron Aquino** stated in a news article that Law enforcement would create a national watchlist to consolidate the collected watchlists from the baranday-level. The list aims to reduce confusion and prevent discrepancies from the various agencies keeping track of a watchlist. **PDEA Director General Aaron Aquino** also stated that the president also keeps a similar copy of such a list. He also iterated that such a list is of personalities who are still suspected to be involved in the illegal drug. Said list will be subject to investigations and if sufficient evidence was collected, those personalities' names will be transferred to a target list.[46]

Keeping a consolidated list of suspected personalities involved in drugs do create a security level for validation of those suspects as more people are involved in the monitoring of said list and reduces the likelihood of anomalies. However it also carries an additional risk of leaks as more hands are involved in the management of it if proper safety procedures are not employed.

As a result of this initiative, it was reported that about 11,000 names are included in the validated drugs watchlist in the hands of the Philippine Drug Enforcement Agency (PDEA). To which these are the list whose names of personalities have been validated of the suspicion on the involvement of drugs.[47]

[46] UNTV News and Rescue, (2018, Jun 1). *Law enforcement agencies to create a national drug watch list on, UNTV News and Rescue*. Retrieved from https://www.untvweb.com/news/law-enforcement-agencies-to-create-a-national-drug-watch-list-on/

[47] Sadongdong, M. (2018, Feb 9). *11,000 names figure in validated drug watch list. Manila Bulletin,* Retrieved from https://news.mb.com.ph/2018/02/09/11000-names-figure-in-validated-drug-watch-list/

Oplan Tokhang

In connection to the DILG's MASA MASID program, the personalities who are included in the validated Drugs Watchlist are subject to one of the current administration's programs on war on drugs, Oplan Tokhang.

Oplan Tokhang is the government's anti-drug campaign which aims to rid the Philippines' illegal drugs and it's users to include those who supplies and manages such activities.

The main component of Oplan Tokhang is to knock on the doors of the offenders and plead them to surrender themselves, voluntarily.

In opposition, An article written on *Economics Student Society of Australia website* states that for those who experienced Oplan Tokhang firsthand oppose the said program as they believe that the rehabilitation, welfare and income-generation programs remain the only feasible solution to eradicate drug use in the Philippines .[48]

Numbers on War on Drugs[49]

The number of deaths PDEA released for the government's war on drugs have amounted to 5552 from July 1, 2016, to November 30, 2019 as a result of 151,601 anti-drug operations performed. 220,728 drug personalities have also been arrested and of that number 726 government workers as well as a total of 8185 high value targets were also arrested during that time period.

Furthermore, 16,706 barangays have been reported to be cleared of drugs while 17,175 barangays are yet to be cleared by the government. Finally a total of 485,295 surrenderers are recorded for reformations programs. In total, 40.39 billion value of drugs, CPECs and laboratory equipment were seized. These numbers are the latest update from the #RealnumbersPH page.

Right to Due Process.

In reference to the law governing the right of the people to the due process of the law, the Article III, Bill of Rights, of the 1987 Philippine Constitution states the following provisions:

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[48] Hew, S.Y., (2018, May 25). *Oplan Tokhang: The Philippines' War on Drugs, Economics Student Society of Australia*. Retrieved from http://economicstudents.com/2018/05/oplan-tokhang-philippines-war-drugs

[49] #RealNumbersPH Facebook Page. (2019, December 12). #RealNumbersPH (as of Nov. 30, 2019) Alamin ang tunay na numero. #RealNumbersPH #RealNumbersPHYear3. Retrieved fromhttps://www.facebook.com/pg/realnumbersph/photos/ ?tab=album&album_id=1489147827933417&ref=page_internal

Article III Section 1 states:

> *"Section 1. No person shall be deprived of life, liberty, or property without <u>due process of law</u>, nor shall any person be denied the equal protection of the laws."*

Article III Section 14 states:

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

According to Section 1 of the Bill of rights, No person shall be deprived of life, liberty, or property without due process of law. The publishing of a list put may be innocent people to public scrutiny and shame. Akin to a trial by publicity, this is a detriment to the socio-economic standing of these people. They may be shunned by family and friends and be let go from work. If such injustice occur, would it not deprive said personalities to their right to not be deprived of life, liberty, or property without process of law?

In Section 14 of the article, would such injustice violate the person's right to not be forced to answer for a criminal offence without due process of law? Even an individual charged in court are deemed innocent until the contrary is proven. Such situation clearly violates said provisions of the law.

Heavy-hand on Suspects

The anti-drug program, Oplan Tokhang, of the government seems simple enough to execute. However problems arise when said suspects fight thus allowing casualties from the operations to occur. Those opposed to the government's anti-drug movement propose that with the president's brash orders, even if told as a joke, that statements of the police that the suspects have retaliated gives rise to doubt that said suspects did indeed retaliated.

In the prospect of self-defense, necessary force may be employed to counter threats, but we constantly receive reports that excessive force has been used to suppress such suspects and allegations that even without retaliating, the suspects was still have been killed. This allegations have been raised in response to the heavy number of extra-judicial killings the police has been made. The president seems to have a great hatred to illegal drugs. But we have to give credit to him also as he have made Davao what it is today due to his administration. The means taken may have been controversial and will remain so but alternatives to the same end are available though it does take longer to see change for these.

The Centre for Human Rights(CHR) have been vocal in response to the heavy number of killings since the start of the anti-drug movement.

Sub judice

The Merriam-Webster's Dictionary defines *Sub judice* as something pending before a judge or court : not yet fully decided. Accordingly, the Doctrine of Sub Judice bars anyone from talking about matters which are already filed in Court but have not yet been decided by the same. Such acts may be considered contemptuous to the Court. Such rule bars the possibility that public perception of the case would intervene with the outcome of a proceeding where the life, liberty or property of a person may be at stake.

Thus, among those included in the lists there may be drug cases already pending before the courts that may require careful scrutiny of the evidence presented and actually admissible. The release of such a list, especially to the public, draws negative prejudice especially among the person's peers and family and may unnecessarily impact the outcome of his case and his life generally.

Accordingly, the release of such a list may be considered sub judicial to drug cases that may have already been filed in court.

CONCLUSION

Keeping a drugs watchlist is not at all bad in fact. But it comes with it certain risks and proper considerations to prevent possible violations to the rights of the accused to due process and against preemptive judgment due to the publicity of such list.

There is no wrong done if what is being made public is a validated list of personalities that law enforcers already have substantive evidence that point said personalities are indeed involved in drugs. What is wrong is the call of the administration to publish lists which names that are yet to be validated and confirmed by a succeeding investigations. These lists may as well contain names of personalities who are only products of a mistake or have been reported maliciously.

If said list were to be made public, there are alarming consequences that will affect the reputations of said innocent personalities as well as a risk of a socio-economic detriment to said persons. As an example, a personality's superior at work may have been informed of such list which includes the said personalities name, would it not compel the superior to terminate or be biased towards said employee? If after an investigation, the employee was deemed innocent and was stricken off the said watchlist, the damage to the reputation and finances of the said employee has already been done. Where would he look for such injustice to which his own government made the person's dilemma possible?. This would constitute for having put into a preemptive predicament in part of the employee without due process of law.

Programs of the Government should not be taken for granted and should not be implemented haphazardly and should come with it strict regulations for implementation to protect the rights of the people. If even the government itself does not put proper safety procedures in place to prevent violations of the right of the people, it may make the people lose trust in the government. After all, the government has the obligation to uphold the provisions of its Constitution and protect the rights of its people.

Increasing the Subsidy of 4Ps: Is it a Safe Move?

Mark Mira

The State, conferred with sovereign power, is bound to the moral principle that the general welfare of its citizenry is the heart of its functionality. That in all affairs and enterprises, may it be political, social, cultural, and moral, the government is always solely headed and directed to the benefits of the entire strata of marginalized and unprivileged. This principle is the basic foundation of the Conditional Cash Transfer Program , an epic poverty reduction and alleviation program and the "government's most expensive social protection program to date"[50] intended to answer the immediate need of the poor populace of this country.

The conditional cash transfer (CCT) program which began in the year 2007 has become one of the major instruments being used by the government in order to support the effort to eradicate poverty and achieve six out of eight Millennium Development Goals set by the United Nations for developing countries. It is currently called the 4Ps program (Pantawid Pamilyang Pilipino Program) which provides cash grants to poor families subject to certain conditions set by government that must be followed by recipients in order to maintain their eligibility over a five-year period. These conditions generally include mandatory enrollment of children in public schools and regular medical check-ups for both children and mothers in each of the households identified as target beneficiaries of the country[51]. In 2016 , the program covered 4.6 million households with which the government allocated some P78.2 billion for its full implementation. Subsequently, such poverty alleviation program was institutionalized under the Republic Act 11310 or the "Pantawid Pampamilyang Pilipino Program Act"which was signed by President Rodrigo Duterte on April 17 , 2019. The law provides that the State" shall promote a just and dynamic social order thereby uplifting its citizens and marginalized sectors from poverty through policies that provide adequate social services, promote full employment, a rising standard of living ,and an improved quality of life[52]. Such Legislation concurs with constitutional provision that, "the promotion of social justice shall include thee commitment to create economic opportunities based on freedom of initiative and self- reliance"[534]. Truly, within the line of considerable instrumentality in addressing the dismal and depressing problem of poverty, 4ps is deemed to be an excellent mechanism that the government could reasonably employ to eradicate the immense poverty problem.

[50] Dr. Roberto B. Raymundo, Inefficiencies, Disincentives and the Misallocation of Resources under the Conditional Cash Transfer Program, p1.
[51] *Id..*, p 1.
[52] An Act Institutionalizing The Pantawid Pamilyang Pilipino Program (4Ps) [Pantawid Pamilyang Pilipino Program (4Ps) Act], Republic Act 11310, S (2019).
[53] 1987 Philippine Constitution, Art. XIII, Sec. (2).

The noble objectives of the enacted law may appear to be in favor of the poverty stricken masses. However, the considered opinion of increasing the 4ps subsidy from a minimum of 1000.00 to 5000.00 is bereft of merit on the grounds that: (1) the implementation of 4ps is derailed with inefficiencies and irregularities, (2) increasing the subsidy will constitute to Higher taxation, and (3) the recent out comes of the Conditional Cash Transfer grants have left some questionable points.

Inefficiencies and Irregularities of the 4Ps Implementation

The Commission on Audit, a government institution which has "the power, authority and duty to examine, audit,and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by or pertaining to the government"[54] as defined by the constitution, issued an Audit Report on 2012 that the conditional cash transfer program had covered a number of ineligible households ,most of which were found in Region 5 with 64 beneficiaries being included that were not poor. The COA had stated that the selection of poor house through the household assessment and application of the Proxy means Test (PMT) may be considered deficient. For the year 2012, P96.62 million worth of disbursement did not comply with regulations and P50.15 million worth of payments went to 7,782 which were not in the list of validated beneficiaries in the National Targeting System of the DSWD. Furthermore, from January 2012 to August 2012, cash grants of 18,683,963 had revealed duplication among the names of 4,443 households.

A COA Audit Report dated 2013 revealed that the DSWD employed the Over the Counter Scheme for releasing cash grants of a total amount of P10.626billion which was deposited in the DSWD Land Bank of the Philippines account . The Audit Report also revealed that an amount of 46,502 million worth of cash grants were traced to 4320 households with duplicate entries.

In 2014 COA Audit Report, it was discovered that both non-eligible and eligible beneficiaries are of duplicate entries. Many of the current beneficiaries are noting the list in the identified as poor by the National household Targeting System. From the sample taken by the COA , 1,752were identified as unique households and 609 were duplicates.

In 2015 COA Report, it was revealed that the amount of P1.579 billion from 2010 to 2015 had remained idle apart from the fact that 327 households names were being duplicated.

In 2017 COA Annual Performance Report, the department hasgenerally suggested that DSWD should maintain the suspension of 4Ps expansion until

[54]1987 Philippine Constitution, Art. IX-(D), Sec. (2).

it upgrades its Information Technology systems and identifies ineligible beneficiaries[55]. Since the Department of Social Welfare and Development is tasked to provide an optimum implementation of the said program under Administrative Order No.16. s 2008[56] and is ruled by the Supreme Court in the case of *Pimentel ,et al V. Executive Secretary and DSWD Secretary , July 17, 2012,*[57]any issue that will rise in consonance of the execution of the program is subject for further clarification. As the CCT program has been previously attacked with controversy by some sectors in the society, claiming that such program show that people understood 4ps to be perceived as a "dole-out" program which causes dependency that forfeits the purpose of making the people self-reliant, COA has found out that upon the implementation of the program, inefficiencies and irregularities come to existence.

The Commission on Audit has regularly discovered various cases that involved the illegal use and diversion of public funds in all government departments under executive branch, and the expanded CCT program with its wide coverage across the entire country, only adds to the list of potential sources of public funds which can be diverted for other purpose[58].

According to report, poverty incidence data from the Philippine Statistics Authority (as of June 2015) shows that the program successfully targeted regions with the highest percentage of poor households. However, DSWD's individual household has targeting problems. DSWD data (as of May 22,2017) reflect that 31,389 households that received benefits were non-poor and therefore ineligible. These errors resulted from poor data gathering during the 2009 National Household Assessment. On May 22, 2017 almost 16,000 duplicate entries were discovered. This irregularity is due to inadequate Information Technology support upon the expansion of the program.

With such reality, how can this institutionalized government program, founded by legal basis, serve its purpose for the good of all people when flaws are evident and abject? Can a government continue to spend and allocate another billion pesos to sustain and upgrade a certain program when glaring loopholes are not yet given appropriate attention for solution?

The existence of numbers of ineligible beneficiaries, thus subject to delisting of some households also contributes in the irregularities of the actual implementation of the 4ps program. This pushes some to question as to what extent the program will favor the real poor and in fact answer the

[55] COA, (2017) Performance Audit Report, Pantawid Pamilyang Pilipino Program p.1.

[56] Guidelines on the Implemenation of Pantawid Pamilyang Pilipino Program, Adminitrative Order No. 16, S.2008.

[57] Pimentel ,et.al V. Executive Secretary and DSWD Secretary, G.R No. 195770, July 177,201(EN BANC).

[58] Dr.Roberto B. Raymundo, Inefficiencies , Disincentives and the Misallocation of Resources under the Conditional Cash Transfer Program, p6.

growing poverty upheaval. Fraud, waiver, duplicates, no eligible members and above the poverty threshold are some of those identified causes why many household have been delisted.

Moreover, according to the latest Program Implementation Status Report for Pantawid Pamilyang Pilipino Program issued by the Department of Social Welfare and Development for the first quarter of 2019 from January to March 2019, a total of 40,107 complaints were encoded and recorded in the Grievance Redress System (GRS) through various mode such as call, grievance forms, social networking sites, courier and electronic mail. Of the 40,107, only 31, 374 (78.23%) have been resolved[59]. Some of the grievance categories include payment-related issues in which out of 21, 653 complaints only 15,331 were resolved; Cash Card related issues which out of 6,360 complaints only 5,575 were resolved; Misbehavior of the Beneficiary with which out 1,941 complaints only 1,378 are resolved; Ineligibility with which out of 362 complaints only 191 were resolved; and Grievance on Staff Performance with which out of 43 complaints only 17 are resolved[60]. These inefficient operations, inadequate mode of verification of the eligibility of the beneficiaries, ineffective administration are surely the contributing factors in questioning the credibility and effectiveness of 4Ps program in answering the poverty crisis of our country, thus these will also be the concrete bases of contradicting, as it may arise, any proposal to increase the 4Ps subsidy in so far as inefficiencies of the implementation constitute to wasteful expenditure of public funds. .

The Role of the Commission On Audit (COA) in this case as an appropriate agency which has technically determined the irregularities of the 4ps implementation has been properly appreciated with great credence.As a government institution whose duties and responsibilities are defined by the Constitution and comprehensively explicated in many jurisprudence,any findings of irregularities and misallocation of public funds by the COA shall become a subject of legislative scrutiny and consideration . In the case of Verzosa, Jr. V. Carague, et al, February 07,2012, the Supreme Court held that,"The COA, under the Constitution, is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis. For this purpose, the Constitution has provided that the COA shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties"[61].

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59 Department of Social Welfare and Development, Program Implementation Status Report , Pantawid Pamilyang Pilipino (2019).

60 *Ibid.*

61 Verzosa, Jr. V. Carague, et .al. G.R. No. 157838, February 07, 2012 (EN BANC).

Thus the comments and remarks of the COA with respect to discovering some evident loopholes, and inefficiencies in the implementation of Conditional Cash Transfer Grants commonly known as 4ps program could be the prima facie evidence that increasing the subsidy to 5000.00 should never be pushed through.

Increasing 4Ps Subsidy Constitutes Higher Taxation

The Pantawid Pampamilyang Pilipino Program which is regarded as one of the most expensive poverty alleviation programs that the government has been implementing has allocated an epic amount of budget since it started in 2007[6213] . Since the 4Ps has been piloted in 2007, a total of PHP 75.99 billion have already been allocated for its implementation. By the end of 2013, the allocation had significantly reached to PHP 120 billion[63]to cover the entire implementation from planning, updating the technical facilities needed for checking and validating household data, financing the cash grants for millions of family households, monitoring evaluating the implementation .Consequently ,this will make us question as to how can our government manage to finance the entire machinery of the Conditional Cash Transfer grants considering its magnanimous financial impact that has to be addressed immediately.

This pushes the government to acquire loans from international banks to finance the project. In 2010, the Asian Development Bank approved a $400 million loan to help finance the program over the 2011 to 2014 period,while the World Bank provided a loan worth $405 million to cover the same over the 2019 to 2014. These loans helped in fulfilling the optimum implementation especially in financing the cash grants and of course some of the essential and necessary administrative processes.

However, debt incurred from the loans coming from the loan amortization, loan percentage and loan penalties, were substantially larger than the combined loan amount of $805 million incurred from the two international banks because of the interests and principal payments to be amortized over a long loan term period. This costly government programs need to operate in all entire regions as the objectives should cover all eligible beneficiaries in the entire country. Hence, this enormous amount of public funds allocated for the sole program of reducing poverty problem of our country has been placed in the hot seat in so far this will become the precedence of making our country susceptible to deficits and drowning public debt. In 2018, around PhP1.2 billion was allocated to the Department of Social Welfare and Development (DSWD) for the administration of the Program, while PhP24.5 billion was lodged in the Land Bank of the Philippines (LBP) for the cash transfer and for the payment of bank fees. For

[62] Dr.Roberto B. Raymundo, Inefficiencies , Disincentives and the Misallocation of Resources under the Conditional Cash Transfer Program, p.3.
[63] *Ibid.*

2019, the DSWD and the LBP will be allotted with PhP1.1 billion and PhP36.5 billion for the Program, respectively[64]. In order to realize this proposed budget intended for the 4Ps project , the government has to find way; and the easiest way to get such huge amount is to increase the loan amount that the government has had previously incurred from international banks. This will eventually stir our mind and make us question: "Where will the government get a considerable amount to pay such loans?".

Obviously, these payments of debts will be taken from the taxes paid by the public and private sectors as it has been said that taxes are the lifeblood of the government. The importance of imposing tax has been well explained in the case of *ABAKADA GURO PARTY LIST (FORMERLY AASJAS) V. THE HONORABLE EXECUTIVE SECRETARY EDUARDO ERMITA et. al,* when the issue about whether or not Republic Act 9337[65]is unconstitutional was raised by some concerned citizens. The Supreme Court Ruled in favor of the respondents in so far as the dire need for revenue cannot be ignored since our country is in a quagmire of financial woe[66][17]. The only way to meet government expenditure is to raise the source of revenues.

The government's authority to impose tax to goods, services and other enterprises has never been a question inasmuch taxes are the government's income which is used for all the governmental functions in the forms of different projects and programs. However, the manner, the reason and ,to some extent, the amount of tax to be imposed to the public is something which is to be reflected upon and subject to legislative scrutiny.

Considering the huge amount of loans that has to be paid over a period of time the government should strategically create and implement a new taxation system to increase the government's revenue for the purpose of paying the country's debt.

This will create mere economic difficulties inasmuch as higher taxation enkindles another, and perhaps more serious, problem in many business and industries as it will be the precedence of the suspension of business expansion, production of greater quantity of goods, and services, creation of lesser job, reduction of the creation of wealth and limitation of the ability of the workers and business owners to spend for consumption.

[64] Gov't allots PthP2.3 Billion for Sustainable Livelihood Program, available at https://dbm.gov.ph/index.php/secretary-s-corner/press-releases/list-of-press-releases/1256-gov-t-allots-php2-3-billion-for-sustainable-livelihood-program (Last accessed on September 13, 2019).

[65] An Act amending Sections 27,28,34,106,107,108,109,110,111,112,113,114,116,117,119 ,121,148,151,236,237 and 288 of The National Internal Revenue Code of 1997, As Amended, for other purposes,Repupublic Act No.9337 S.2005.

[66] ABAKADA GURO PARTY LIST (FORMERLY AASJAS) V. THE HONORABLE EXECUTIVE SECRETARY EDUARDO ERMITA et. al. G.R. No. 168056, September 01, 2005 (EN BANC).

What makes the situation more alarming and serious is the fact that additional taxes collected to fund cash grants were simply redistributed to another sector of the society without a commensurate public good or service that would justify the additional taxation [17].

If tax collections are inadequate to support the government expenditure the government will experience fiscal deficit. A fiscal or budget deficit happens when the government's expenditures exceed revenues over a period. Revenue refers to money from taxes collected by the Bureau of Internal Revenue (BIR) and Bureau of Customs (BOC), and from non-tax sources of other agencies. Accordingly, Philippines recorded a government Budget deficit equal to 3 percent of the country's Gross Domestic Product in2018. Government Budget in Philippines averaged -2.11 percent of GDP from1988 until 2018 ,reaching an all time high of 1 percent of GDP in1994 and a record low of -5.30 percent of GDP in 2002[67]. From January to May 2018 the country's budget deficit has doubled compared to the same period in 2017, as reported by the Bureau of Treasury .The reason cited was that government expenditures grew faster than its revenues in the first five months of the year. In 2018 tax collection reached PHP 1.07 trillion, increasing by 18 percent or PHP 166.1 billion from last year's tax revenue of PHP 900.8 billion. However, government expenditures accelerated by 25 percent to 1.32 trillion in the first five months of 2018 from 1.06 trillion in the same period in the previous year[68]. With this glaring budget deficit that the government has had experienced, another serious problem comes in the way – inflation.

Economic inflation is the increase in the price level of all goods. When economic inflation happens, the effect of it is on the people and it also reflects the loss of the value of the money of the country.

It has many side effects when inflation rate happens. The effect on consumers, the increase of goods and other products, the shortage of supplies of food to Filipino people that cause consumers to keep it or hold so that it will increase the price in the future[69].

Inflation will become scourging at the pillar to the large strata of common masses where daily income is in the minimum level. Inflation also slows down economic growth, hurts workers, businessmen and common people.

With all these interconnected economic realities: on the decadent impact of high government expenditures which will dismally become the major

[67] Government Budget available at https://tradingeconomics.com/philippines/government-budget(Last accessed on September 16, 2019).
[68] Kris Crismundo, Budget Deficit Climbs in January-May 2018 available at https://www.pna.gov.ph/articles/1039383 (Last accessed on September 16, 2019.)
[69] "What is Economic Inflation?" available at https://lookupgrade.com/en/blog/english-the-impact-of-economic-inflation-to-filipino-people (Last accessed on September 16, 2019)

cause of higher taxation, serious problems of economic havoc like fiscal deficit and economic inflation, it would be of such impracticable, unfeasible and futile idea to increase the subsidy of the 4ps program to PHP 5,000 when our country is in the brink of financial malady, a country's gloomy state of economic affair. This insensible proposal which will be deemed to be a product of illogical conceptualization, which will never uplift our country's status from the morass of economic upheaval, should never be given much consideration. It may be the state's supreme and noble duty, of uplifting the poor from their miserable condition, however such attempt to compromise and make the entire nation a scapegoat just to save the few from poverty shall never be a brilliant solution which will justify good faith. Regardless of what the government project or program maybe it should serve the entire citizenry as enshrined in the bill of right *"...nor shall any person be denied the equal protection of the law"*[70].

4Ps QUESTIONABLE OUTCOMES

For the past decades, The Pantawid Pamilyang Pilipino Program has been the centerpiece of the government's social protection in helping the millions of household living in poverty. The two main objectives of the program are social assistance and social development. The former objective aims to alleviate the poor's immediate needs, hence it can be considered a short –term poverty alleviation measure. The latter objective aims to break the intergenerational Poverty cycle by investing in human capital[71].

The 4Ps has two components: health and education. Under the health component, the program provides PHP 6,000 annually (PHP 500 per month) to each family-beneficiary for their health and nutrition expenses. Under the education component, it provides PHP 3,000 per child for one school year (i.e.,10 months) to meet his/her educational expenses. Each family – beneficiary receives cash for up to a maximum of three children under the educational grant.[72]

In addition to this, in 2017, DSWD granted all active beneficiaries of 4Ps additional cash grant in the amount of PHP600 per month as rice subsidy, pursuant to National Advisory Committee Resolution NO.36,s.2016.

The goals of the government of institutionalizing 4ps program may have been appreciable in alleviating the economic condition of the poor masses however cash grants do not automatically get a household out of poverty. Poverty reduction incidence will never be an exact outcome since the fact that conditional cash grants just serve as the social safety nets which help finance nutrition, indirect education expenses and healthcare, but it never guarantees immediate employment. While the program has advanced into its optimum

[70] Philippine Constitution, Art. III, Sec (1).
[71] Celia M.Reyes ,et.al.(2013).Promoting Inclusive Growth p.3.
[72] *Ibid.*

implementation where it resulted to positive and negative impressions the government will still need a long-term data to determine if the program has made difference in bootstrapping beneficiaries out of poverty. In 2015, DSWD determined that there are 1,315,477 household beneficiaries who have moved above poverty line and are ready for transition. However, available data only shows that 4Ps was able to encourage its beneficiaries to avail education and health services of the government. It does not say whether these services are effective in keeping children nor whether increased access to primary and secondary public education would guarantee that beneficiaries will properly equipped to pursue further studies to secure jobs. Furthermore, there is insufficient longitudinal evidence to determine if the program caused this decline and thereby contributed to the goal of breaking the intergenerational cycle of poverty.[73]

As far as health services are concerned which is one of the conditions to be complied with by 4Ps beneficiaries the DSWD has been successful in encouraging its beneficiaries to avail health and medical services in the government. However, based on the COA spot check reports and quantitative and qualitative evaluations, access to government health services does not guarantee that children will be healthy. Some of the children who have been beneficiaries in the 4Ps program are still underweight based on the Social Weather Station's reports on the implementation of 4Ps. In 2012, percentage of those underweight went up to 12% , and in 2017 14% were still found to be underweight.

Moreover, non-compliance of the conditions for the 4Ps programs have also manifested in some regions, specifically Region IV-A and NCR. The chief reason of the non-compliance is the inadequate program knowledge of beneficiaries, particularly when it comes to the beneficiary's duties and responsibilities as recipients of the program. In this glaring reality, the threshold question is, "Did the DSWD provide comprehensive orientation as to the goals and implementing regulations of the program for each beneficiary? Were the beneficiaries not given proper knowledge as to their basic duties? These are simple implementing procedures which need to be followed accordingly, inasmuch as failure over these matters constitute to dysfunctional programs.

DSWD has also been successful in encouraging the children to come to school and attend to classes, however, there is insufficient data which determines as whether increased access to primary and secondary public education would guarantee that beneficiaries will be properly equipped to pursue studies or to secure jobs.[74]

The idea behind giving much attention to the extent of investing the health and educational aspect of the children as primary beneficiaries of this

[73] COA ,(2017) Performance Audit Report, Pantawid Pamilyang Pilipino Progra p.9.
[74] COA, (2017) Performance Audit Report, Pantawid Pamilyang Pilipino Progra p.12.

program is to equip them with functional skills and knowledge to find a better job in the future. In other words, quality education should have been the determining and measuring indicator for the children readiness. However quality education is not included as an indicator of the program.

At the onset, DSWD officials have been making clarification in many occasions that 4PS is not a poverty reduction program but a social security program such that breaking the inter-generational cycle of poverty is the long- term goal of the program, hence observable changes in economic status of the beneficiaries will only show after years of program implementation. However, it should be noted that initially, when the program was created , it was the intention of the government to use 4Ps as poverty reduction strategy. Administrative Order No. 16,s. 2008 or the Guidelines on the Implementation of Pantawid Pamilyang Pilipino Program provides that "4Ps is a poverty reduction strategy that provides cash grants to extremely poor households to allow the members to meet certain human development goals"[26]. This fact of having the incongruity of the real and authentic advocacies of the government of having 4ps as a poverty reduction program versus the goal of the DSWD as a long term goal program should be given extra and careful attention as it would create clashing controversies which eventually create a more serious dilemma.

These are factual yet questionable outcomes of the 4Ps implementation, which in a closer look, would make us question its credibility on whether the program has really been beneficent to the poor .That to some extent will push the public to question the effectivity of the Pantawid Pamilyang Pilipino Program in addressing the real and pragmatic scenario of poverty lurking in every life of our poor brothers and sisters. With all these questionable outcomes: about health and medical issues of the beneficiaries, impugnable educational outcomes of the student beneficiaries and conflicting aim between the DSWD and the main goal of the government in institutionalizing the 4Ps are subject to scrutiny by the authority. That in any event, with such considered reflection from all these inconsistencies, increasing the subsidy of Pantawid Pamilyang Pilipino Program to PHP5000 should never be pushed through for it lacks significance.

While it is true that Pantawid Pamilyang Pilipino Program (4Ps) has somehow improved the lives of many poor Filipinos in the different corners of this nation. That the noble rule of the state to give provisions for the basic needs of its citizenry most specially the food that has to be served in every table of the Filipino family has been given much consideration and attention by the law makers through legislations . The problem about poverty has long been felt, for decades, or even for centuries. The continuous struggle of our poor brothers and sisters in the brinks of emptiness has had imbibed the legislatures and the Chief Executive to institutionalize for 4Ps.

Indeed, the welfare of the poor Filipino people is the crux of the 4Ps operation. However, at one point, the glaring and continuous deficiencies of the DSWD's mechanism of implementation, the alarming increase of taxes to be shouldered by the public and private sectors, and questionable outcomes of the program will surely be the reasonable and logical grounds to hinder any proposal to increase the subsidy.

The state should never condone such inefficiencies within the actual implementation of the program , much more will it increase and update the subsidy when alarming increase of government expenditure and taxes takes place which will lead to the fearful budget deficit and inflation. The State shall never allow failure in the government functionality when all its citizenry will suffer from its dreadful fiascoes. The government can never allow such situation when only favored few will benefit at the expense of the other group.

Government programs should be beneficial to the entire citizenry regardless of social and economic status, denomination, gender and age. Although it has the inclination of favoring the poor and needy, however it should serve the best for all.

The welfare and goodness of all should always be considered in assuring economic tranquility and prosperity of this country. As highlighted in the constitution "...general welfare are essential for the enjoyment by all people of the blessings of democracy."[75]should at all times be radiated in this nation where the rule of law and the mandate of the Constitution is always supreme.

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[75] 1987 Philippine Constitution, Art. II, Sec. (5)
[76] 1987 Philippine Constitution, Art. II, Sec. (5)

On Constitutional Amendments: Is Federalism Really the Solution?

Steffi Dawn C. Ilagan and Neslie Marie M. Acain

Introduction

For several countries, it has been strongly established that a Constitution cannot exist unless promulgated by the sovereign people. In the same perspective, changes to the constitution only become valid and effective if ratified or approved by the people.

Currently, one of the matters that really matter to the President of the Philippines, Rodrigo Duterte is his campaign for Charter Change for federalism. Supported and/or opposed by political critics, analysts, including scholars, the shift from a unitary to a federal type of government remains at issue. Taking into consideration, the Philippines' history of amendments to its Constitution has been through quite a few debacles, from its previous state influenced by our colonizers, under the regime of a dictator and finally the current Constitution that sponged out all the vague provisions that allowed for an oppressor to exploit and abuse the law, many remain skeptical about the proposed changes suggested by President Duterte.

Is the Philippines ready for its shift towards federalism? If stressing that the Philippines' unitary type of government has failed (in many aspects) to solve the country's primary problems, is federalism really the solution? These questions remain unanswered as the debates regarding the matter are ongoing.

The Philippines has had a total of six constitutions since the Proclamation of Independence on June 12, 1898. Several administrations have tried to introduce amendments and revisions to the charter but until now, no attempt had been successful. These Constitutions, inherited from colonial regimes, depicted common characteristics where the authority and power emanates from the national government and flows down to subordinate territorial units.

While in terms of human rights protection, our current Constitution has really strived to correct the error of the past totalitarian government, making certain that history does not repeat itself and put the people's freedom into question, in terms of economical growth, the Philippines still continues to remain stagnant and unmoving towards the ladder of a developed country; the charter change President Duterte wishes to be put in place aims towards addressing this exact issue.

The real deal however is, will the Federal Constitution that the President is looking forward to truly embody the ideals and aspirations of all the Filipino people? Relatively, a revered Constitutionalist and a law professor in the person of Fr. Joaquin Bernas, SJ, points out that "our society's success or failure depends not so much on the system as on the people running the system. It is easy to write a Constitution; it is more difficult to make a Constitution work."

Now to outline the above-cited points at issue, this paper will take a look into the following most significant Philippine Constitutions and see why for some, there are certain aspects which require overhauling and what are the areas which supply the futile yet continuous urge to consider a shift from unitary into a federal form of government for the country.

The 1935 Constitution

It was in the year 1934 when the United States Congress passed the Philippine Independence Act, which eventually set the parameters for the creation of a constitution for the Philippines. Said Act mandated the Philippine Legislature to call for an election of delegates to a Constitutional Convention which was then tasked to draft a Constitution for the Philippines. When the 1934 Constitutional Convention finished the preparation of its work on February 8, 1935, the submission of said Constitution to the President of the United States for certification occurred on March 25, 1935. The 1935 Constitution was ratified by the Filipino people through a national plebiscite, on May 14, 1935 and came into full force and effect on November 15, 1935, with the inauguration of the Commonwealth of the Philippines.

Among the original provisions of the 1935 Constitution provided for the following: (1) a unicameral National Assembly and (2) the President was elected to a six-year term without re-election. However, it was amended in the year 1940 to have a bicameral Congress composed of a Senate and House of Representatives, which at the same time included the creation of an independent electoral commission. Consequently, the Constitution now granted the President a four-year term with a maximum of two consecutive terms in office.

As it can be recalled, it was during World War II when the Japanese-sponsored government nullified the 1935 Constitution and appointed Preparatory Committee on Philippine Independence to replace it. In 1943, the Constitution then came into place and was used by the Second Republic with Jose P. Laurel as President.

Conversely, upon the liberation of the Philippines in 1945 wherein the Americans and Filipinos campaigned to defeat and expel the Imperial Japanese forces occupying the Philippines during World War II, the 1935 Constitution came back into effect. The Constitution remained unaltered until 1947 when the Philippine Congress called for its amendment through Commonwealth Act No. 733. On March 11, 1947 the Parity amendment gave United States citizens equal rights with Filipino citizens to develop natural resources in the country and operate public utilities as a result. The Constitution thereby remained in force until the declaration of martial law on September 23, 1972 by President Ferdinand Marcos.

The 1935 Constitution was drafted, prepared and written with the assurance of meeting the approval of the government of the United States as well, so as to ensure that the U.S. would live up to its promise of granting the Philippines independence, which is a real one.

The 1973 Constitution

On the 16th of March 1967, a Constitutional Convention election to be held in 1971 was decided by Congress to effect amendments to the current Constitution in effect in the Philippines, which was the '1935 Constitution'. A proposal of only two amendments were proposed beforehand; namely to increase the number of the members of the House of Representatives and the other was to allow Congress members to be elected to the Constitutional Conventions while still keeping their Congress seats.

Subsequently, a Constitutional Convention was then elected on the 10th of November 1970 and the construction of a new constitution was initiated on January 6, 1970. By the 29th of November in 1972, a draft had already been published and was put to referendum on January 15, 1973. However, in September of 1972, President Ferdinand Marcos declared the Philippines under Martial Law and ordered the arrest of 11 members of said Constitutional Convention. Thereafter, the convention re-convened and drafted a new constitution which was more sound with what President Marcos had in mind. Not long after, he issued Presidential Decree No. 86 which sought to cancel the previous one and instituted barangays' citizens' assemblies to ratify the new constitution by a referendum from 10th to the 15th January 1973. A couple of days later, President Marcos certified and proclaimed that the 1973 Constitution had been ratified by the Filipino and issued Proclamation No. 1102 declaring that the new Constitution was thereby in effect.

For the first time in Philippine history had an amendment to the Constitution been done in such a short amount of time, specifically 3 months was all it took to draft a new constitution that was in line with what President Marcos had wanted. This alone highlights the particularly exceptional circumstances under the Marcos regime. Naturally, people challenged the ratification of the constitution and a landmark case officially titled, *Javellana v. Executive Secretary*[77] was filed and heard by the Supreme Court but the

[77] G.R. No. L-36142, March 31, 1973; 50 SCRA 30

case ruled in favor of President Marcos. This put the 1973 Philippine Constitution in full force and allowed his dictatorship to continue.

Substantial amendments to the 1973 Constitution are namely, the additional 5 sections in Article 2, focusing more on benefiting the Filipino youth, assuring rights to workers, and highlighting the superiority of civilian authority, which were previously not in the 1935 Constitution. Additionally, the qualifications and terms of public officials were also elaborated in the new constitution. The main changes were solely on the type of government that the Philippines was under in the new constitution, and the abolition of the Legislative Department and Judiciary, therefore putting the Congress out of order and placing the powers of Congress under the National Assembly and assigning Executive powers to a Prime Minister who shall be the head of the government. Among the sea of controversy surrounding the Marcos regime, the outstanding issue is the exploitation of his Executive power to put the country under Martial Law.

In the 1973 Constitution, the Presidential power to declare Martial Law and his additional powers during the state of Martial Law was not thoroughly defined and restrained, giving a vague and seemingly unlimited control during such circumstance. President Marcos took this opportunity to make his term into a dictatorship and extend his term indefinitely. However, he was then ousted by the EDSA revolution and the faulty Constitution was then amended and insured that no President could take advantage and be vested with all the powers of the government.

The 1987 Constitution

The People Power Revolution, which was also known as "EDSA Revolution", that took place during February of 1986 was a turning point for the Philippines and was the end of the Marcos dictatorship. It is known as one of the most historical times in the Philippines, one of freedom from under the foot of a dictator; bringing back the power and voice to the people. This public outcry was pushed to light by the death of Benigno Aquino Jr. and also decades of oppressive and totalitarian rule. Other than removing President Marcos from his presidential position, the revolution's goal was also to place in the Government, Corazon P. Aquino as President which also was a success. Subsequently, once her term began an immediate drafting of a new constitution took place; one that would ensure that the powers of the President could not exceed its limit and that there would be no vague constitutional provisions to avoid exploitation.

One of the most essential amendments to the Constitution in 1987 was the power of the President during a state of Martial Law. What used to be a vague and short definition of this in the 1935 Constitution had become very detailed and specific in the 1987 Constitution:

> "The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress..."[78]

This is thoroughly described in order for there to be no way to circumvent and allow misinterpretation and exploitation like the one done during the Marcos regime. The Congress is also still in full effect during this time allowing for there to be a fair and just decision as to putting the state or the whole country under Martial Law. Rampant during the Marcus dictatorship was unlawful detainment and unwarranted arrests that were shouldered by the lack of provision during Martial Law, however, that is addressed in the new constitution, "..The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion." Not only are those the only additions, but many other cases during the Martial Law regarding human rights, like people being tortured for information, unlawful arrests and secret detentions places were unfortunately, some incidents that happened during the Martial Law in the Marcos regime; the 1987 Constitution has made certain that these actions would never be repeated without proper reprimanding by the law and for the people to be protected regardless of a state of Martial Law.

The 1987 Constitution has been written and amended in a way to ensure that the people's welfare is at top priority and that everyone's rights would not be violated once again. There are outlets for people to ask for redress if there is any unconstitutionality occurring and the freedom of speech has been highlighted so as to assure the people that they will never lose their voice as they have gone mute for so long. Considering the history of oppression and colonization of the Filipino people, the current Constitution safeguards these rights of the people and any law that is not constitutionally sound is decreed null and void.

Constitutional Cases Surrounding 1973 Constitution

As previously mentioned, there were many loopholes in the 1973 Constitution drafted by President Marcos that allowed for there to be many abuses during his reign as dictator. This era in the Philippines continues its infamy throughout the years and have been the subject of many human rights

[78] Art. III, Section 18

activists' movements. It was a dark time for many citizens, but many revere that era as a progressive and peaceful time in the Philippines, one where the country saw a lot of bold decisions allowing growth to happen to the country. However, many would also assail these opinions as one of those more fortunate individuals who did not feel the oppression by the infamous President.

It is important to look back at how the Constitution during this time abetted and allowed little resistance to Marcos' machinations in order for there to be finesse when it comes to deciding on whether or not to vote positive on the tremendous changes to the current Constitution -- which was written with the freedom and protection of the people in mind. These changes currently proposed are allegedly for the betterment of our economy but it is crucial not to rule out a different agenda actually behind this. History speaks for itself and the people should take into mind what had happened before in order to make an intellectual decision because after all is said and done, all of it goes into a plebiscite where the people get the final say and it is crucial for our country for the people to be very mindful of their choices.

Some infamous cases surrounding the Marcos regime that is worth taking note is the validity of the ratification in the first place. The landmark case of *Javellana v. The Executive Secretary*[79] remains questionable to this day as it was ruled in favor of the ratification of the 1973 plebiscite. The question was not whether the Constitution was valid but rather the ratification of such as the circumstances during the latter were special and was done in such a short period of time. Despite the lengthy trial, the case was dismissed.

For the "President's power as Commander- in-chief has been transformed from a simple power of military command to a vast reservoir of indeterminate powers in time of emergency. ... In other words, the principal canons of constitutional interpretation are ... set aside so far as concerns both the scope of the national power and the capacity of the President to gather unto himself all constitutionally available powers in order the more effectively to focus them upon the task of the hour."[80]

An additional danger during that time belonged specially to reporters, researchers and news outlets who wore the brunt of the risks during the oppressive rule. There was fear ingrained to these individuals as their focus was on exposing the corrupt and tyrannical reign of the President which of course, did not fare well for them.

The task of social scientists includes the description and explanation, publication and criticism of social behavior and condition. Filipino social scientists continue to perform these tasks even under a martial regime

[79] G.R. No. L-36142
[80] *Ibid.*

although they face possible official sanctions and risks related to the accuracy of their findings, their professional and personal integrity and their roles as citizens[81].

Well-informed decisions and being mindful of our country's true state is an essential feat for Filipinos especially in the horizon of a big change. Looking at every aspect of this proposed charter change is the initial thing one must remember, but also paired with a brief look into how our Constitution has served us and affected us in the past. That being said, further discussions will shed light on how this proposed federal government could affect us positively and negatively.

Duterte on Federalism

After all the amendments there has been to the Constitution over the decades, it is explicitly understood that it has adapted to further protect the people and their properties, assuring the general welfare of the Filipinos; however, it is not perfect and there are quite a few equivocal provisions that have allowed others to exploit and circumvent it. As the constitution is the fundamental law of the land and is therefore, the most absolute law that all statutes must adhere to, it should be sound and airtight, barring any misinterpretation and ill treatment. With that said, current President Rodrigo Duterte, upon becoming President of the Philippines has numerously expressed his desire to amend the Constitution and change the type of government the Philippines is under. Many ask, why?

President Duterte has been one of the most controversial Presidents to have ever served in the Philippines for many reasons, like his outspoken-nature and his bluntness; one of the most prevailing current issue is his inclination to amend certain provisions in the 1987 Constitution and to change the nature of the Philippine government into a federal government. It has been the talk of many and the subject of many scholarly debates as to the benefit of doing so and of course, the negatives.

One of the main reasons argued by many is that it could greatly affect the economy and aid the problem of poverty in the country. Many are skeptical as they are afraid this could be another totalitarian type of regime. In the proposed amendment of the constitution, it focuses greatly on economic growth and enhancing agricultural productivity, namely proposed added sections like, "Section 19. THE STATE SHALL PROMOTE THE DEVELOPMENT OF A DYNAMIC AND PRODUCTIVE ECONOMY WHERE OPPORTUNITIES, INCOME AND WEALTH ARE EQUITABLY DISTRIBUTED."

[81] Carino, Ledivina V. (1980). *Research Under Martial Law: The Tasks and Risks of The Filipino Social Scientist*

Major changes are found also in Article V, Suffrage which focuses on defining the federal government and the public officers of such new type of government, along with qualifications and other technicalities. Article VII would also be renamed as “The Federal Executive Department” and mainly highlights the difference of presidential powers under such government.

Time and time again, President Duterte expresses his determination to rewrite the Constitution and implement a federal republic government as he emphasizes the benefits to our economy and to make the Philippines into a more developed country in the future.

Shift to a Federal Government

The Philippines has been under many changes and development throughout the decades; tyrant after tyrant, colonizer after colonizer, she has gone through many developments and is now considered a ‘developing country’. President Duterte sees a huge benefit in shifting to a federal type of government and hopes for this to be the secret to breaking major prevailing issues like, poverty, corruption, etc. However, as it is a completely massive change, many new things are introduced. Even national hero, Jose Rizal suggested a federal government, along with other Filipino revolutionaries like, Emilio Aguinaldo and Apolinario Mabini.

Many developed countries have a federal government like Canada, United States, Australia, etc. It aims to divide the country into states which would have their own government; in this way, the economy is micromanaged by state, so is the local industries, public health and safety. For example, States could be empowered to make their own decisions, considering the many cultural differences in the Philippines, this could promise a more harmonious decision-making but on the other side of the spectrum, it could also bring about total havoc and place the country in an even harder situation, one where others fear they would be put in another situation where they would be under the thumb of officials.

Federalism: PROS and CONS

There may have been hundreds of supporters showing their solidarity in pushing for a federal type of government as well as to amend the Constitution. On the other hand, countless criticisms and arguments on the matter seem to equate. At some point along the way, should there be a best type of government to suit the Philippines? If there is, then what is it? Is federalism a top choice?

In his initial move to said aspiration, the President, Rodrigo Duterte issued on Dec. 7, 2016 Executive Order 10 creating a Consultative Committee (ConCom) to revise the 1987 Constitution and draft a new Charter to shift to federalism. The 22-member ConCom was headed by retired Justice Reynato Puno.

Upon going through the debates on the shift to a federal type of government, political trust is deemed a consideration. Some scholars usually define political trust as citizens' belief or confidence that the government or political system will work to produce outcomes consistent with their expectations. As a multidimensional political sentiment, such trust may be incumbent-based, regime-based, or system-based. It is an essential component of "political support," which constitutes the basis of a political system's legitimacy (Easton, 1965: 273). People who trust the government are more likely to comply with laws, support government initiatives, and follow political leadership. In this sense of political leadership, the Filipinos look up to Duterte as a perfect leader for the Philippines. The political confidence and satisfaction of people towards the government attribute many positive outcomes to beneficial central policies, and they are satisfied that local officials dutifully carry out those policies.

Some, if not majority, see economic stability in its place and they would tend to give their whole support to the government as its source of political trust.

Consequently, did the present administration proved itself worthy of the political trust reposed by the citizens? In this section, we will try to look on what federalism as a type of government has to offer, including some of its advantages and disadvantages.

The PROS

1. It is believed that the shift from a unitary to a federal type of government will avoid the further fragmentation of provinces and towns as it will seek to suit the interests of some groups or political clans. Thus, local government units being empowered.

2. The proposal to shift into federalism seeks to reintegrate all divided provinces, towns, and cities into a regional political unit, so that the national government only has to deal with federated regions. This way, the delivery of social services will become more efficient and equitable.

3. It seeks to break the over-concentration of powers in the national government. By allowing more autonomy to local units, different sets of policies can be tried, and it may be found more effective at solving its problems. The same principle applies today with our country – something that is rejected in the national level can most likely be tried by the local units, based on effectiveness of those laws.

4. By not centralizing all power into the hands of a national government, but sharing that power with federated regions, federalism is considered to actually increase a citizen's ability to effect their government, government policy, and lawmaking. In the same manner, the way on how the government is run will be brought closer to the level of the common citizens.

5. When some of the power of the government is dispersed among federated regions, it gives them the right to solve some of their own problems, allowing for more efficiency within the country in general and as a whole.

6. Federalism, as supported by many is likewise envisioned to improve conflict management. By allowing different communities and federated regions to create their own policies, it allows for people with irreconcilable differences, or very strong disagreements, to live in separate areas, and create their own solutions, or policies,

7. These federated regions can also become more responsive. The closer a government entity is to its citizens, the more likely it is the respond to the needs of citizens. The local units will then be more likely to listen to citizen needs, and respond to them quickly, than the national government would.

The CONS

1. As opposed to the benefits of federalism being presented in this paper, some disagree and strongly believe that federalism is definitely not suited for the country, for the people of this generation and even of the succeeding generations. Taking into deeper consideration, federalism cannot just simply fit into our history as a people, with respect to our culture, our character, our traditions, our training and even in our experiences in the art of politics and government.

2. In terms of policy-making, it may open an avenue for possible adoption of laws which are seen by many as not fit, and not well-accepted by the culture we Filipinos have relied upon and embellished through time. There may be laws passed adopting abortion or divorce in their self-governed society, to name some. The method of law and policy making can only end up with solutions that are more effective in some regions and less effective in others.

3. Federalism does not guarantee decentralization. Decentralization can be best achieved within a unitary state. If decentralization efforts in

the Philippines are failing and continues to fail to yield the expected benefits, it is not because of its unitary political structure. Rather, it is because of the non-acceptance of the fact by the government that there are way better areas of development that needed to be focused on, thereby giving solutions even to the simplest problems this country has ever had. Why not focus on improving the lives of the Filipino people? Why not propose programs and develop strategies that could improve the economy of the country? Why not truly uphold the true ideals and aspirations of the people?

4. In addition, one of the biggest setbacks of federalism is the prevailing problem of political dynasties. If the country is divided into regions and states wherein they can govern and create policies for themselves, there is a huge possibility that these dynasties can only be enhanced. Scholars believe that this is validated by the fact that while the 1987 Constitution prohibits dynasties, there was never an enabling law passed for this.

5. If federalism is pushed through in the Philippines, it will only feed inequalities between the divided regions. For example, instead of education funding throughout the country being the same for all, some regions will spend more on education than the others, considering that it is a state issue. Basically, causing that could be considered a disparity. The same goes for other concerns of the country such as taxes, health care programs, and welfare programs to perfectly suit what is needed by the people at present and in consideration of the future that is yet to unfold.

6. Charter Change may lead to authoritarianism. Pushing for federalism and rushing to change the 1987 Constitution in order to impose a federalized system of government that will institutionalize President Duterte's authoritarian regime may only threaten democracy. The strengthening of political dynasties, term extension of incumbent officials, runaway taxation and price hikes to prop up the federal states, surrendering our patrimony and sovereign territorial rights, unending martial law, consolidation of big drug lords and relentless human rights violations, are some of the effects noteworthy in this proposed change in the political system. It is clear enough that President Duterte is aiming to make the Philippines a well-built republic. And if achieving the objective will require authoritarian means, then we all know that he is the type of man who can definitely do it until accomplishment. What is more terrifying is that when authoritarian rule takes place, the real purpose and reason why a Constitution must come into existence may be ignored.

Conclusion

While the debates on whether to shift from a unitary to a federal type of government are ongoing, it is quite equally important to note that local autonomy has definitely improved through the years. But undeniably, the national government has retained significant influence over local government performance.

In relation to that, two schools of thought have emerged with respect to improving local governance and accountability: (i) fix the current decentralization under a unitary system by introducing significant amendments to the Local Government Code of 1991 (LGC 1991); and (ii) shift to greater local autonomy via federalism with local self-government as a cardinal principle (Llanto, 1998).

The Local Government Code of 1991 is the enabling law that transferred power, authority, and responsibility over certain governmental functions from the national to the local government units. It gave flesh to the 1987 Constitutional mandate (Article 2, Section 25) that “the State shall ensure the autonomy of local governments.”

Now the question arises: Is there really a need for a federal type of government to strengthen the local government units? How much political and social powers would remain intact for different forms of self-government that is believed to match unique local circumstances and aspirations? While a federalist structure will enable provinces, cities, municipalities freed from extensive central government control to respond better to local development and governance needs, it however appears to be contrary to the prevalent notion that unity is strength.

On a personal note, people nowadays tend to likewise believe that what is believed as the best by the highest political authority in the country, the President, is also the best option the Philippines could ever have. Considering that President Duterte has gained a lot of appreciations from the public, people seem to just adjust and go with the flow (as we say figuratively) without even looking at a broader perspective. We cannot deny the fact the Philippines has improved as a country through the years. The poor and unemployed rates (to name some) may have remained a stain to the full growth of the country. But be it denied or not, there were already significant developments economically and socially.

Moreover, why did the 1987 Constitution endured for several years? Isn’t it remarkable that the Philippines quite went well with the present Constitution? If so, then why change from a unitary to a federal type of government? Perhaps the solution is not towards shifting our government system, maybe the answer lies in different problem areas to be looked into rather than putting a whole nation through a tedious change that is questionably not the best time and decision to make. Regardless of how other countries have fared under a federal government, it does not immediately follow that success is in the horizon for the Philippines as well. There are many other variables that come into play and we, as Filipinos, need to stop thinking about what the majority think and start to make intellectual decisions based on facts and research, not political influence.

People must rethink and act. It's now time to be awake of what really matters.

A DISCUSSION ON WHETHER OR NOT LEBMO NO. 7, SERIES OF 2016 AND ITS RELATED LEBMOs (LEBMO NO. 11 AND LEBMO. NO. 18) VIOLATE ACADEMIC FREEDOM UNDER ARTICLE XIV, SECTION 5(2) OF THE CONSTITUTION *AND* WHETHER OR NOT R.A. No. 7662 IS UNCONSTITUIONAL FOR ENCROACHING UPON THE JURISDICTION OF THE SUPREME COURT OVER THE LEGAL PROFESSION

Beauty Serino, Cyril Enriquez

Introduction

In a Resolution dated March 12, 2019, the Supreme Court (SC) en banc resolved to issue a Temporary Restraining Order (TRO) enjoining the respondents of cases docketed as GR Nos. 230642 and 242954 and all persons acting in their behalf and/or under their direction from enforcing and implementing Legal Education Board (LEB) Memorandum Circural No. 18 dated June 8, 2018. The Resolution came after the two petitions which were filed by several petitioners with the Supreme Court and were consequently docketed as GR Nos. 230642 and 242954.

GR No. 230642 is a Petition for Prohibition to assail the constitutionality of Republic Act No. 7662 which creates the Legal Education Board and to seek the invalidation of all acts and issuances that LEB has promulgated with the prayer for the issuance of a Temporary Restraining Order to enjoin the holding of the Philippine Law School Admission Test (PhilSAT) scheduled nationwide on April 16, 2017.

GR No. 242954, likewise, is a Petition for Certiorari and Prohibition with a prayer for Preliminary Injunction and/or Temporary Restraining Order on the same subject as that of GR No. 230642.

Brief History

The Legal Education Board (LEB) was created by Republic Act No. 7662 or the "Legal Education Reform Act of 1993." The powers and functions of LEB are enumerated under Section 7 of said Act which is read as:

> "**Section 7.** *Powers and Functions.* - For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:

(a) to administer the legal education system in the country in a manner consistent with the provisions of this Act;

(b) to supervise the law schools in the country, consistent with its powers and functions as herein enumerated;

(c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;

(d) to accredit law schools that meet the standards of accreditation;

(e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members;

(f) to prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by the law schools and colleges under the different levels of accreditation status;

(g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.

(h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary; and

(i) to perform such other functions and prescribe such rules and regulations necessary for the attainment of the policies and objectives of this Act."

Pursuant to the power of the LEB, hereinafter referred to as the Board, to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members as stated under Section 7(e) of Republic Act No. 7662, the Board has released its Memorandum Order No. 7, Series of 2016 which prescribes the policies and regulations for the administration of a nationwide uniform law school admission test for applicants to the basic law courses in all law schools in the country. Said Memorandum created the Philippine Law School Admission Test (PhilSAT).

To that end, no one shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhilSAT taken within two (2) years before the start of studies for the basic law course and presents a valid Certificate of Eligibility (COE) as proof thereof. An exemption to this requirement, however, is provided for those honor graduates granted professional civil service eligibility pursuant to Presidential Decree No. 907 who are enrolling within two (2) years from their college graduation.

During the first year of implementation of the PhilSAT, that is on the AY 2017-2018, conditional admission to law school was permitted as part of the transition adjustments. Those who cannot present their COE or PhilSAT Exemption Certificate are allowed to enroll on the condition that they will take and pass the next scheduled PhilSAT and other conditions set forth in LEB Memorandum Order (LEBMO) No. 11, Series of 2017.

On June 8, 2018, the Board issued Memorandum Circular No. 18 which ended the conditional admission practiced by law schools in admitting first year students for the basic law course beginning AY 2018-2019. Paragraph 1 of the said Circular can be read as follows:

"1. In the admission of freshmen students in the basic law course this Academic Year 2018-2019. please be advised to comply with the guidelines below:

Any applicant who cannot present a valid/unexpired PhiLSAT Certificate of Eligibility or PhiLSAT Exemption Certificate cannot he admitted as a freshman student in the basic law course. These include the following:

a) those who have not taken the PhiLSAT prior to the beginning of the Academic Year 2018-2019;

b) those who have taken the PhiLSAT but did not pass:

c) Honor graduates in college with no PhiLSAT Exemption Certificates: and

d) Honor graduates in college with expired PhiLSAT Exemption Certificates (graduated in SY 2015-2016 or earlier)."

Presently, Memorandum Circular No. 18 has been rendered ineffective by the Resolution dated March 15, 2019 issued by the SC which issues a Temporary Restraining Order (TRO) enjoining LEB from enforcing and implementing said Memorandum. Per SC Resolution, those who have not taken the PhilSAT prior to the beginning of AY 2018-2019, or who have taken the PhilSAT but did not pass, or are honor graduates in college with no PhilSAT Exemption Certificate, or honor graduates with expired PhilSAT Exemption Certificates may now be allowed to conditionally enroll as incoming freshmen law students under the same terms as LEBMO No. 11, Series of 2017.

Issues

The main issue raised by petitioners in case docketed as GR No. 230642 is on whether Republic Act No. 7662 (R.A. No. 7662) creating the Legal Education Board encroached upon the powers vested on the Supreme Court by the Constitution. The following are their arguments on the subject matter:

i. The power to regulate and supervise the legal profession is vested in the Supreme Court;

ii. Congress cannot create an administrative office or board which can exercise the powers vested in the Supreme Court by the Constitution;

iii. R.A. No. 7662 is unconstitutional for encroaching upon the jurisdiction of the Supreme Court over the legal profession;

iv. Continuing operations of an unconstitutional agency constitute unlawful expenditure of public funds; and

v. The rule of law mandates respect for the constitutional allocation of powers.

Petitioning for the same subject matter, petitioners in GR No. 242954 presented their grounds relied upon in support of their petition. They are the following:

i. R.A. No. 7662 infringes upon the powers of the Supreme Court as enshrined under Article VIII, Section 5(5) of the Constitution in violation of the doctrine of separation of powers;

ii. LEBMO No. 7, Series of 2016 and its related LEBMOs (LEBMO No. 11 and LEBMO No. 18) are unconstitutional as in encroaches upon the powers of the Supreme Court to promulgate rules concerning the admission to the practice of law under Article VIII, Section 5(5) of the Constitution;

iii. LEBMO No. 7, Series of 2016 and its related LEBMOs (LEBMO No. 11 and LEBMO No. 18) violate academic freedom under Article XIV, Section 5(2) of the Constitution;

iv. LEBMO No. 7, Series of 2016 and its related LEBMOs (LEBMO No. 11 and LEBMO No. 18) cannot be justified under the state's police power;

v. The LEB is not authorized to issue penal regulations;

vi. The forfeiture of school fees and ban on students from enrolling in the following semester under LEBMO No. 7, Series of 2016 is a violation of the due process clause; and

vii. The classification of law schools in the admission of freshmen students, who have not yet taken the PhilSAT, is repugnant to the equal protection clause.

Discussion

Of all the issues raised by petitioners in cases docketed as GR Nos. 230642 and 242954, this research aims to focus on two main issues – (1) whether or not LEBMO No. 7, Series of 2016 and its related LEBMOs (LEBMO No. 11 and LEBMO No. 18) violate academic freedom under Article XIV, Section 5(2) of the Constitution *and* (2) whether or not R.A. No. 7662 is unconstitutional for encroaching upon the jurisdiction of the Supreme Court over the legal profession.

a. First Issue

Whether or not LEBMO No. 7, Series of 2016 and its related LEBMOs (LEBMO No. 11 and LEBMO No. 18) violate

academic freedom under Article XIV, Section 5(2) of the Constitution

The board aims to uplift the standards of legal education in order to prepare law students for advocacy, counseling, problem-solving, and decision-making, to infuse in them the ethics of the legal profession; to impress on them the importance, nobility and dignity of the legal profession as an equal and indispensable partner of the Bench in the administration of justice and to develop social competence.

The Board enumerates its general and specific objectives under Sec. 3 which reads:

(a) Legal education in the Philippines is geared to attain the following objectives:

(1) to prepare students for the practice of law;

(2) to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;

(3) to train persons for leadership;

(4) to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system and legal institutions in the light of the historical and contemporary development of law in the Philippines and in other countries.

(b) Legal education shall aim to accomplish the following specific objectives:

(1) to impart among law students a broad knowledge of law and its various fields and of legal institutions;

(2) to enhance their legal research abilities to enable them to analyze, articulate and apply the law effectively, as well as to allow them to have a holistic approach to legal problems and issues;

(3) to prepare law students for advocacy, counseling, problem-solving and decision-making, and to develop their ability

to deal with recognized legal problems of the present and the future;

(4) to develop competence in any field of law as is necessary for gainful employment or sufficient as a foundation for future training beyond the basic professional degree, and to develop in them the desire and capacity for continuing study and self-improvement;

(5) to inculcate in them the ethics and responsibilities of the legal profession; and

(6) to produce lawyers who conscientiously pursue the lofty goals of their profession and to fully adhere to its ethical norms.

Assailing the constitutionality of the Board under the following Constitutional provisions on academic freedom would not be tenable:

(a) Article II, Section l3: The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

(b) Article II, Section 17: The State shall give priority to education, science and technology, arts, culture and sports to foster patriotism and nationalism, accelerate social progress and to promote total human liberation and development.

(c) Article XIV, Section l: The State shall protect and promote the right of all citizens to quality education at all levels and take appropriate steps to make such education accessible to all.

(d) Article XIV, Section 5 (3): Every citizen has a right to select a profession or course of study, subject to fair, reasonable and equitable admission and academic requirements.

(e) Article XIV, Section 5(2): Academic freedom shall be enjoyed in all institutions of higher learning.

While it is true that the Constitution guarantees the protection of academic freedom, the State can also validly enforce law to regulate such. The power to regulate and control the practice of a certain profession includes power to regulate admission, in the same vein as "the power to grant includes power to restrict". It is within the ambit of the government power to establish rules to prescribe an admission test, like, which in this case PhilSAT, as a means of achieving its state's objectives. In the end, it is the right of the State to guarantee to produce competent lawyers and to eliminate mediocrity in order to dispense a better quality of judgment in the Legal field in the country.

In *Camacho v. Coresis Jr,*[82], the Court held that academic freedom guaranteed by the Constitution is two-tiered: that of the academic institution and the teachers. Further, it explains that "institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives and the methods on how best to attain them, free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint." The Court consequently held that institutional academic freedom encompasses the freedom to determine for itself on academic grounds: who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

The case of University of San Agustin v. CA[83] adopted the same definition of academic freedom, which is the right of the school or college to decide for itself, its aims and objectives and the methods on how best to attain them, free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. Although said constitutional provision is not to be construed in a niggardly manner or in a grudging fashion, the Court held that academic freedom has a wide sphere of autonomy certainly extending to the choice of students.

Part of the Court's decision is read as follows:

> "While it is true that an institution of learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue, since a contract creates reciprocal rights and obligations, the obligation of the school to educate a student would imply a corresponding obligation on the part of the student to study and obey the rules and regulations of the school. When a student commits a serious breach of discipline or fails to maintain the required academic standard, he forfeits his contractual right. In this connection, this Court recognizes the expertise of educational institutions in the various fields of learning. Thus, they are afforded ample discretion to formulate reasonable rules and regulations in the admission of students, including setting

[82] GR No. 134372
[83] GR No. 100588

> of academic standards. Within the parameters thereof, they are competent to determine who are entitled to admission and re-admission."[84]

Following previously cited Court rulings, it would be inconsistent to hold that the PhilSAT, which is mandated and created by the LEBMOs assailed by petitioners in GR No. 242954, is a violation on academic freedom. Academic freedom is not to be construed as the absolute right of an individual to enroll in whatever course he/she may want to take without subject to regulation. Furthermore, institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives and the methods on how best to attain them, free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. [85]

While every person is entitled to aspire to be a doctor, he does not have a constitutional right to be a doctor. This holds true if a person wanted to be a lawyer or of any other calling in which the public interest is involved. In DECS vs. San Diego, the Court ruled that it is the State's responsibility to harness its human resources and to see to it that they are not dissipated or, no less worse, not used at all. These resources must be applied in a manner that will best promote the common good while also giving the individual a sense of satisfaction.

Prescribing every law aspiring students to undergo PhilSAT is not violation of constitutional rights but rather a valid exercise of Police power. As emphasized in the case of DECS vs. San Diego, it is sufficient that police power is validly exercised if the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals.

It is time indeed that the State took decisive steps to regulate and enrich our system of education by directing the student to the course for which he is best suited as determined by initial tests and evaluations (DECS vs. San Diego). Otherwise, we may be "swamped with mediocrity," in the words of Justice Holmes, not because we are lacking in intelligence but because we are a nation of misfits.

Second Issue

> **Whether or not R.A. No. 7662 is unconstitutional for encroaching upon the jurisdiction of the Supreme Court over the legal profession**

[84] GR No. 100588
[85] GR No. 242954

This research is inclined to believe that R.A. No. 7662 is constitutional for it does not encroach upon the jurisdiction of the Supreme Court over the legal profession, with the exception of its Section 7, paragraph “h”. Said provision may be held unconstitutional for the reason that it encroaches upon the exclusive power of the Supreme Court which is to supervise the practice of the legal profession.

The 1987 constitution is explicit on the power of the Supreme Court under Sec. 5(5), Article VIII of the Constitution which provides that:

> ***Section 5.*** The Supreme Court shall have the following powers:
>
> [...]
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the *admission to the practice of law*, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.[86]

The book of Bernas pointed out that the authority to promulgate rules concerning pleading, practice, and procedure and admission to the practice of law is a traditional power of the Supreme Court. The revisory authority which was once given by the 1935 Constitution to the legislature over rules of pleading, practice and procedure and admission to the practice of law was explained by the Supreme Court in the case involving the Bar Flunkers’ Act of 1953 or R.A. No. 972.

Thus, indispensable to this discussion is to delve into the case involving the Bar Flunkers’ Act of 1953 or R.A. No. 972. Section 1 of said Act is opposed to the provision under the Rules of Court governing admission to the bar which expressly states that "in order that a candidate (for admission to the Bar) may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 per cent in all subjects, without falling below 50 per cent in any subject.”[87]

Nevertheless, as per Supreme Court Resolution dated March 18, 1954, in the matter of the Petitions for Admission to the Bar of Unsuccessful

[86] 1987 Philippine Constitution, Art. VIII, Sec 5 (5).
[87] (Rule 127, Sec. 14, Rules of Court)

Candidates of 1946 to 1953, the Court held that “considering the varying difficulties of the different bar examinations held since 1946 and the varying degree of strictness with which the examination papers were graded, this court passed and admitted to the bar those candidates who had obtained an average of only 72 per cent in 1946, 69 per cent in 1947, 70 per cent in 1948, and 74 per cent in 1949. In 1950 to 1953, the 74 per cent was raised to 75 per cent.”

Said Section of R.A. 972, which has the objective to admit to the Bar those candidates who suffered from insufficiency of reading materials and inadequate preparation during the immediate post-war years, is read as:

> “SECTION 1. Notwithstanding the provisions of section fourteen, Rule numbered one hundred twenty-seven of the Rules of Court, any bar candidate who obtained a general average of seventy per cent in any bar examinations after July fourth, nineteen hundred and forty-six up to the August nineteen hundred and fifty-one bar examinations; seventy-one per cent in the nineteen hundred and fifty-two bar examinations; seventy-two per cent in the in the nineteen hundred and fifty-three bar examinations; seventy-three per cent in the nineteen hundred and fifty-four bar examinations; seventy-four per cent in the nineteen hundred and fifty-five bar examinations without a candidate obtaining a grade below fifty per cent in any subject, shall be allowed to take and subscribe the corresponding oath of office as member of the Philippine Bar: *Provided, however*, That for the purpose of this Act, any exact one-half or more of a fraction, shall be considered as one and included as part of the next whole number.”[88]

A more thorough explanation on this matter is found in the said Resolution issued by the Supreme Court dated March 18, 1954. The Court noted that the Constitution has clearly not conferred on Congress and the Supreme Court equal responsibilities concerning the admission to the practice of law, being the primary power and responsibility resides in the latter. Part of the Resolution explained that:

> “*Congress may repeal, alter and supplement the rules promulgated by this Court*, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision remain vested in the Supreme Court.”

This only means that the power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take the place of the Supreme Court in the exercise of its primary power on the matter. The Constitution, according to the resolution, does not say nor mean that

[88] R.A. 972, Sec (1).

Congress may admit, suspend, disbar or reinstate directly attorneys at law, or a determinate group of individuals to the practice of law.

Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires.

The legislature, as explained in the Resolution, may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility. The legislature may, by means of appeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending, disbarring and reinstating attorneys at law is realized. They are powers which, when exercised within their proper constitutional limits, are not repugnant, but rather complementary to each other in attaining the establishment of a Bar that would respond to the increasing and exacting necessities of the administration of justice.

However, its power is limited to repeal, modify or supplement the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession[89].

Following this well-reasoned explanation, as per SC Resolution, it can be logically inferred and deduced that what the Constitution only prohibits is for the legislative to encroach the power on the judiciary by assuming the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision. It doesn't prohibit repealing, modifying or supplementing the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it.

The act of the Congress in creating the Legal Education Board in order to administer the legal education system in the country is not an act of substituting the Supreme Court in the exercise of its primary power which is to admit, suspend, disbar or reinstate directly attorneys at law. Such act of Congress merely supplements the rules promulgated by the Court for the

[89] (SC Resolution, 1954).

purpose of enhancing the legal profession in the country. It is only preparatory to the admission to the law profession, which only the Supreme Court can supervise.

Furthermore, the creation of LEB by R.A. 7662 is entirely difference from the enactment of R.A. 972 which has been the subject of said SC Resolution. The former is not an encroachment on the powers of the Supreme Court for it merely supplements existing rules; however, the latter is undeniably a violation of the separation of power, thus, a violation also of the Constitution for, by enacting such Act, Congress has encroached on the exclusive power of the Supreme Court to admit persons to the practice of the legal profession.

Quoting Bernas in his Constitutional Law I textbook where he pointed out that "the Supreme Court distinguished between the authority to promulgate rules concerning admission to the practice of law and the *actual admission* to the practice through the application of these rules."[90] Moreover, Bernas noted that the first is legislative or quasi-judicial and in it the legislature had been given a revisory role subordinate to the role of the Supreme Court. The second – application of the rules promulgated – is by tradition a judicial function and the legislature exercises no revisory role.

Thus, in light of the foregoing discussion, this research resolves the issue by standing on the conclusion that R.A. No. 7662 is constitutional for it does not encroach upon the jurisdiction of the Supreme Court over the legal profession. However, this research is inclined to believe that Section 7, Paragraph "h" of R.A. 7662 may be held unconstitutional for the reason that it encroaches upon the exclusive power of the Supreme Court specifically the supervision on the practice of the legal profession. Section 7(h) of R.A 7662 is read as:

> "**Section 7**. *Powers and Functions*. - For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:
>
> > [...]
> >
> > (h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary;"[91]

Considering that the above-stated function affects practicing lawyers, it shall now be the Supreme Court who has jurisdiction over them. This

[90] Bernas (n.d.). Constitutional Law I Textbook.

[91] R.A. 7662, Section 7 (h)

research stands that to adopt a system of continuing legal education is an act of supervision to the practice of the legal profession, and such act of supervision is lawfully vested by the Constitution on the Supreme Court. Thus, such is an encroachment of powers by the legislative over the judiciary.

Conclusion and Legal Opinion

Researchers hereby conclude, with all the gathered jurisprudence, SC resolutions, and legal opinion of legal luminaries considered, that the admission test (PhilSAT) is non violative to academic freedom which our Constitution guarantees. Suffice it to say that the state validly exercises its Police power. It is within the purview of the state to regulate the admission of aspiring lawyers in order to meet the general and specific objectives and to eliminate mediocrity in the legal education for the purpose of securing well-balanced, highly-profound legal assistance and even to prevent impartial judgments.

Notwithstanding our conclusion on the first issue that the imposition of PHILSAT does not constitute a violation to academic rights or freedom, this research affirms that Section 7, Paragraph “h” of R.A. 7662 may be held unconstitutional for the reason that it encroaches upon the exclusive power of the Supreme Court which is to supervise the practice of the legal profession.

While it is true that the legislative has the limited power to repeal, modify or supplement the existing rules if according to its judgment the need for a better service of the legal profession requires it, this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and ***supervise*** the practice of the legal profession[92].

Recommendation

Evidently, the purpose of the creation of the Board and imposing the admission test (PhilSAT) is for the benefit of the legal education and the legal system of the country. It should not be assailed repugnant to the fundamental law of the land merely because it is not the Supreme Court who initiates the admission test itself.

In view of the foregoing, it is recommended that the Supreme Court render a decision on the issue of its constitutionality as immediate as possible. In the end, it is the Court’s decision that will be respected and has the effect of a law. Petitioners are also encouraged to pursue a common legal education reform agenda which establishes a better service of the legal profession. After all, this is what the Code of Professional Responsibility

[92] SC Resolution, 1954

requires from lawyers – to participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice[93], and to support efforts to achieve high standards in law schools as well as in the practical training of law students[94].

93 Code of Professional Responsibility, Canon 4.
94 Code of Professional Responsibility, Canon 5.

A Discussion on the Salient Features of the Revised Law Student Practice Rule

Abigail Rem T. Soliva

Legal profession is a practice, and legal professionals study, understand and apply law. Our country is running short of legal practitioners that Supreme Court has looked into allowing law students to appear and represent their clients in court under the supervision of a supervising lawyer.

On June 2019, the Supreme Court approved and promulgated A.M. No. 19-03-24-SC Rule 138-A Law Student Practice otherwise known as the Revised Law Student Practice Rule. This is an amendment to the existing provisions of Rule 138-A of the Rules of Court. The most noticeable feature of the Revised Rule is that the law student to be qualified for law student practice must now be certified to be able to experience the limited practice of law.

"A lot of our countrymen are still under-served in the needs for legal services. Even the current number of lawyers are not enough," SC Chief Justice Lucas Bersamin stated during a testimonial dinner on June 28, 2019 where he also said that SC Associate Justice Alexander Gesmundo has been asked to draft the formal order for the expansion.[95]

The Supreme Court assessed our country's condition and created rules concerning legal assistance to the underprivileged. This amendment of the Law Student Practice Rule ensures access to justice of the marginalized sectors, enhances learning opportunities of law students by instilling in them the value of legal professional social responsibility, and to prepare them for the practice of law. The Supreme Court also addressed the need to institutionalize clinical legal education program in all law schools in order to enhance, improve, and streamline law student practice, and regulate their limited practice of law. The Revised Rule is now more comprehensive with 14 sections and shall take effect at the start of the Academic Year 2020-2021 following its publication in two newspapers of general circulation.

A Clinical Legal Educational Program of the law school covers activities included with the Law Student Practice. It is an experiential, interactive and reflective credit-earning teaching course with the objectives of providing law students with practical knowledge, skills and values necessary for the application of the law, delivery of legal services, and promotion of social justice and public interest.

[95] Philstar/headlines/2019/07/02

A salient feature of the Revised Rule is that a law student must now be certified to be able to engage in the limited practice of law.

Let us look into the important parts of the Revised Rule.

1. The Rule covers the limited practice of law by law students certified under the Clinical Legal Education Program (CLEP) of the law school.

Coverage of limited practice of law includes the following:

a. Appearances.

   A Law Student Practitioner is given the opportunity to engage in legal work for marginalized sectors or for the promotion of social justice and public interest.

b. Drafting and submission of pleadings and documents before trial and appellate courts and quasi-judicial and administrative bodies.

   A certified law student will be making drafts for pleadings in cases assigned, subject for review and final drafting by the supervising lawyer. Pleadings are used for submission for trial.

c. Assistance in mediation and other alternative modes of dispute resolution, legal counseling and advice.

   A Law Student Practitioner engages in interviewing prospective clients and is allowed to give legal advice to the client. The law student may negotiate for and on behalf of the client. Drafting of legal documents such as affidavits, compromise agreements, contracts, demand letter, position papers are included in the program.

d. Other activities that may be covered by the Legal Education Program of the law school as provided under Section 1.

2. The Rule requires the law students, before engaging in practice of law via the Clinical Legal Education Program (CLEP), must first apply for and secure the following:

   a. Level 1 Certification for those who have completed the first year.

   b. Level 2 Certification for those who are currently enrolled in their third year, second semester under Section 3.

3. The areas of the law student practitioners can engage in accordance with their certification is mentioned under Section 4.

   a. Subject to the supervision and approval of a supervising lawyer, a certified law student with Level 1 Certification may interview prospective clients, give legal advices, negotiate for and on behalf of the client and draft pleadings. A law student practitioner is to represent eligible parties before quasi-judicial or administrative bodies, provide public legal orientation and assist in public interest advocacies for policy formulation and implementation.

   b. With Level 2 Certification, a law student practitioner performs all activities under Level 1 Certification, as well as assist in the taking of depositions and/or prepare judicial affidavits of witnesses. A law student practitioner appears on behalf of the client at any stage of the proceedings or trial, before any court, quasi-judicial or administrative body.

4. Section 5 enumerates certification application requirements.

   A law student must submit a duly –accomplished application form under oath in three copies, accompanied by proof of payment for necessary fees. Law school thru the dean or the authorized representative, shall submit to the Office of the Executive Judge of the Regional Trial Court having jurisdiction over the territory where the law school is located, the duly-accomplished application form together with an endorsement under oath.

   Level 1 certification issued under this provision shall be valid before all courts, quasi-judicial and administrative bodies within the judicial region where the law school is located.

   Level 2 certification issued under this provision shall be valid before all courts, quasi-judicial and administrative bodies.

5. Section 6 enumerates the duties of a law student-practitioner. It says that one is bound by the Code of Professional Responsibility.

   In law profession, everyone is expected to act accordingly. This includes protecting personal sensitive information gathered in one's capacity as a law student practitioner. He or she is obliged to perform the duties and responsibilities to the best of one's abilities as a law student practitioner.

The Law student practitioner must strictly observe the Canons of the Code of Professional Responsibility[96].

6. Section 7 is the counterpart of the lawyer's signature provision under Rules of Court. A law student practitioner may sign briefs, pleadings, letters, and other similar documents under the direction and approval of the supervising lawyer, indicating his/her practitioner's certificate number as required under the Revised Rule.

7. Section 9 enumerates the duties of law schools.

   The law school, through its dean or authorized representative must:

   a. Develop and adopt a Clinical Legal Education Program;
   b. Develop and establish at least one law clinic in its school;
   c. Endorse qualified students for certification as law student practitioner under the Revised Rule.
   d. Ensure compliance by law school practitioners and supervising lawyers with the Code of Professional Responsibility.

8. The Revised Rule mandates the personal appearance of the supervising lawyer in all cases pending before the second level courts and in all other cases, the supervising lawyer determines that his or her presence is required as provided in Sections 10 and 11.

   A supervising lawyer must be a member of the bar in good standing. He/She is to supervise such number of certified law student practitioners as far as practicable. He or she assumes personal professional responsibility for any work performed by the certified law student practitioner while under his or her supervision.

9. In Section 13, the Revised Rule provides for appropriate sanctions in cases of violations.

   Without prejudice to existing laws, rules, regulations, and circulars, the revised rules has set sanctions if the law student

[96] Promulgated by the Supreme Court on June 21, 1988.

practitioner abuses the opportunity of limited practice of law. This includes:

a. Engaging in any of the acts provided in section 4 of this Rule without the necessary certification or without the consent and supervision of the supervising lawyer.
b. Making false representations in the application for certification;
c. Using an expired certification to engage in the limited practice of law under this rule;
d. Rendering legal services outside the scope of the practice areas allowed under Section 4 of this Rule
e. Asking for or receiving payment or compensation foe services rendered under the Clinical Legal Education Program as provided in this Rule; and
f. Such other analogous circumstances.

These violations shall be a ground for revocation of the law student practitioner's certification and/or disqualification for a law student from taking the bar examination for a period determined by the Supreme Court.

10. The Rule shall take effect at the start of school year 2020-2021.

    This Rule shall take effect at the start of Academic Year 2020-2021 following the publication in two newspapers of generic circulation. The requirements under the second paragraph of Section 5, Rule 138 as amended by A.M. NO. 19-03-24 SC dated June 25, 2019 shall apply to bar examination applicants commencing the 2023 bar examinations.

11. Rule 138, section 5 has been amended by this Rule, regarding the prerequisites to take the 2023 bar examination.

    To produce practice-ready lawyers, the completion of clinical legal education is to be a prerequisite to take the bar examinations.

    The Supreme Court en banc adopted and promulgated the Revised Student Practice Law.

Under Section 3 of the Revised Rule, a law student shall apply for and secure a Level 1 or 2 Certification, as the case may be, in order to be permitted to engage in any of the activities under the Clinical Legal Education Program of a law school. The basic distinction between the two levels involve the minimum academic requirement the law student has successfully completed: for Level 1 Certification – first-year law subjects, while for Level 2 Certification – third-year law subjects.

Once the law student is certified, the certificate number must be used in signing pleadings, briefs, letters, and other similar documents produced under the direction of a supervising lawyer. (Section 7) The law student shall also take the Law Student Practitioner's Oath, a modified lawyer's oath, under Section 8 before engaging in the limited practice of law.[97]

Supreme court stands by what the Late President Ramon Magsaysay Sr. has once said, *"I believe that government starts at the bottom, and moves upward, for government exists for the welfare of the masses of the nation."*

"He who has less in life should have more in law."

Supreme Court now allows certified and qualified law students to appear in court pro bono to represent indigent clients in need of legal representation. This is to ensure access to justice of the marginalized sectors, to enhance learning opportunities of law students, to instill among them the value of legal professional social responsibility, and to prepare them for the practice of law. The expansion of Rule 138-A states that cases allowed are criminal, civil, and administrative.

The Revised Rule has its strict limits and also enumerates in Section 13 acts considered as unauthorized practice of law as well as the corresponding sanctions, without prejudice to existing laws, rules, regulations, and circulars. It stresses that "unauthorized practice of law shall be a ground for revocation of the law student practitioner's certification and/or disqualification for a law student from taking the bar examinations for a period to be determined by the Supreme Court."

Other countries are also adopting the Law Student Practice. It is proven that with proper exposure of law students to the practice of law, new lawyers are more qualified and deserving when they become licensed lawyers.

Law student practice rules are adopted by both state and federal courts which authorize eligible law students to practice law under the supervision of a practicing lawyer. These countries are:

Alabama, Arizona, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

[97] http://sc.judiciary.gov.ph/4810/

Common criteria among most countries to qualify for student practice is that one has to be a certified law student having completed required number of units for specific subjects. A certified law student is one who has a currently effective certificate of registration as a certified law student. The law student has to be under the general supervision of the supervising lawyer. This privilege of exposure is only introduced to certified law students who has completed or are currently enrolled in and attending academic courses in evidence and civil procedures. It is capitalized that this must be done under the supervision of a lawyer to ensure quality service and proper application of law will not be sacrificed.

The courtroom as classroom. It is understandable that, from his perspective on the bench, a judge would view his workplace as a courtroom and not as a classroom. An overarching objective in any classroom setting is to educate the student(s), whereas the primary function of the courtroom is to adjudicate disputes and achieve justice for the parties. And yet, had the judge in the case above given his statement more thought, he might have acknowledged that the means by which the adjudication occurs arguably includes an educational component, even for himself[98]

The individuals in the courtroom have different parts to play and lawyers in particular necessarily wear different hats.[99] Lawyers serve as officers of the court and thus have specific obligations to the tribunal. But they must also be zealous advocates for their clients and in so doing, have several ethical responsibilities to which they must adhere. In an effort to facilitate informed decision-making, lawyers also act as educators of the jury, the judge, opposing counsel and parties, and even for their own clients.[100]

A student attorney, like any other lawyer in the court, must juggle multiple roles as advocate, officer of the court, and teacher. Supervising lawyers might also accept any or all of these roles in the courtroom, as well as the additional one of teacher for the student attorney. There are times in the courtroom when even the advocate, experienced practitioner or student attorney, must also be the pupil.

[98] Jennifer A. Gundlach, *"This is a Courtroom, Not a Classroom": So What is the Role of the Clinical Supervisor*. 13 Clinical L. Rev. 279 (2006)

[99] 8 The Preamble to the Model Rules of Professional Conduct acknowledges the multiple and sometimes conflicting roles of an attorney: A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice . In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. See American Bar Association, MODEL RULES OF PROF'L CONDUCT Preface (2004 ed.)

[100] David Dominquez has noted that "Our society often overlooks one of the most powerful roles of a lawyer: that of teaching and empowering." David Dominquez, Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering, 12 GEO. J. ON POVERTY L. & POL'Y 55, 55 (2005).

The appearance of a law student on court gives a first hand experience of the actual scenarios of everyday life of a practicing lawyer. This has been considered by the Supreme Court in the hope to produce the best and deserving future lawyers.

Since the primary function in the courtroom is the adjudication of arguments, one might say that any instructional activity of the student attorney and the supervising lawyer would be overly burdensome or distracting. The student, like any practicing lawyer, must abide by her ethical responsibilities, which inherently require that a lawyer remain teachable and open to learning about cases and practice itself during the course of representation and throughout the court proceedings.

Why are we adopting the Law Student Practice Rule in the Philippines? This comes with both advantages and disadvantages. There is general consensus about the core competencies of effective lawyers, even though opinions about the ideal preparation for law practice and the proper curricular emphases of law schools have varied and evolved over time.[101] Legal analysis and reasoning tops most lists of essential lawyering skills, but there are other skills that are also considered indispensable: oral and written communication, client interviewing and fact investigation, client counseling, problem solving skills, and ethical judgment.[102] The client-focused skills, which are learned effectively by experience, are important because it establishes both the lawyer's ability to be effective and the lawyer-client professional relationship.

The Supreme Court is looking into developing important lawyering skills. The best way to learn the four basic values of the legal profession is thru first-hand experience. These include:

(1) striving to promote justice, fairness, and morality,
(2) providing competent representation,
(3) continuing to grow professionally and
(4) honoring the profession's duty to enhance the capacity of law and legal institutions to do justice. Basic skills are those necessary for professional competence to fulfill a lawyer's ethical duty to promote justice.

[101] ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S (1983); see discussion infra Part III.

[102] John Sonsteng & David Carnarotto, Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction, 26 WM. MITCHELL L. REv. 327, 335 (2000) [hereinafter SONSTENG & CAMAROTTO]; Bryant G. Garth & Joanne Martin, Law Schools and the Construction of Competence, 43 J. LEGAL EDUC. 469, 473 (1993) [hereinafter GARTH & MARTIN]; MACCRATE REPORT, supra note 5, at 135, 138-40.

The MacCrate Report identified ten key practice skills that every attorney needs: problem-solving, legal analysis and reasoning, legal research, fact investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and the ability to recognize and resolve ethical dilemmas.[103] Among these key lawyering skills are some that are learned well only in a practice setting: communication skills, client interviewing and fact investigation skills, counseling skills, and problem solving skills.

Having the Law Student Practice is the closest to experiencing the life of a lawyer for an aspiring lawyer. This could test the courage of the student on how to survive dealing with clients. It is a challenge to understand, to apply the law and to effectively present the case on court. This way, the student attorney skills are sharpened. Communication skills provide a necessary foundation for the other essential lawyering skills of client interviewing and fact gathering, and client counseling.[104] Those skills are necessary to an aspiring lawyer's overall abilities.

The Revised Rule have been both hailed and criticized, but there has been no serious argument regarding professional skills and values essential for law practice.

There is this tendency that if clients are left with student lawyers to handle their cases, the trust and confidence is not complete. When they know that the one handling the case is still a student, some would shy away and doubt if cases will be presented well. This has been fully considered by the Supreme Court that is why it is stated that all actions by the student lawyer must be under the supervision of a practicing law professional.

Exposure to law practice may be the only way through which students can really begin to understand the written and unwritten standards of law practice and the degree to which those standards are followed.[105]

If it were not for a tradition which blinds us, would we not consider it ridiculous that, with litigation laboratories just around the corner, law schools confine their students to what they can learn about litigation in books? What would we say of a medical school where students were taught surgery solely from the printed page?... Who would learn golf from a golf instructor, contenting himself with sitting in the locker-room analyzing newspaper accounts of important golf-matches that had been played by someone else several years before? [106]

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[103] MACCRATE REPORT, supra note 5, at 140-41

[104] MACCRATE REPORT, supra note 5, at 172.

[105] Clinical Legal Educ. Ass'n, Best Practices for Legal Education 151 (Dec. 15, 2005), http://professionalism.law.sc.edu/downloads/bestpractices/20051215-Text.pdf [hereinafter BEST PRACTICES].

[106] JEROME FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE 229 (1950).

The amended Rule 138-A Law Student Practice is a very timely revision in the law profession. Our country would gain advancement in terms of the quality of new lawyers in the future. There will be a more prepared, practice –ready and more confident lawyers.

This also would help measure one's interest in the field of law. A law student practitioner would have real life experience on how it would be when he or she becomes a full-fledged lawyer. This way, he or she could weigh reality and expectations. This could help one decide either to pursue or withdraw from pursuing law school.

Law Organizations: Are They Essential to Survive in Law School?

Genevieve Jore, Frances Dave Paculanang

The idea of becoming a lawyer and the experience one can earn in law school can be elating. Aspiring lawyers head to law school as a starting point of their legal profession journey. And studying the law can be both fascinating and can be challenging at the same time.

Before becoming a law student, one must undergo the challenge of choosing the right law school that would fit one's references. Each law school has different practices and teaching styles, and these could be necessary to determine the degree of tolerance one has to give in hurdling at least the challenges of law school. One of the things to consider is the presence of organizations and groups of friends one has to be with throughout one's law school journey.

There are law schools where fraternities/ sororities and other organizations form part of the law student's journey. For some, it becomes less stressful with the help of members of the organization. For others, they can be able to finish the degree without joining a law student organization in the school.

Life in law school is hard, but it could be an understatement. The sacrifices can be indescribable. The things that one did not experience in college, you might be encountered them in law school—rigorous recitation, memorization, and the constant reading sessions. However, some students claim that law school can be less stressful when you have friends or a group of people that would serve as your support system. In an article about having friends in law school the author mentioned that friends in law school lifted him and became his study buddies, and they celebrate school-related victories together. The author considered this as help and good memories beyond books[107].

In an interview with a student from Liceo de Cagayan University, Mary Cris Akut said that being part of an organization means you have someone to help you in complying with the course requirements. In the organization she's with, she can quickly get the resources she needs for reviewing exams because of the provided copies of past exam questionnaires. She even learns the technique of digesting cases with the help of members of the sorority. She can also do an advance study before the semester starts with the advice and guidance of the senior members of the group. She added that unlike when she hasn't joined any group, she now feels guided[108].

[107] Karr Katigbak, 5 Things I Learned in Law School available at edukasyon.ph
[108] Mary Cris Akut, Thoughts on Law Organizations – interview question [2019]

According to Atty Aisa Musa-Barrat of RTC Branch 7, the rigid process of acceptance in fraternities and sororities are made worth it when she was in law school and justified by the bond between brothers/sisters. She added that it was more than companionship that enticed her to join the organization. It was the connection between the members of the group, the support throughout the law school journey and during the bar exam, and the opportunity of employment[109].

While law students have the high hopes of enduring law school challenges if they join an organization, some may find it unimportant. Angelica Casino, a law student from Liceo de Cagayan University, said that though she agreed that law school organizations are everywhere and can lessen the burden, she still believes that determination is more important. One’s grit and perseverance in becoming a lawyer could be enough. One might have all the help he needs, but without the drive to survive, one won't be able to surpass the hardship of law school. Angelica is in her third year and one of the top students of Liceo Law.

Becoming a lawyer starts with a small dream and aspiration to be in a legal profession. It might be because of the influence of families and friends or could be a generated childhood dream that later became an overwhelming desire to become a lawyer. While there can be law schools that entice a person to be in law school organizations, there are also schools where the brotherhood/sisterhood concept doesn't exist. But these schools only exist to help one learn the law and be aided in passing the bar exam to further realize every law student’s dream of becoming a lawyer.

[109] Atty. Aisa Musa-Barrat, Thoughts on Law Organizations – interview. [2019]

Marawi Crisis and Its Underlying Impact

Led Caliao and Nehemiah Montecillo

Marawi - a beautiful city, with tall densely packed houses and ornate mosques is located on the Southern Island of Mindanao, the capital city of Lanao del Sur province in the Bangsamoro Autonomous Region of the Philippines. It is a city with a majority of Muslim inhabitants in an overwhelmingly Christian country, with an estimated population of 201,785 based on the 2015 census. The people of Marawi are called the Maranaos and speak the Maranao language. They are named after Lake Lanao, called Meranau in their language, upon whose shores Marawi lies. The city is also called the "Summer Capital of the South" because of its higher elevation and cooler climate, a nickname it shares with Malaybalay, which legally holds the title[110].

Marawi Siege Timeline

The war started on May 23, 2017 in a village called Basak Malutlut where the military spotted a most-wanted terrorist leader, Isnilon Hapilon - 'emir' of ISIS in the Philippines and Abu Sayyaf leader, and moved in to take him. The military troops took a back after numerous armed men from neighboring houses joined the firefight.

Hapilon had gained supporters after joining local armed groups, the Maute brothers led by Omar and Abdullah- both pledged allegiance to international terrorist network Islamic State (ISIS) with their purpose to siege the city to establish an Islamic caliphate in the Philippines.

Hapilon escaped the arrest. Armed Marawi residents then rushed into the streets, waved the ISIS black flag and attack strategic points around the city. They took hostages along the way. During the war, the once bustling Islamic city was turned into a ghost town. Residents fled. There were destruction, death and despair all over the city.

The terrain in Marawi proved difficult for military troops used to fighting in the jungles. The military fought an urban warfare. Military occupied buildings and their snipers bore holes on hard concrete walls so they could avoid enemy snipers and have a view of the battle area. The military also resorted to air strikes. The Philippine Army, Air Force and Navy combined forces in the biggest, longest and bloodiest operation of the Philippine Army since World War II. The mission is to neutralize the terrorists while making sure the hostages are safe. Soldiers were wounded,

[110] Marawi, available at https://en.wikipedia.org/wiki/Marawi, last accessed January 17,2020.

and many lost their lives. But the troops push on and learn new tactics along the way. But so do the enemies. They hid inside mosques because militaries were limited from striking such building. The terrorists also bore holes and dug tunnels which enabled them to safely hide and move between buildings. They also made and planted IED's which made it difficult for advancing troops.

Still, troops forwarded day by day adjusting to the tactics of the Maute fighters until the last of the enemy strongholds fell one by one. Isnilon Hapilon and the Mautes put up a good fight but on October 16, 2017, they met their end in Marawi; a bullet to Hapilon's chest and another bullet to Omar Maute's head put an end to their reign of terror. The ensuing battle lasted until October 23, 2017 when Defense Secretary Delfin Lorenzana announced the ending of the battle. The war lasted for 153 days. [111]

Damages and Rehabilitation

Major damage of the city was mostly caused by airstrikes carried out by the Philippine Air Force in an attempt to eliminate the militants. The Rehabilitation of Marawi began following the end of the Battle of Marawi on October 2017 which left the city devastated. The five-month conflict which started on May 2017 saw government forces fighting against ISIL-affiliated militants led by Isnilon Hapilon of the Abu Sayyaf and Omar and Abdullah Maute of the Maute group.

"Marawi will rise as a prosperous city again", that was President Rodrigo Duterte's promise to the families who continue to suffer the cost of the Marawi siege. Two years after government forces routed the IS-affiliated Maute group that laid siege on Marawi starting May 2017, the city's rehabilitation remains a pipe dream for some 70,000 evacuees still languishing in makeshift shelters. The five-month battle against the terrorists left more than 800 militants and 162 soldiers dead, displaced some 200,000 Marawi residents, and transformed a once vibrant center of commerce into a war-torn ghost town. The outcome of the five months of air strikes and ground combat in the city reduced to rubble, forcing the residents to leave the homes and lives they built[112]. Just how long will the displaced residents of Marawi City have to suffer neglect for a conflict caused by the failed intelligence work of the military and this administration?

Today, hundreds of families continue to live in temporary shelters on a 22 square meter home meant to fit a family of three built on government land. There are many problems that go with displacement. Marawi residents' dissatisfaction with post-conflict rehabilitation is widely documented. We

[111] Documentary Marawi: 153 Days of War, available at https://www.rappler.com/nation/186264-documentary-marawi-crisis-153-days-war,last accessed January 17, 2020)

[112] Philippine Daily Inquirer, 2019

have corresponded with some of those who have witnessed this first hand, heard stories of trauma and survival, of mothers feeling insecure about the future of their young children and fathers trying to find ways to earn a living without being a burden to others. Underlying these stories is a sense of neglect.

They heard many promises, but experienced little relief. We've come up with some questions for them such as:

(1) With regards to the rehabilitation, what are the agencies involved?

"In terms of rehabilitation efforts, the agencies being involved firsthand are DSWD, DTI and DOH."

(2) What is the current status of the residents in the city?

"As of now, there is little to no progress at all in terms of the well-being of the majority of the residents. This is evident from the fact that there are still numerous families who are still forcing their families to survive and fit in small tents and the fact that there are still hundreds of families who are trying to squeeze their families in the housing units provided. Most of the programs initiated are not sustainable and does not provide for a long-lasting solution for their problem like the cash grants, for example. Little efforts are invested to sustainable projects. Further, the morale of the displaced residents is so low since they cannot see any significant progress in their request to return to their homes in the ground zero."

(3) What are the plans of the government for the rehabilitation? Is there any progress from the past to present?

"In all fairness, the government has numerous and extravagant plans for the rehabilitation of the area. Like the re-development of the ground zero into a well-designed city area and other infrastructure related developments. However, until now, they still remain as plans. Some, if not all, of the projects for rehabilitation remained stagnant and ineffective. Until now, we see no significant progress. We urge the government to step up its game."[113]

Another set of answers from a victim of the Marawi crisis for the following questions were being asked:

[113] Interview by Philippine Inquirer with Nurhalim S. Carim, one of the residents, in Marawi City, Philippines.

(2) With regards to the rehabilitation, what are the agencies involved?

"Based on my experience working on previous projects with Marawi Rehabilitation, particularly the Kambalingan Project, the primary agencies involved in the Marawi rehabilitation project are: the agency members of the Task Force Bangon Marawi, these are: DSWD, DTI, DPWH, chief of the armed forces of the Philippines, DepEd, DOE, DOH, DBM, and DILG, representatives from different sectors in Marawi such as the women sector, indigenous leaders, the youth were also consultant members of the Task force."

(3) What is the current status of the residents in the city?

"As of today, residents were classified into LAA (Less Affected Area) residents and MAA (Mostly Affected Area) residents. The LAA residents were able to return back to their barangays, started rebuilding their damage property and has already settled back to their homes. They have received assistance from the agency members of TFBM, Kambalingan assistance (5k, grocery package, 2 sacks of rice), quarterly ration of 2 sacks of rice, DTI livelihood assistance and today the DSWD livelihood assistance of 10k. As for the MAA residents, the Kambisita (visitation) of their property/house has commenced, followed by the mapping of their houses, and also the demolition for those who chooses to demolish their property after Kambisita. Construction of Temporary shelters within Marawi City was on going, to cater the IDPs (Internally Displaced Persons) that are still in the evacuation centers outside Lanao del Sur, the last transfer of IDPs from Lanao del Norte was in Sarimanok tent city last 2018.MAA residents also receive 73k financial assistance from the DSWD. DTI and other agencies have also started their own implementation of their rehabilitative projects such as livelihood kits with the Marawi IDPs both from MAA and from LAA."

(4) What are the plans of the government for the rehabilitation?

"Is there any progress from the past to present? The goal of TFBM as it always has emphasized during the meetings with stakeholders is to bring marawi (ground zero) back on its feet. As to whether they are aiming to let the MAA residents to build their homes back to where it formerly stands is a wish and a prayer that both MAA and LAA residents has been hoping for. From day 1 the efforts from different agencies has always been there, the existence of the temporary shelters from Sagonsongan and tent city in Sarimanok has been a great help to the Marawi IDPs particularly the MAA residents. There is noticeable Progress in terms of assistance and services just like

> the Kathanor Project to validate the data of the IDPs. These secures that the legitimate members of household, be directly given to them, and eventually lessen fraud and misrepresentation. Yet, again the progress we all have been waiting for, and been praying for the past 2 years in return of MAA residents to their homes and to see the rehabilitation in terms of rebuilding and construction of the buildings in the ground zero."[114]

Chief among their complaints is the lack of access to the battle area where their homes once stood. Access to the main battle area, however, is just one issue. The process of reconstruction is also marred with issues of representation. Some voices are heard more than others. "If you don't have money, you don't have a voice", as one resident puts it. Indeed, there were several respondents who, at first, hesitated to talk about their grievances. They were worried that if they talk negatively of the rehabilitation, they will be excluded from the list of beneficiaries from relief operations. This possessed a disheartening picture of Marawi's rehabilitation. The people who built the city are now its outcasts. The lack of coordination, respect and consultation renders them voiceless, as if their opinions do not matter. "Of course, we're from ground zero, so the way they see us is also zero'", as an elderly imam puts it.

Rebuilding Marawi

When will the residents of Marawi come home? According to Task Force Bangon Marawi, they can return by September 2019. But the correspondence revealed that there are still lots of doubt clouding this promise. Time and again, they have heard authorities promise them job security and food assistance, but none of these promises were met. Two years since the siege, the city is still in ruins. The debris is yet to be cleared, the devastated buildings are yet to be demolished, and road widening projects are yet to begin. For its evacuated citizens, a rehabilitated Marawi remains a fantasy.

For people from the southernmost region of the Philippines, government neglect may not be new. The delays in the Marawi rehabilitation are part of a longer tale in the centuries-long worth of accounts of marginalization in the country's southernmost island. There was a time when the people of Marawi thought things could be different. In 2016, a Mindanaoan mayor from Davao City promised to end the suffering of his people when he became President. The firmest manifestation of this commitment was his support for the passage of the Bangsamoro Organic Law which provides the new Bangsamoro Autonomous Region in Muslim Mindanao greater financial and political autonomy. For *bakwits*, autonomy may mean a more responsive

[114] (Interview by Philippine Inquirer with one of the female resident working in MSSD-LSA, in Marawi City, Philippines).

government to their needs. It also means greater leverage for funds to be spent the way they need it. This, however, is still another promise. If past experience holds predictive value, we have reason to be skeptical about Marawi's future. The hearing also uncovered repeated government delays in housing displaced residents, according to the Marawi Reconstruction Conflict Watch (MRCW), which has been monitoring the city's rehabilitation since 2018. The delays have prompted claims of discrimination from aggrieved residents whose call for compensation for lives put on indefinite hold has so far been ignored. The seeming betrayal rankles, and so does the government's lack of transparency on its plans for Marawi, the timetable for the evacuees' eventual return, the resources available for rebuilding, and the outputs to be expected.[115]

Agencies present at the House hearing, for instance, were a picture of confusion as they failed to provide accurate updates on the implementation of their programs. These efforts, however, are simply not enough, according to Marawi's dispossessed. Why are they not consulted and included in the planning, the timetable, the use of resources, the choice of contractors or even the design of their new homes that would reflect their culture and consider the particular needs of their Muslim community? Take that December 2021 deadline for the complete rehabilitation of Marawi City that TFBM chair, Secretary Eduardo del Rosario, had given. Waiting another two years would mean an interminable, unconscionable period of dislocation for survivors who have been in exile for two years now, and who simply want to be allowed back to resume their interrupted lives. Government agencies, too, must provide a clear accounting of the P5.52-billion fund that had been released for Marawi's rehabilitation in 2017, and the P10 billion earmarked for the same purpose in 2018.[116]

[115] (Philippine Daily Inquirer, 2019).
[116] *Ibid.*

Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao: A Start for a Better and United Philippines?

Nikka Doria, Mispa Hayao and Michelle Ann Paculanang

The Bangsamoro Organic Law is likely to have a positive side effect that will create a domino effect towards the union of all Filipino people no matter what their identity is and bring triumph to the Republic of the Philippines. This law will create a frame for belongingness, proper identity of the Bangsamoro people and soon lead to minimal disputes and give more focus on the economic development of the country.[117]

"We are all equal in the fact that we are all different. We are united by the reality that all colors and all cultures are distinct and individual. We don't share blood, but we share the air that keep us alive". This quote by Jaybell C. emphasizes the essence of equality in diversity. The Philippines consists of various races and tribes, which causes the emergence of culture differences. These differences associate contrasting manner and orientation towards certain conditions, which is one of the extensive grounds on the emerging chaos among varied nations. The most evident issue is the existing conflict in Mindanao with the disputes over ancestral land and religion. To address such, the government exerted immense effort to eliminate hostility among the people. Peace negotiations were made between the Philippine government and the Bangsamoro people with the hope of restoring peace to an unsettled territory.

Prior to the creation of the Bangsamoro Organic Law is an unending strive towards molding a nation where peace and harmony prevails. In 2008, the government and the Moro Islamic Liberation Front announced the creation of the Memorandum of Agreement-Ancestral Domain (MOA-AD), a document that outlined the creation of a Bangsamoro Juridical Entity with its own police, military, and judicial systems. Four years thereafter was the release of Framework of Agreement on the Bangsamoro, paving the way for a new autonomous political entity. In 2014, the Comprehensive Agreement on the Bangsamoro (CAB) was signed in a ceremony, thus concluding 17 years of negotiations between the Government of the Philippines and the Moro Islamic Liberation Front. A year thereafter, the House ad Hoc Committee on the BBL approved the draft and the committee report of the proposed measure. In the following years, President Rodrigo Roa Duterte met with MNLF founder and leader Nur Misuari to discuss the BBL and the shift to federalism after the group rejected the passage due to complicated issues. The first public consultation in Mindanao on the proposed BBL took place in Cotabato City in Mindanao. The House of Representatives approved its version of the proposed BBL. The bicameral committee approved the final

[117] Fast facts on the Bangsamoro Organic Law by Beatrice JilieGutieriez available at http://pia.gov.ph//features/articles/1018364 last accessed on November 18, 2019.

version of the BBL. The recent happening was the plebiscite conducted on the early part of 2019.[118]

Bangsamoro Organic Law is the result of the peacebuilding efforts of the government of the Philippines. It was signed by President Rodrigo R. Duterte last July 26, 2018. It is a law which provided for the establishment of the autonomous political entity known as the Bangsamoro Autonomous Region in Muslim Mindanao, replacing the Autonomous Region in Muslim Mindanao (ARMM).[119] It is the outcome of the prevailing armed conflict in Mindanao in which the right to self-determination is aggressively asserted. It hopes to achieve more sustainable peace on the island of Mindanao as well as provide relief and answers to grievances to the people who are within the jurisdiction of the organic law.[120]

Essentially, the right to self-determination is the right of a people to determine its own destiny. In particular, the principle allows a people to choose its own political status and to determine its own form of economic, cultural and social development. Exercise of this right can result in a variety of different outcomes ranging from political independence through to full integration within the state.[121] This right is reiterated in Article 1 of International Covenant on Economic, Social and Cultural Rights which states that "All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[122] Freedom and independence is the prime goal of Bangsamoro people on their efforts respecting to the approval of Bangsamoro Organic Law.

The purpose of the organic law is providing political entity to provide for its basic structure of government in giving recognition of the justness and legitimacy of the Bangsamoro people and the Filipino Muslims including the indigenous people of the said communities. The Bangsamoro Organic Law is a privilege that a community can see its primary necessities depending on the people reside particularly its economic growth which the Bangsamoro gains its 75% of its income and 25% to the national government as higher than 5%

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118 Timeline: The Bangsamoro Peace Process by Christine Cudis available at https://www.pna.gov.ph/articles/1059598 last accessed on January 14, 2020.

119 Bangsamoro Organic Law, available at https://en.wikipedia.org/wiki/Bangsamoro_Organic_Law last accessed November 20,2019.

120 Bringing peace to the Philippines Troubled South: The Bangsamoro Organic Law by Fausto Belo Ximenes October 2, 2018 available at http://thediplomat.com/2018/10/bringing-peace-to-the-philippines-troubled-south-in-the-bangsamoro-organic-law/ last accessed on November 16, 2019

121 Self-determination, September 21, 2017 available at https://unpo.org/article/4957 last accessed January 13, 2020

122 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A, International Covenant on Economic, Social and Cultural Rights available at https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx last accessed January 14, 2020

when it was Autonomous Region of Muslim Mindanao (ARMM). Only 25% will be put to the national treasury.[123]

There are some salient points that can be inferred from the Organic Law, namely, determination of territorial jurisdiction, the autonomy of Bangsamoro, upholding social justice, and strengthening the union between the Bangsamoro and the Filipino people. This law eradicates the uncertainties on the territorial jurisdiction of the Bangsamoro people as it determines the scope of its territory explicitly including thereof are inland waters, Bangsamoro municipal regional waters and constituent waters which Bangsamoro state extends its jurisdiction. It fortifies their sense of identity. The Bangsamoro Government shall enjoy fiscal autonomy with the end in view of attaining economic self-sufficiency and genuine development. The Bangsamoro Government shall have the power to create its sources of revenues as provided in this Organic Law, which shall be spent in a programmatic, transparent, performance-based, and phased manner. This given autonomy for them to have direct control of the necessary resources and exercise self-governance to administer its political, economic, social, and cultural aspects. This minimizes delay and promotes efficiency in its operations relevant to their prosperity. Social justice is accentuated in the organic law as it emphasizes the rights of children, youth, women, labor, and settlers, and Bangsamoro people in general as well as their protection.[124]

With their contention on their right to self-determination, Bangsamoro Organic Law grants Independence on Bangsamoro people. An independent Bangsamoro state is to be founded on the principles of freedom, democracy, equality of all men and women, respect to religious and political beliefs, and adherence to universal human rights. The system of government to be adopted will be determined by the Bangsamoro people themselves. Residents of the territory at the time of independence will be the citizens of the Bangsamoro state. They will enjoy equal rights, privileges and obligations. They will have rights to suffrage, ownership of properties, practice of their religious beliefs and participation in public affairs. As to the International Conventions and Agreements, the Bangsamoro government will assume the obligations and enjoy the rights out of international conventions to which the Philippines is a signatory, in accordance with the rules of international law.

Multilateral and bilateral agreements signed by the Philippines that directly apply to the territories of the Bangsamoro State will be honored. Through treaties, the independent Bangsamoro state can have a special relationship with the Philippines. In relation to the laws passed by the Congress of the Philippines that specifically apply to the territory of the

[123] Republic Act No. 11054, available at https://www.lawphil.net/statutes/repacts/ra2018/ /ra11054 2018.html last accessed on November 16, 2019
[124] Republic Act No. 11054, available at https://www.lawphil.net/statutes/repacts/ra2018/ /ra11054 2018.html last accessed on November 16, 2019

Bangsamoro state at the time of independence will remain in force until amended or repealed by the Bangsamoro legislative body.[125]

Though Bangsamoro Organic Law is situated as an independent government in its recognized areas and expansion there is still retention of the national government responsibility. The national government retains its important responsibility for its crucial government functions such as auditing, national defense, public order and safety.

In the auditing aspects the Constitution secures that the Commission on Audit shall be the exclusive auditor of the Bangsamoro Government and its constituent local government units. The Bangsamoro government has its own internal auditor in accordance with RA No. 3456 or the Internal Auditing Act of 1962.[126]

In the national defense and security, public order and safety, the defense of the BARMM shall be the responsibility of the National Government.[127] The Police Regional Office in the BARMM shall be directly under control in its operation of the Philippine National Police.[128]

As stated in the Institute for Autonomy and Governance, Bangsamoro Organic Law has its implications. These implications are the following; it would usher in socio-economic development in the Bangsamoro, giving economic opportunities for its residents, security will also improve, as the MILF intends to make that transition to civilian life as a social movement once all political conditions are met, it would guarantee peace and harmony among its residents by ensuring the protection of human rights of all]residents of the Bangsamoro and stronger working relationship between the national government and the Bangsamoro government through the creation of appropriate intergovernmental mechanisms.[129] Bangsamoro Organic Law provides a platform for perpetual settlement of the Bangsamoro and Filipino people. It also guarantees equality among the stakes of the nation. Hence, this law is for the purpose of formulating tools for a good-

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[125] Understanding Bangsamoro Independence as a Mode of Self-Determination by Abhoud Syed M. Lingga available at http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2013 /01/independence-Option.pdf last accessed on January 14, 2020

[126] Article XII, Section 2 Republic Act No. 11054, available at https://www.lawphil.net/statutes /repacts/ ra2018/ /ra11o542018.html last accessed on January 15, 2020

[127] Article XI, Section 1 Republic Act No. 11054, available at https://www.lawphil.net/statutes/ repacts/ra2018//ra11o542018.html last accessed on January 15, 2020

[128] Article XI, Section 2 Republic Act No. 11054, available at https://www.lawphil.net/statutes/ repacts/ra2018//ra11o542018.html last accessed on January 15, 2020

[129] Implications of the GPH-MILF Peace Process and The Bangsamoro Organic Law to Mindanao and the Emerging Challenges by Mohagher Iqbal, November 14, 2018 available at http://iag.org.ph/index.php/editor-s-picks/1783-implications-of-the-gph-milf-peace-process-and-the-bangsamoro-organic-law-to-mindanao-and-the-emerging-challenges last accessed on January 13, 2020

natured negotiations and enabling every class to facilitate and function as an asset to the betterment of the country.

The paramount goal is reiterated in the Bangsamoro Organic Law, which is the unification of the adverse parties. All undertakings by the Bangsamoro people entails the association of the government of the Philippines. Their culture, health, education, defense, and justice system concur with the policies and standards of the national government. Operations of the Bangsamoro people are for the preservation, enrichment, and strengthening of their right to self-determination, which will consequently boost their well-being and escalate their sense of belongingness. As they will obtain their asserted rights, conflicts, and struggles of the adverse parties will be eliminated, which will promote well-built relations among the citizens of the Philippines.

The Bangsamoro and the Filipino people extend their arms for the elimination of war and struggle. After a prolonged dispute and several peace talks, the government of the Philippines and Bangsamoro people transpired Bangsamoro Organic Law. This law is for the restoration of Bangsamoro identity, exercise right to self- governance, the institution of justice, and termination of violence and inhumanity.

There have been countless unrest in various forms in the country throughout the years. This unrest is most noticeable on the island of Mindanao, or so they say. The island seems to carry the prejudice that, it is the part of the country where wars are through bloodshed.

The country is a cornucopia of cultures, religions, traditions, and beliefs and with this comes minor disagreements. The country must pause and review its statutes to stand under one flag as a nation; it must rethink the laws that govern the land and give space to compromises.

The Bangsamoro Organic Law is a re-conceptualization of the national law that governs the entire Philippines. The newly signed law is not free of any apprehensions as there will be factions that will arise with any changes to what is the norm. The Bangsamoro Organic Law, which is a law that caters to the Autonomous Regions of Muslim Mindanao, has its primary focus on the Moro people and other minority groups.

In the report published in the PhilStar Global, 79% of the Muslim community is in favor of the Bangsamoro Organic Law. This report is according to the poll that was collected. The Bangsamoro Organic Law may look like it will only benefit the Muslims; it is not so. Fearing change and progress is the kind of thinking that will hold back the advancement of a country.[130]

First and foremost, the Bangsamoro Organic Law was created not to oppressed and suppressed the rights of the Muslims and other ethnic groups. The law talks about the advantages that it would give the Moro and ethnic groups to protect their rights better. However, one of the biggest questions of the passing of this law is that it will become leverage for more nefarious reasons. These are simply apprehensions and doubts that hold the country from achieving its highest potential.

It is a great deal to think about the possibilities that represent both the pros and cons of Bangsamoro Organic Law. Oppositions and support are part of the transformation. It gives a better perspective to the Filipinos if they truly understand the platform in which the Bangsamoro Organic Law stands for.

The BOL is the result of the desire of the people to have lasting peace in Mindanao.[131] It is a solution that is supposed to give not just power but a voice to the voiceless. Does it guarantee everlasting peace? It is a question that is difficult to answer on its own. It is the questions that so terrifies others from supporting it. Chaos comes from change; disagreement comes from dissatisfaction. In order for a government to better control dissatisfaction, one must be able to cater to what is genuinely needed.

The Bangsamoro Organic Law is a separate entity that also reminds the Filipino that there is unity in separation. This is a dangerous term to use as it can be misconstrued into several ideas. However, separation in terms of governing the land in which Bangsamoro people will also have the right of self-determination, which is basically their collective right to achieve their own political, cultural and economic privilege is one should be given focus to[132].

It can be expected that no law is perfect and fear of change can be one of the biggest challenges the Filipino people can face. The good intentions of the lawmakers can have flaws and that can interpret to an existing law especially in the implementation part. As enunciated in a speech delivered at the Peace Assembly for the ratification of Republic Act 11054 or the Bangsamoro Organic Law at the Shariff Kabunsuan Cultural Complex: “The BOL is not a perfect law but it is the best now we have in our common

[130] Patricia Lourdes Viray, 79% of Muslims in favor of the Bangsamoro Organic Law-SWS, January 22, 2019, available at https://www.philstar.com/headlines/2019/01/22/1887202/79-muslims-favor-bangsamoro-organic-law-sws last accessed on January 15, 2019.
[131] BBL: Is it worth it?, July 20, 2015 available at https://lkdzapata17.weebly.com/blog/bbl-is-it-worth-it last accessed on January 15, 2020.
[132] Gutierrez, Beatrice, Fast Facts on the Bangsamoro Organic Law, ; available at https://pia.gov.ph/features/articles/1018364 last accessed on January 15, 2020

interest for peace, unity and progress for our people."[133] However, this does not mean that the law itself is bad. It is only difficult if cooperation and agreement is put in question. Despite all this the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao is a start of something new.

Active measures on the challenges that poses itself from the Bangsamoro Organic Law has been made to ensure favorable results. The undertaking of the Bangsamoro Organic law can be thought of as an ambitious move for the devolution of power, necessary for a more inclusive Mindanao, only time will tell for certain if the steps taken today are risks worth taking.

[133] PEACETALK: The BOL is not a perfect law but it is the best now we have in our common interest for peace, unity and progress by Muslimin G. Sema, January 19, 2019 availabe at https://www.mindanews.com/mindaviews/2019/01/peacetalk-the-bol-is-not-a-perfect-law-but-it-is-the-best-now-we-have-in-our-common-interest-for-peace-unity-and-progress/ last accessed on January 14, 2020.

DEFINING THE CRIME OF AGGRESSION

Atty. Marcelino S. Marata

The Crime of Aggression is one of the four core crimes placed by the Rome Statute (Statute) under the jurisdiction of the International Criminal Court (Court). Unlike the other three crimes (Genocide, War Crimes, and Crimes Against Humanity) the Crime of Aggression had not been defined when the Statute took effect in July 2000. On December 15, 2017 the Assembly of State Parties (ASP) in a meeting in its UN Headquarter in New York approved to activate the Court's jurisdiction over the Crime of Aggression.

The Bases

The review of the Statute and definition of the crime of aggression took its bases from Articles 121, 123,and 5 (2) of the Statute.

Article 121 (1) says that:

> **Article 121 (1) Amendments.** After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.

Meanwhile, Article 123 (1) mandates that:

> **Article 123 (1) Review of the Statute.** Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

Whereas, Article 5, paragraph 2 provides that:

> **Article 5 (2)[134].** The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the

[134] This has been deleted per RC/Res.6, the Review Conference of the Rome Statute of the International Criminal Court, held in Kampala, Uganda, from 31 May to 11 June 2010.

> conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of United Nations.

The Kampala Resolution

Following the above-cited provisions, a Review Conference of the Rome Statute of the ICC was called in Kampala, Uganda from 31 May to 11 June 2010. The 10-day Review Conference passed the RC/Res. 6 which came up, among others, with the definition of the Crime of Aggression, determined the instances when it is committed, and identified the manner by which the Court's jurisdiction may be invoked.

1. Defining the Crime of Aggression

The Kampala Resolution, as it has been later known, defined the Crime of Aggression (which became the Statute's Art. 8 *bis*) in this way:

> **Article 8 *bis*. Crime of aggression** 1. For the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
>
> 2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
>
>> (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
>>
>> (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

2. Exercise of Jurisdiction Over the Crime of Aggression

Integral in the definition of the crime of aggression is the determination of the exercise of jurisdiction by the Court. Towards this end, the Kampala Resolution added Article15*bis* and Article 15*ter* to the body of the Statute. Article 15*bis* deals on the exercise of the Court's jurisdiction by referral of a case by a State Party or by *motu proprio* investigation over a case by the Prosecutor, whereas Article 15*ter* is the exercise of the Court's jurisdiction over a case referred to it by the UN Security Council.

Specifically, the exercise of jurisdiction of the Court is guided by the following:

2.1 Through State Party Referral or *Motu Proprio* Investigation by the Prosecutor

Article 15 *bis* Exercise of jurisdiction over the crime of aggression (State referral, *proprio motu*)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effected at any time and shall be considered by the State Party within three years.

5. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory.

6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16.

9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

10. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

2.2 Through UN Security Council Referral

Article 15*ter* Exercise of jurisdiction over the crime of aggression (Security Council referral)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

Summary

1. The Crime of Aggression focuses on the most responsible, the political and military leaders. It doesn't cover States, but individuals. The aim is to address aggressive wars and breaches of world peace, the foremost of the objectives of the establishment of the United Nations.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed **one year** after the ratification or acceptance of the amendments by thirty States Parties. As of 11 April 2019, 37 states ratified the Resolution with the state of Guyana sent its ratification on 28 September 2018[135].

3. It does not apply on States that do not ratify the amendments.

4. States that activate the ICC jurisdiction has the option to "opt-out" therefrom.

5. The reported view held by the plurality of ICC member states is that once the two conditions (ratification by at least 30 ICC member states and the decision by the ASP) are met, the Court's exercise of the jurisdiction over the crime of aggression applies to all ICC member states (unless an opt out declaration has been submitted), regardless of individual ratification status of the amendments[136].

6. An alternate view has also been advanced stating that the Court's exercise of jurisdiction over the crime of aggression only applies to the ICC member states who have ratified the amendments[137].

[135] https://crimeofaggression.info/the-role-of-states/status-of-ratification-and-implementation/
[136] http://www.coalitionfortheicc.org/explore/icc-crimes/crime-aggression
[137] *Ibid*

Legal Dispute on Church Property: The Misamis Experience

Lhem J. Naval

Introduction

At the dawn of the Revolution of 1898 and the subsequent establishment of the short-lived Republic under Emilio Aguinaldo made the Catholic Church in the Philippine Islands take a very uncomfortable position. It no longer enjoyed the patronage of the Spanish crown; revolutionists often vilified the institution capitalizing on the abuses of the friars as a sweeping and hasty generalization instigated by the Propaganda movement, often, in the façade of patriotism. Then came the Americans, the property once enjoyed by the Catholic Church were put into question, as these patriots who were already in the municipal positions, claimed ownership to said properties. This chronological presentation regarding this issue shall be dealt upon by this paper, connecting to what had happened locally in the province of Misamis Occidental.

What were the events that took place in our history that could connect to the clash over church properties? How did the Church managed to wrestle and recover what was rightfully belonging to her? In this paper, allow me to present the following events and to the eventual legal resolutions that put clarification over the said issue, after which we extract lessons in life out of these said events.

Malolos Convention and the Separation Clause

On 8 October 1898 Felipe Gonzales Calderon, presented a draft in the Malolos Convention proposing for the Catholic Church be made the national state religion although other religious entities may be tolerated. Calderon, a staunch anti- Spanish and anti-friar but pro-Catholicism, together with the conservative bloc of the convention, asserted that the new Republic must be guided morally by Catholic Church. They further inferred that the Filipino people had a common identity with the said church.138 Calderon attacked the early proposal of Apolinario Mabini for a separation of the church and state.139 On the other side, Tomas del Rosario, a lawyer- delegate representing Surigao and a prominent mason, proposed that while the state recognizes the liberty and equality of all religious worship, there would be a separation of the church and state. The progressive bloc also entered into a heated argument with the other side, citing all the abuses of the Spaniards and the friars. On 25 October 1898, a vote was casted to resolve the issue in

[138] Cesar Majul, *Anti-Clericalism during the reform movement and the Philippine*

[139] John Schumacher, *Church and State in the Nineteenth and Twentieth Centuries*, Quezon City: Loyola School of Theology, 1976, p.1.

contention and the result was a tie with each side garnering 25 votes. A second voting was held, having the same result, Pablo Tecson who earlier abstained, voted in favor of the progressives.[140]

The vote paved way to the adoption of a provision in the Malolos Constitution as follows:

> The state recognizes the liberty and equality of all religious worship, as well as the separation of the Church and the State.[141]

The Treaty of Paris

On 10 December 1898, the infamous Treaty of Paris was signed between Spain and United States wherein the former sold the Philippines to the latter in payment of the sum of twenty million dollars after the mock battle in Manila.142 Upon this premise, the Philippine Independent Church and many municipal government officials claimed that the cession included transfer of ownership of all Church properties previously held by the Spanish Crown to the United States. These contenders further cited Section 12 of the Philippine Bill of 1902 as a concrete proof about the transfer of ownership, to wit:

That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act.[143]

This was the basis of municipalities to take over the church properties including plazas, convents and cemeteries, taking advantage of the absence of the friar- parish priests who had fled or had been imprisoned or killed during the revolution. They argued that since these structures were built on public lands and with labor of the Filipino people, it was proper for them to have possession of these said properties. The municipal government officials, who were mostly influenced by the schism, had given the churches and convents

[140] Cecilio Duka, Struggle for Freedom, Manila: Rex Bookstore, Inc., 2008, p. 172.
[141] Title III, Section 5 of Malolos Constitution.
[142] *Treaty of Peace Between the United States and Spain*; December 10, 1898". Yale. Retrieved 04 June 2014
[143] Philippine Bill of 1902 Public Act No. 235 AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES 1 July 1902 57th Congress of the United States of America, First Session, 1902.

to the Aglipayans.[144]

The Schism

The design of separating from the Catholic Church in order to put up some kind of a national church had its commencement in the thoughts of Apolinario Mabini. In his aspiration for the Filipino people to attain full independence from any external influence thereby making the nation a people of equality and justice, he saw the vital importance of religion and the institutional church. The new republic must control this church and ensure that after driving out the Spanish friars from this land, the Filipino secular priests must be loyal to the Philippine government alone and not to Rome or Spain. The plan was initially implemented by securing the appointment of Father Gregorio Aglipay as military vicar general of the revolutionary army, the disposition of the friar lands, and the ordinance for Filipino clergy to transfer allegiance from Rome to Aglipay.[145]

The proposal for a national church faced its own death in Malolos congress, when the convention upheld the separation of church and state followed by the non- establishment clause. Aglipay, whose initial advocacy was that of continuing the call for the Filipinization of the clergy as started by Fathers Pedro Pelaez[146] and Jose Burgos [147] without severing ties with Rome, later issued a Manifesto on 21 October 1899 declaring the necessity of rejecting the authority of Spanish bishops and that Filipinos must take over authority of the church.

On 03 August 1902, Isabelo de los Reyes148 together with members of the Union Obrera Democratica Filipina he founded, declared the birth of the Iglesia Filipina Independiente, with Aglipay as its first head.[149]

Aglipay's Argument

Gregorio Aglipay argument on why his Philippine Independent Church could lay claim for all churches and convents in the Philippines is summed

[144] Archutegui and Bernad, p. 314.

[145] Aurora Roxas-Lim. *Apolinario Mabini and the Establishment of the National Church*, *Asian Studies,* 2011*,* p. 120.

[146] Father Pedro Pelaez (1812-1863) was a Filipino Catholic priest who favored the rights for Filipino clergy during the 19th century. He was diocesan administrator of the Archdiocese of Manila where he died during an earthquake and his body was recovered under the rubbles of the church.

[147] Father Jose Apolonio Burgos y Garcia was a Filipino mestizo secular priest and together with Fathers Mariano Gomez and Jacinto Zamora, were accused of mutiny by Spanish authorities and after a mock trial, executed in Bagumbayan. These three clergy-heroes are known by the name *Gomburza.*

[148] Isabelo de los Reyes, Sr. y Florentino was a well-known Filipino politician, writer and labor activist in the 19th and 20th centuries. He is the founder of the Iglesia Filipina Independiente. Before his death, he reconciled with the Catholic Church.

[149] Archetugui and Bernad, op. cit. p. 237.

up into four premises:

First, these churches and convents belonged to the Filipino people since they were the builders under forced labor and heavy taxes laid down by the Spaniards, and the Philippine Independent Church is the church of the Filipino people.

Second, if the people of a certain town chose to leave the Catholic Church, the church and convents should go with them to the new religion.

Third, the United States was the rightful owner of these church and convents and should have the obligation to give it to the Filipino people who would exercise their faith under the new church.

Fourth, the municipalities had rightful ownership over these ecclesiastical properties situated therein since they were built on public lands. After which, the municipalities should relinquish these for religious utilization by the new religion of the people[150].

Historians and scholars found the argument of Aglipay filled with defects. The Treaty of Paris was signed on 10 December 1898 while the Philippine Independent Church was organized in 03 August 1902. Therefore, this church could not claim ownership to churches and convents prior to its establishment as a legal entity. Nevertheless, Bishop Charles Brent of the Episcopalian Church opined that Aglipay's view could be accepted on the ground of equity151. As Catholic hierarchs like Bishop Rooker of Jaro (jurisdiction including Mindanao during this time) complained against constructive confiscation by the new government the properties from them, and the many instances where vacant parishes had been taken over by ministers of the schismatic church, there should be a legal resolution as to who was the rightful owner of these disputed properties.

Barlin vs. Ramirez Case

One historic case decided by the Supreme Court that put an end to the row was the *Barlin vs. Ramirez case*.[152]

Father Vicente Ramirez, a Catholic priest who decided to affiliate with the new church (the only priest to do that in the Archdiocese of Nueva Caceres) in the Municipality of Lagonoy (now part of Camarines Sur). Monsignor Jorge Barlin, in his capacity as apostolic administrator of the

[150] Ibid., p. 315, 347.
[151] Brent papers, Box V, Hersog to Brent, cited in Achutegui and Bernad, p. 313.
[152]GR L-2832, November 24, 1906.

vacant see of the archdiocese, upon learning that his priest had turned schismatic, sent a new parish priest to the said town and advised Ramirez to vacate and turn over the property to the proper canonical authority. Ramirez refused to vacate, in fact he seized the property and held that the rightful owner was the town of Lagonoy. Barlin brought this issue to the Court of First Instance who decided in favor of the Catholic Church. The Supreme Court on 24 November 1906 promulgated its decision concurring with the decision of the lower court.[153]

The Supreme Court held that the church and its adjuncts were a property of the Catholic Church. Since the property did not belong to the Spanish crown, neither the United States had any right over it. The properties were beyond the commerce of man. They were not considered public property, nor could they be subject of private property appropriation in any manner or in the sense that any private person could be the owner thereof, the Court further declared. These properties constituted a distinctive characteristic of being devoted to the worship of God.[154]

The decision demolished the contention of Aglipay and of the many municipal government officials. The Catholic Church has a legal and juridical personality in the Philippine islands. The Court ordered for the return of all the properties illegally occupied and possessed by the defendants.

The Misamis Experience

During these tumultuous years, the same issues on property disputes prior to the **Barlin vs. Ramirez** decision were also present in Misamis Occidental. The municipalities of Misamis (now Ozamiz City), Jimenez, Oroquieta and Langaran (now Plaridel) took over the church property and its adjunct in their respective towns. The province was heavily Aglipayanized. Aglipay and his ministers demanded that these properties be given to them. Even Bishop Rooker who visited Misamis in 1904 was harassed and threatened with death by an angry mob. Only few families had remained Catholic, and those Recollect friars who remained like Fray Bernardo Araiz and Fray Julian Ortiz had to endure hardships from the majority of the public. Schreurs noted in his book Caraga Antigua the sad state of the friars in Misamis: “We should also not forget the pitiful number of Catholic friars (in Misamis) who could not possibly be present at all times and in all places to prevent hostile shepherds from breaking it through the backdoor.”[155]

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[153] *Ibid.*
[154] *Ibid.*
[155] Peter Schreurs, MSC, Caraga Antigua 1521-1910 The Hispanization and Christianization of Agusan, Surigao and East Davao Manila: National Historical Institute, 2000 ed., p. 478.

The Catholic Church continued the legal battle for the recovery of the properties usurped by the abovementioned defendants. On 21 October 1908 the Supreme Court promulgated decision resolving the issue in **The Roman Catholic Apostolic Church, et al. versus The Municipality of Langaran, et al.**[156]

The recovered properties were:

1. The church, convent, cemetery and plaza of parish of San Nicolas de Tolentino in Langaran (now Plaridel) and the visitas of Baliangao, Manella (now Lopez Jaena) and Biaton from Jose de Luna, the Municipality of Langaran and Aglipay.

2. The portion of the plaza belonging to the church of Oroquieta from the municipality of Oroquieta, Casimiro Dolalas and Aglipay.

3. The convent and cemetery of the church of Jimenez from the municipality of Jimenez and the Aglipayan church.

4. The chapel lot situated in the barrio of Tangob (now Tangub City) known as the visita de San Miguel Arcangel. (see Appendix II)

However, in Misamis (now Ozamiz City) the two tracts of land formerly owned by the church, in the proper judgment of the Court, as the evidence pointed that they were not used in connection with any church, convent or cemetery of the parish, these said tracts of land should be eliminated from the complaint. Hitherto the Court did not decide as who should rightfully own them.[157]

The Land Dispute in 1932

There was again a row over ownership of the Roman Catholic plaza situated in the Immaculate Conception parish ground in Misamis (now Ozamiz City), Misamis Occidental.

The municipality laid claim title over four parcels of land used as church plaza[158]. The trial of the case was opened on 25 October 1932 before Judge Hontiveros of the Court of First Instance in Cagayan de Misamis (now

[156] G.R. No. L-3356, October 21, 1908.
[157] *Ibid.*
[158] These lots are the present site of the Ozamiz Cathedral, convent, pastoral and commercial buildings and the La Salle University Heritage campus.

Cagayan de Oro City). The counsel for the Church was a certain Atty. Santos from Manila, witnesses were Father Thomas Gallagher, S.J. then parish priest, Pedro Pintacasi and Juan Adamas, both devout parishioners159. The Church of Misamis Occidental still belonged to the Archdiocese of Zamboanga prior to its transfer to the newly-created Diocese of Cagayan de Oro in 1933.

The municipality argued that it owned the properties in contention since they were public plaza. The presence of the monument of Dr. Jose Rizal and its concrete enclosure proved it unmistakably. It also claimed ownership to the part of the fourth lot because a public school for both sexes was once erected therein by the Spanish government. On 31 May 1933, the lower court decided in favor of the municipality of Misamis for slightly preponderant reasons. Feeling aggrieved, the Church appealed to the Supreme Court for a final jurisprudence[160].

On 31 July 1935, the Court decided in **The Director of Lands vs. The Roman Catholic Bishop of Zamboanga and municipality of Misamis** that the properties in controversy rightfully belonged to the Catholic Church. **The Court affirmed that said lots were already in the possession of the Catholic Church prior to 1789** and the church, belfry and convent which served as dwelling for the parish priests were built on the fourth lot being claimed by the municipality. The Spanish school that was erected as alleged by the municipality to be public institution was indeed under the direct supervision of the priests who received subsidy from the government. The existence of the Rizal monument did not prove the ownership of the municipality of Misamis, not even the recent occupation be invoked as a title theret[161].

The only property that rightfully belonged to the municipality was the monument itself and its enclosure. Upon the execution of the judgment, it was evicted from the church ground and transferred to the municipal hall[162].

Conclusion

Winston Churchill said, "History is written by victors." This could be true, we admit. But this piece of history we just read is not giving much deal on victory on the part of the Church or the defeat on the part of the adversaries. It is written already. It is adjudged already by no less than the

[159] Timoteo Rubin, *The Brief History of the Immaculate Conception Cathedral Parish,* (Ozamiz, 1978, p. 32.)
[160] *Ibid.*
[161] *G.R. No. L-3356, op. cit.*
[162] The old municipal hall of Misamis is the building presently occupied by Philippine National Bank (PNB) fronting the Osrox (Osmena-Roxas) Park, Ozamiz City.

last bulwark of democracy - the Supreme Court. Our concern is to find lessons from the past we can bring today in order to have a future that is secure and rewarding. We give credit where credit is due. We give ownership to real owners themselves. We do not unlawfully detain things that are not ours lest the wheel of justice turn against us. We abide by the Law and Jurisprudence on property.

Notes

1. Cesar Majul, Anti-Clericalism during the reform movement and the Philippine Revolution Studies in Philippine Church History, p. 168
2. Philippine Bill of 1902 Public Act No. 235 AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES 1 July 1902 57th Congress of the United States of America, First Session, 1902.
3. Archutegui and Bernad, p. 314.
4. Aurora Roxas-Lim. Apolinario Mabini and the Establishment of the National Church, Asian Studies, 2011, p. 120.
5. Father Pedro Pelaez (1812-1863) was a Filipino Catholic priest who favored the rights for Filipino clergy during the 19th century. He was diocesan administrator of the Archdiocese of Manila where he died during an earthquake and his body was recovered under the rubbles of the church.

Are Smart Contracts, Smart?

Atty. Loueli-Talam Jabines

At present, the world is welcoming the arrival of smart contracts and blockchain technology.

Goodbye paper trail. This revolutionary use of technology will change our view about written contracts, wherein paper trail is the best way of proving that such agreement between parties exists.

This is a far departure from the traditional way of sealing an agreement, which instead of having a contract drafted, signed and in some cases, notarized, smart contracts offer a decentralized approach. Meaning, it seeks to avoid the necessity of going to a lawyer and avail of dispute settlements in applicable jurisdictions.

Distributed ledger technology (DLT). In the world of DLT, a smart contract is "a computer protocol – an algorithm – that can self-execute, self-enforce, self-verify and self-constrain the performance of "its instructions". [163]

What does this technology propose to achieve? Smart contracts will help facilitate all the transactions involved in an agreement. Smart contract aims to speed up the process, not only the execution stage but also how the parties enforce what they have agreed in the contract.

Instead of the conventional signing and enforcement of a contract, what therefore are involved are not just the execution and enforcement of a contract, but embraces the other transactions: enforcement and dispute resolution.

As an example, a certain Mr. A may sell his house and lot to Mr. B and Mr. B agrees to buy. Typically, Mr. A and B will sign a contract in writing.

In a smart contract, the solutions covered are not just sealing the agreement; it covers the following:

1. **Checking with the registry (property).** Checking, if the property to be sold has some liens, like mortgages. Hence, smart contracts seeks to cover even doing the due diligence.

[163] Swanson, Tim (2014). "Great Chain of Numbers: A Guide to Smart Contracts, Smart Property and Trustless Asset Management 312.

2. **Payment**. Using the bitcoin technology or digitized currency, another aspect which may eliminate the need of cash as a mode of payment. This will eliminate the need to make a written demand, because technology will automatically enforce the need for collection and payment.

3. **Dispute resolution.** Since this technology proposes an automatic enforcement of the contract or what is coined as "automatic performance", it is claimed that it may eliminate the possibility of dispute. Lawyers and courts may be taken out of the picture.

Legal bars

Is it valid? When we discuss validity of contracts, let us revisit legally accepted principles of a contract under applicable law/s on contracts. The validity of a contract requires, consent from both parties, price or consideration and subject matter.

So, it seems that in smart contracts, all the requirements of a valid contract may be present, hence, valid.

For a contract to be valid, it need not be in writing. When Mr. A proposes a particular valid undertaking and Mr. B agreed without reservations, there is already a valid contract.

Thus, even verbal agreements are valid.

But, is it valid and enforceable? The other aspect of a contract we need to understand is its enforceability. Smart contracts may be a valid contract, but there might be issues when we talk about its enforceability.

Let us visit laws governing contracts in several jurisdictions.

In civil and common law jurisdictions, Statute of Frauds refers to the requirement that certain kinds of contracts be memorialized in a writing, signed by the party to be charged, with sufficient content to evidence the contract. [164]

An issue of enforceability is the question whether a party can go to court and seek to claim and enforce its rights based on a contract. Since there are

[164] Drachsler, Leo M. (1958). "The British Statute of Frauds - British Reform and American Experience". *Section of International and Comparative Law Bulletin*.

contracts that are required to be in writing, there might be a legal hiccup when it comes to alleging that parties agreed in a form of a smart contract.

In fact, failure to comply with the Statute of Frauds is a defense when the one party refuses to recognize that a contract exists.

Imagine, the headache of going to court, alleging and proving that the parties complied with Statute of Frauds, and arguing that smart contracts substantially comply with the requirement "in writing".

In an actual setting, using the example given, in order for Mr. B to enforce the agreement he has with Mr. A, Mr. B (depending on circumstances), Mr .B may file an *action for performance* alleging that the agreement comply with the Statute of Frauds.

Another legal milieu, is whether or not, the jurisdiction in which the smart contract is sought to be enforced recognizes or has enough laws, or jurisprudence that will serve as a guide in deciding a court decision.

A lawyer may come up with a legal leeway and may find refuge under Electronic Evidence Rule, but still, if you are a party or in a way a 3rd party beneficiary in contract, you of course would rather follow a more established method rather than jeopardize your rights.

It will eliminate need for lawyers and courts. In some written articles, one possibility of smart contracts is the possibility of not needing lawyers and help of courts. This is drawn from the idea that smart contract has "automatic enforcement" provisions.

It can be argued that the questions regarding enforceability of smart contracts may no longer be a concern since lawyers and courts may be verily avoided.

But, this proposition of not needing lawyers and courts are not really convincing. This is because, there is no absolute certainty, as the very existence and validity of smart contracts can be initially attacked legally.

Also, it cannot be discounted that to come up with strong contracts, especially, putting life to what the parties agree, require a legal skill possessed by lawyers. A good lawyer aims to draft a contract that reveals the intent and position of the parties, so that, protracted litigation will be avoided.

The "automatic enforcement" capabilities of smart contracts therefore covers not just the involvement of the lawyers and courts, but also the commercial side of it. Use of token or bitcoins for payments could have entered the realm under securities.

> "Given the recent prominence of tokens and token sales, the legal issues that are currently at the forefront to arise most frequently in the near term involve analysis as to the legal nature of a smart-contract –based token and whether a token sale constitutes an offering of securities, a commodities contract, or some other regulated financial transaction…" [165]

Government initiative. With so many concerns placed on the table, the question is whether or not a government is willing to embrace initiatives. There might be a lot of legal reservations when it comes to validity and enforceability, but we are not saying it is impossible.

The key to stepping into the realm of blockchain technology is to combine innovations with strong legislations. The key therefore is to pass laws that defines smart contracts and provides mechanism on how it is made enforceable.

It must be a government initiative, not mainly a sole reliance on the product proposition that seeks to eliminate the "need" for lawyers and courts in the picture.

This is because the critical role of the lawyer is not only when there is a controversy. But to prevent controversies and speed up process in dispute resolution.

As for the Government, the U.A.E. Government is enthusiastic in its efforts to use blockchain technology in its transactions.

Recently, the UAE Government launched the Emirates Blockchain Strategy 2021. The strategy aims to capitalise on the blockchain technology to transform 50 per cent of government transactions into the blockchain platform by 2021. [166]

Reports of governments investigating the use of recordkeeping systems deployed on the blockchain abound; such governments include the United Kingdom, Estonia, Dubai the U.S. federal government and various state governments in the United States. [167]

[165] Coie LLP, Perkins (March 2018). "*Legal Aspects of Smart Contract Applications*".

[166] Emirates Blockchain Strategy 2021. https://government.ae/en/about-the-uae/strategies-initiatives-and-awards/federal-governments-strategies-and-plans/emirates-blockchain-strategy-2021

[167] *Id.*

The most expansive plans to use DLT and smart contracts to enable smart government and smart cities belong to the Dubai Government. Dubai's stated goal is to be the first government in the world to execute all applicable transactions on DLT-based systems by 2020. [168]

There is therefore no disconnect with the potentials offered by smart contracts as against the legalities surrounding smart contracts.

The legal issues can be reconciled through effective legislation.

Are smart contracts smart? One of the reasons why smart contracts are described as smart is because a smart contract is an event-driven contract.

However, like any other technology, when departing from the traditional approach, the initiatives must be synchronized with effective legislations and should be proven as "effective".

Not for long, smart contracts will be integrated in government strategies and will not remain as untested technology.

The innovations introduced in smart contracts may feel like getting into a jungle; but combining enthusiasm and law, it is not difficult to untangle even the most complicated legal issues.

[168] Coime, *supra note 2*.

SPEEDY TRIAL: ORDERLY, EXPEDITIOUS AND DELIBERATE

Michelle Llanera and Jihan Banding

Introduction

The saying "justice delayed is justice denied" is often quoted not only by lawyers but also by common people to demand speedy disposition of cases. However, some individuals misunderstood such proverb and give emphasis to speed rather than justice. The word "speedy" should never be disconnected from the word justice. For speedy justice means that justice must be made efficiently.[169]

Generally and as defined by Merriam-Webster dictionary, speedy trial is a trial conducted according to prevailing rules and procedures that takes place without unreasonable or undue delay or within statutory period. To prevent harassment of the citizen and delays in the administration of justice, the right of the accused to a speedy trial and disposition of the case against him was designed mandating the courts to proceed reasonably in the trial of criminal cases.

Right to speedy trial means that the trial should be conducted according to the rules of criminal procedure and other prevailing rules and regulations. Such right is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

The concept of speedy trial is necessarily relative and determination of whether the right has been violated must be based on the balancing of various factors. Length of delay is certainly a factor to consider; but other factors must also be considered such as the reason for the delay, the effort of the defendant to assert his right, and the prejudice caused the defendant.[170]

The general objective of this research is to discuss sample cases which have various factors that contributed on when to raise the right to speedy trial in the Philippines. This paper also gives contextualized definition of speedy trial other than its universal meaning and interpretation. Aside from citing the constitutional basis, this research will also enumerate some of the Rules and Statutes which the Supreme Court and the Congress promulgated for the protection of the right to speedy trial and which are developed in the effort of enforcing and enhancing speedy trial in the country.

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[169] Bernas, J. G. (2011). The 1987 Philippine Constitution: A Comprehensive Reviewer (2011 Edition). Quezon City: REX Printing Company, Inc.

[170] Regalado, F. D. (2008). Remedial Law Compendium (Volume Two). Mandaluyong City: Anvil Publishing, Inc.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.[171]

For a layman's convenience, the researcher purposely enumerated and discussed the following provisions of the constitution, rules and statutes to understand how the speedy trial started and how it came about. Moreover, the presentation shows the different amendments and revisions made by lawmakers to improve the justice system in the Philippines in the conduct of speedy trial.

A. Laws implemented that focuses on the protection of the right to speedy trial

1. Philippine Constitution

Article III of the 1987 Philippine Constitution provides the primary constitutional rights of the people. There are two sections under Article III which address the speedy trial in the Philippines. The 1987 Philippine Constitution provides that:

> "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."[172] Another section under the Bill of Rights mandates that "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi- judicial, or administrative bodies."[173]

2. The Revised Rules of Criminal Procedure

[171] Gana, Jr., S. H. (no date). Justice Delayed is Justice Denied: Ensuring Efficient and Speedy Criminal Trials in the Philippines. *Resource Material Series No. 95*. https://www.unafei.or.jp/publications/pdf/RS_No95/No95_VE_Gana2.pdf
[172] Article III, Section 14 paragraph 2.
[173] Article III, Section 16.

Under Section 1 of Rule 115 enumerates the rights of the accused at trial. It stated that:

> *"In all criminal prosecutions, the accused shall be entitled to the following rights:*
>
> *X X X*
>
> *h.) To have speedy, impartial and public trial."*

3. Speedy Trial Act of 1998 and the Supreme Court Circular No. 38- 98

The Republic Act No. 8493, otherwise known as the "Speedy Trial Act of 1998", provides for the time limit between filing of Information and Arraignment and Between Arraignment and Trial. The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. Trial shall commence within thirty (30) days from arraignment as fixed by the court.[174]

An extension of the provisions of Section 7 of this Act, it also ordered for the extended time limit. For the first twelve-calendar-month period following its effectivity, the time limit with respect to the period from arraignment to trial imposed by Sec. 7 of this Act shall be one hundred eighty (180) days. For the second twelve-month period the time limit shall be one hundred twenty (120) days, and for the third twelve-month period the time limit with respect to the period from arraignment to trial shall be eighty (80) days.[175]

Where the accused has not been brought to Trial within the time limit specified under Section 7 and Section 9, the remedy provided by the Act is for the information to be dismissed on motion of the accused. The accused shall have the burden of proof of supporting such motion but the prosecution shall have the burden of going forward with the evidence in connection with the exclusion of time under Sec. 10 of this Act.

In determining whether to dismiss the case with or without prejudice, the court shall consider, among other factors, the seriousness of the offense, the facts and circumstances of the case which led to the dismissal, and the impact of a re-prosecution on the implementation of this Act and on the administration of justice. Failure of the accused to move for dismissal prior to trial or entry of a plea of guilty shall constitute a waiver of the right to dismissal under this section.[176]

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[174] Section 7, Republic Act No. 8493
[175] Section 9, *ibid.*
[176] *Section 13,* Republic Act No. 8493

The SC Circular No. 38- 98 was promulgated as directed in Section 15 of the Republic Act No. 8493 which mandates that:

> "The Supreme Court shall promulgate rules, regulations, administrative orders and circulars which shall seek to accelerate the disposition of criminal cases. The rules, regulations, administrative orders and circulars formulated shall provide sanctions against justices and judges who willfully fail to proceed to trial without justification consistent with the provisions of this Act."

Section 8 of the said Circular mandates that:

> "In criminal cases involving persons charged with a crime, except those subject to the Rule on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of one thousand pesos (Pl,OOO.OO)or both, irrespective of other imposable penalties, the court shall, after consultation with the public prosecutor and the counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authori zed by the Court Administrator pursuant to Section 2, Rule 30 of the Rules of Court."

4. The Judicial Affidavit Rule

The Supreme Court has also adopted certain rules to further accelerate and distribute trial. These include the revolutionary Judicial Affidavit Rule and the Rule on Small Claims, the Guidelines for Decongesting Holding Jails by enforcing the rights of accused persons to bail and speedy trial, the experimental Guidelines for Litigation in Quezon City trial courts, the mandatory pretrial proceedings, mediation, conciliation and arbitration proceedings.

On September 4, 2012, the Supreme Court issued Administrative Matter No.12-8-8SC or the Judicial Affidavit Rule (JAR). This is promulgated to solve the prevalence of case congestion and delays that plague most courts in cities, given the huge volume of cases filed each year and the slow and cumbersome adversarial system that the judiciary has in place. Furthermore, it is also created to reduce the time needed for completing the testimonies of witnesses in cases under litigation, on February 21, 2012 the Supreme Court approved for piloting by trial courts in Quezon City the compulsory use of judicial affidavits in place of the direct testimonies of witnesses.

This Rule shall apply to all actions, proceedings, and incidents requiring the reception of evidence before:

(1) The Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari' a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC;

(2) The Regional Trial Courts and the Shari'a District Courts;

(3) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts;

(4) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and

(5) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.[1]

(b) For the purpose of brevity, the above courts, quasi-judicial bodies, or investigating officers shall be uniformly referred to here as the "court."[177]

The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

(2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.[178]

In strictly implementing the Rule, it provided penalties to those parties who will fail to submit the judicial affidavits on time. One of its sections mandates that a party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the

[177] Section 1, A. M. No.12-8-8-SC.
[178] Section 2, *ibid.*

delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱ 1,000.00 nor more than ₱ 5,000.00 at the discretion of the court. The court shall not consider the affidavit of any witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.

The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the compliant replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than ₱ 1,000.00 nor more than ₱ 5,000.00, at the discretion of the court.[179]

5. Rules on Small Claims Cases

One of the most effective procedural innovations promulgated by the Supreme Court is A.M. No. 0887SC or the Rules of Procedure for Small Claims Cases. The Rule shall govern the procedure in actions before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not exceed One Hundred Thousand Pesos (P100,000.00)exclusive of interest and costs.[180]

The rationale behind the creation of the Rules on Small Claims is that there is a rising significance to implement strategy to declog heavy court dockets. A recurring theme of every program for judicial reform of the Supreme Court is the pressing need for a more accessible, much swifter and less expensive delivery of justice. Undeniably, the slow grind of the wheels of justice is the result of a variety of factors, foremost of which is the perennial congestion of court dockets which has transformed court litigation into a protracted battle, that invariably exhausts the time, effort and resources of party-litigants, especially the poor.

This Rule applies to The Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts shall apply this Rule in all actions which are; (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal action,

[179] Section 10, A. M. No.12-8-8-SC.
[180] Section 2 ,AM No.08-8-7-SC.

or reserved upon the filing of the criminal action in court, pursuant to Rule of 111 of the Revised Rules of Criminal Procedure.[181]

The principal provision of the Rule is that it boasts of a same day rendition of judgment. This means that judgment will be rendered the same day as the hearing day. The decision is also final and unappealable. The procedure is conducted informally and the rule prohibits the participation of lawyers.[182]

The purpose of the rule is to enhance the power and duty of the judiciary as agent of change by unclogging the heavy court dockets in order to efficiently address the clamor for more accessible, much swifter and less expensive delivery of justice to the less privileged members of the society. Until now, the rules on small claims cases remain to be one of the most effective rules that provide speedy justice.[183]

6. Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and Speedy Trial

To prevent jail congestion then, the Supreme Court has issued A.M. No.12-11-2-SC or the Guidelines for De congesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and Speedy Trial.

These Guidelines was promulgated in line with the 1987 Philippine Constitution, "*that all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall before conviction be bailable by sufficient sureties or released on recognizance as the law may provide and further, that excessive bail shall not be required.*"[184]

The Supreme Court has acknowledged that the manners in which parties are notified are, most of the time, the cause of delay. The guidelines allow the use of Short Messaging Services (SMS), telephone calls, and electronic mail(e-mail)to notify the parties of scheduled hearings. The use of technology in notifying parties to a case is a cost- effective way to provide speedy justice in criminal cases. By using these means, the Supreme Court is exploring the use of unconventional tools to solve conventional problems.

The little difference of the Guidelines from the Speedy Trial Act is that under its Section 9, it provides that:

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[181] Section 4, *ibid.*
[182] Gana, Jr., S. H. (no date). Justice Delayed is Justice Denied: Ensuring Efficient and Speedy Criminal Trials in the Philippines. *Resource Material Series No. 95.* https://www.unafei.or.jp/publications/pdf/RS_No95/No95_VE_Gana2.pdf
[183] *Ibid.*
[184] Article III, Section 13.

> *"The case against the detained accused may be dismissed on ground of denial of the right to speedy trial in the event of failure to observe the above time limits."*

Withal, Section 5 of the Guidelines also mandates that:

> *"The accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, motu proprio or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him."*[185]

7. Pre-Trial Procedures

The Rules of Court make it mandatory for all cases to undergo pretrial proceedings. Pretrial is an essential device for the speedy disposition of disputes and was hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century.[186]

In essence, the pre-trial proceedings force the parties to pinpoint to factual issues that need to be resolved during trial; facts that are irrelevant or not in issue can be subject to stipulations and concessions by both parties. The pretrial, thus, streamlines the factual issues, thereby cancelling out any irrelevant or uncontested issues that parties may discuss or introduce.[187]

8. Alternative Dispute Resolution Act of 2004

The Congress enacted the Republic Act No. 9285 to encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. Moreover, the State shall enlist active private sector participation in the settlement of the disputes through ADR.[188]

Alternative Dispute Resolution System means 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, which

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[185] A.M. No.12-11-2-SC or the Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and Speedy Trial.

[186] Gana, Jr., S. H. (no date). Justice Delayed is Justice Denied: Ensuring Efficient and Speedy Criminal Trials in the Philippines. *Resource Material Series No. 95.* https://www.unafei.or.jp/publications/pdf/RS_No95/No95_VE_Gana2.pdf

[187] *Ibid.*

[188] Section 2, An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes.

includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.[189]

9. The Arbitration Law

Under the Republic Act No. 876, two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation for the revocation of any contract.[190]

In the case of a contract to arbitrate future controversies by the service by either party upon the other of a demand for arbitration in accordance with the contract. Such demand shall be set forth the nature of the controversy, the amount involved, if any, and the relief sought, together with a true copy of the contract providing for arbitration. The demand shall be served upon any party either in person or by registered mail.[191]

10. Katarungang Pambarangay Law

Katarungang Pambarangay is a system of dispute resolution instituted in all barangays in the Philippines that seeks to promote, among others, the speedy administration of justice, by providing all avenues to an amicable settlement, thereby considerably reducing the dockets in our courts of justice.[192]

The first abstract conception of the Katarungang Pambarangay Law started in 1976 when Supreme Court Justice Fred Ruiz Castro proposed the innovative idea of settling disputes through "neighborhood paralegal committee." The abstract conception of the law first saw a ray of hope for a possible passage of a law when Presidential Decree No. 1293 was promulgated on January 27, 1978. It created a presidential commission tasked with a duty of studying the feasibility of instituting a system of settling disputes among the members in the barangay without going to courts. Presidential Decree No. 1508 in 1978 was the first Katarungang Pambarangay Law that institutionalized Katarungang Pambarangay. It was promulgated by

[189] Section 3 paragraph (a), *ibid.*
[190] Section 2, An Act to Authorize the Making of Arbitration and Submission Agreements, to provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies and for Other Purposes.
[191] Section 5, *ibid*
[192] Austral, G. (2012). A Guide to the Katarungang Pambarangay System. Page 1-3. http://zabalketa.org/wp-content/uploads/2016/02/Guide_to_katarungang_2012.pdf

then President Ferdinand Marcos with the passage of Presidential Decree No. 1508 in 1978.[193]

Fourteen years later, P. D. No. 1508 was repealed by the Local Government Code of 1991 or the Republic Act No. 7160. It introduced substantial changes not only in the authority granted to the *Lupong Tagapamayapa* but also on the procedure to be observed in the settlement of disputes within the authority of the *Lupon*.[194]

Aside from the above-mentioned Laws and Rules, the Supreme Court also instituted the Case Flow Management using a Differentiated Case Management Scheme. The DCM premise is simple: Because cases differ substantially in the time required for a fair and timely disposition, not all cases make the same demands upon judicial system resources. Thus, they need not be subject to the same processing requirements. Some cases can be disposed of expeditiously, with little or no discovery and few intermediate events. Others require extensive court supervision over pretrial motions, scheduling of forensic testimony and expert witnesses, and settlement negotiations.[195]

The scheme warrants the development of a case management plan then following the plan, Tracking Systems were formulated by collapsing time frames for case events into reasonably short periods to shorten case life and prevent or minimize delay. There are 3 tracks: the Fast track, Standard track and Complex track. Simple cases would be assigned to Fast Track to be disposed of in six months or less. Cases that demanded utmost judicial attention were shunted to the Complex Track with a disposal time of two years; and a Standard track was configured to capture cases that were neither simple nor complex, the case life of which would be one year.[196]

B. Sample cases

The leading case on the subject of speedy trial is the *Conde v. Rivera*. [197] After reciting the pitiful plight of petitioner Conde, Justice Malcolm concluded:

> *"We lay down the legal proposition that, where a prosecuting officer, without good cause, secures postponements of the trial of a defendant against his protest beyond a reasonable period of time, as in this instance for more than a year, the accused is entitled to*

[193] *Ibid.*
[194] Administrative Circular No. 14-93
[195] Retrieved from https://www.ncjrs.gov.
[196] Gana, Jr., S. H. (no date). Justice Delayed is Justice Denied: Ensuring Efficient and Speedy Criminal Trials in the Philippines. *Resource Material Series No. 95.* https://www.unafei.or.jp/publications/pdf/RS_No95/No95_VE_Gana2.pdf
[197] 59 Phil.650 (1924).

relief by a proceeding in mandamus to compel a dismissal of the information, or if he be restrained of his liberty, by habeas corpus to obtain freedom."

In order to explain the concept of the right of speedy trial, the Supreme Court in *People of the Philippines v. Anonas,* briefly surveyed different cases involving the right to a speedy trial, thus: The earliest rulings of the Court on speedy trial were rendered in *Conde v. Judge of First Instance, Conde v. Rivera, e t al., and People v. Castañeda*. These cases held that accused persons are guaranteed a speedy trial by the Bill of Rights and that such right is denied when an accused person, through the vacillation and procrastination of prosecuting officers, is forced to wait many months for trial. Specifically in the *Castañeda* case, the Court called on courts to be the last to set an example of delay and oppression in the administration of justice and it is the moral and legal obligation of the courts to see to it that the criminal proceedings against the accused come to an end and that they be immediately discharged from the custody of the law.[198]

3. Local Cases

In the case of *Angcangco, Jr, v. Ombudsman*[199]*,* the Department of Labor and Employment (Region X) rendered a decision ordering the Nasipit Integrated Arrastre and Stevedoring Services Inc. (NIASSI) to pay its workers the sum of P1,281,065.505. The decision having attained finality, a writ of execution was issued directing the Provincial Sheriff of Agusan del Norte or his deputies to satisfy the same. Angcangco, as the assigned sheriff and pursuant to the writ of execution issued, caused the satisfaction of the decision by garnishing NIASSI's daily collections from its various clients. In an attempt to enjoin the further enforcement of the writ of execution, Atty. Tranquilino O. Calo, Jr., President of NIASSI, filed a complaint for prohibition and damages against petitioner. The regional trial court initially issued a temporary restraining order but later dismissed the case for lack of jurisdiction.

In addition to the civil case, Atty. Calo likewise fled before the Office of the Ombudsman a complaint against petitioner for graft, estafa/malversation and misconduct relative to the enforcement of the writ of execution. Acting on the complaint, the Ombudsman, in a Memorandum dated July 31, 1992, recommended its dismissal for lack of merit.

When petitioner retired in September 1994, the criminal complaints still remained unresolved although the administrative aspect had already been dismissed, as a consequence of which petitioner's request for clearance in

[198] Gana, Jr., S. H. (no date). Justice Delayed is Justice Denied: Ensuring Efficient and Speedy Criminal Trials in the Philippines. *Resource Material Series No. 95.* https://www.unafei.or.jp/publications/pdf/RS_No95/No95_VE_Gana2.pdf

[199] G.R. No. 122728, February 13, 1997.

order that he may qualify to receive his retirement benefits was denied. With the criminal complaints remaining unresolved for more than 6 years, petitioner filed a motion to dismiss.

The Supreme Court ruled that the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.

In a similar case of *Roque versus Office of the Ombudsman*,[200] auditors Soriano and Enriquez found some major deficiencies and violation of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019), violations of COA Circular Nos. 78-84 and 85-55A, DECS Order No. 100 and Section 88 of Presidential Decree No. 1445 when they conducted an audit on the P9.36 million allotment released by the DECS Regional Office No. XI to its division offices. Consequently, affidavits of complaint were filed before the Office of the Ombudsman-Mindanao against several persons, including petitioner Mabanglo on May 7, 1991, and against petitioner Roque on May 16, 1991.

On August 14, 1997, petitioners instituted the instant petition for mandamus premised on the allegation that after the initial Orders finding the cases proper for preliminary investigation were issued in June 1991 and the subsequent submission of their counter-affidavits, until the present, or more than six (6) years, no resolution has been issued by the Public Respondent and no case has been filed with the appropriate court against the herein Petitioner.

The Supreme Court stated in their ruling that the delay of almost six years disregarded the Ombudsman’s duty, as mandated by the Constitution and Republic Act No. 6770,[13] to act *promptly* on complaints before him. More important, it violated the petitioners rights to due process and to a speedy disposition of the cases filed against them.

In the case of *Tatad v. Sandiganbayan*[201], it involves Antonio de los Reyes, former Head Executive Assistant of the then Department of Public Information (DPI) and Assistant Officer-in-Charge of the Bureau of Broadcasts, filing charges against petitioner Tatad, who was then Secretary

[200] G.R. No. 129978, May 12, 1999.
[201] G. R. Nos. 72335-39, March 21, 1988.

and Head of the Department of Public Information, for the alleged violation of Republic Act No. 3019 or the Anti- Graft and Corrupt Practices Act. Five years later, it became publicly known that petitioner had submitted his resignation as Minister of Public Information. The resignation of petitioner was accepted by President Ferdinand E. Marcos. Petitioner filed with the Sandiganbayan a consolidated motion to quash the informations on the following grounds.

One of the factors that the Court had noticed upon reading the facts of the case is that the unreasonable delay in resolving the case was because there is a political motivation behind it. Such political motivation activated and was able to influence the prosecutorial process. According to the Court, the complaint was filed after Tatad had cut off relations with President Marcos. There was also a departure from the established procedures on criminal cases specifically on preliminary investigation where there is a need for the submission of affidavits and counter- affidavits by the complainant, the respondents and their witnesses. Moreover, the Tanodbayan referred the complaint to the Presidential Security Command for fact- finding investigation and report.

Thus, the Court find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law.

Although there are number of cases that were decided in favor of the right to speedy trial, there are also instances where the Supreme Court ruled that the right to speedy trial is not violated due to some factors involved in the facts of the case.

Take the *Ventura v People*[202]. The crucial question in this case is Ventura's application for a writ of *habeas corpus* . Such filing of an application arose from his continued confinement dating from May 27, 1968 after the filing of an information against him for double homicide with physical injuries with the Court of First Instance of Pangasinan. Though admittedly he was subsequently convicted in a decision rendered on April 2, 1970, an appeal was duly perfected to the Court of Appeals. The grievance set forth in his petition is that the pendency of such appeal all these years amounts to a denial of his constitutional right to the speedy disposition of the case against him, as his appeal could not be decided because the whereabouts of the stenographer, Mr. Jaime T. Cortez, who took down the stenographic notes of the proceedings, could not, until now, be located.

[202] G.R. No. L- 46576, November 6, 1978.

Even a cursory reading of the steps taken by the Court of Appeals to assure that petitioner's appeal could be resolved in accordance with the evidence submitted before the lower court would indicate that all the necessary steps had been taken to assure that a definitive judgment could be reached. Admittedly, there is delay, but it is not that kind of a delay that could be considered either capricious or oppressive. Again, there is an element of vexation that must be suffered by petitioner, but certainly it does not amount to that degree of annoyance, provocation, or distress that would justify a nullification of the appropriate and regular steps that must be taken to assure that while the innocent should go unpunished, those found guilty must expiate for their offenses. Clearly then, there is no justification for the granting of petitioner's plea for liberty.

In another case in which the accused raised his right to speedy trial, the Supreme Court ruled that his defense is not proper because there was no delay. This was the case of *Bermisa v. People*[203]. Petitioner Dominador Bermisa was charged with the crime of Frustrated Murder before the Justice of the Peace (now Municipal Court) of San Manuel, Pangasinan (Criminal Case No. 797). Having waived his right to enter into the second stage of the preliminary investigation, the Municipal Court forwarded the case to the Court of First Instance of Pangasinan, Tayug Branch (Criminal Case No. T-1062). On November 26, 1963, the corresponding Information was filed charging petitioner with the same crime of Frustrated Murder, After protracted proceedings, petitioner was arraigned on December 22, 1964, and he entered a plea of "not guilty."

On June 2, 1965, the Prosecuting Fiscal, instead of proceeding with the trial, moved for provisional dismissal on the ground that the witnesses for the prosecution had failed to appear despite notice. Considering that the case had been pending for almost two years, the trial Court in its Order, dated ‚June 2, 1965, "dismissed (it) provisionally with the consent of the accused and his counsel, with costs *de oficio*."

On September 10, 1969, after a lapse of 4 years, 3 months and 8 days, respondent Assistant Provincial Fiscal Proculo L. Viernes, filed before the Court of First Instance of Pangasinan, Urdaneta Branch, the second Information for Frustrated Murder (Criminal Case No. U-1425), reproducing exactly the same allegations as in the first Information. The Supreme Court ruled that the right to a speedy trial is not invocable in this case. The delay in the refiling of the case was not a delay in trial amounting to a violation of a constitutional right. There was no trial to speak of, in the legal sense, as there was no indictment, as yet. It has been held that the right to speedy trial cannot be violated by delay between offense and indictment, though it can be violated by an inordinate delay in the refiling the indictment after the arrest has been made.

[203] G.R. No. L-32506, July 30, 1979.

In *Martin v. General Fabian Ver*[204], Eulalia Martin filed a petition for *habeas corpus* on behalf of her husband, Pvt. Francisco Martin. In this case, the petitioner claims that he has been denied his constitutional right of speedy trial because the charges against him were filed only about 1 year and 7 months after his arrest.

The Supreme Court ruled that there was no such denial. Citing *People vs. Orsal*[205], the Court in a *per* curiam decision: "x... the test of violation of the right to speedy trial has always been to begin counting the delay from the time the information is filed, not before the filing. The delay in the filing of the information, which in the instant case has not been without reasonable cause, is therefore not to be reckoned with in determining whether there has been a denial of the right to speedy trial."

III. Conclusion

Truly, there are myriad of rules, procedures and laws which protect all kinds of rights of an individual. But we must put in mind that these laws shall not be taken for granted. It shall not become a sword for an individual to create more evils in the society. These laws shall be used not just for the benefit and comfort of an individual but must be upheld for the protection of public justice.

The right to speedy trial is not just about speed. It is not about how swift the court is in rendering judgment over a case. Such right secures not just the speed but also the justice that the parties can get in the judgment. Withal, the justice system is not the only one responsible in protecting our rights. We, as people shall also be capable enough to preserve our right and secure it from the evils that threaten to violate it. At the end of the day, everyone benefits from a more efficient system. The hope still remains that the saying “justice delayed is justice denied” will be but an anachronistic nightmare.

[204] G.R. No. L-62810 July 25, 1983.
[205] 113 SCRA 226 at 236.

EQUILIBRIUM: FREEDOM OF SPEECH AND ITS LIMITATIONS

Jihan G. Banding and Diana Rose Talibong

People who favor the censorship on freedom of speech are devastatingly on the rise. Censorship on the said freedom has become a repetitive narrative for so many years and it has been instigated by dictators and monarchs. That was the popular case in the past. Now, it has been bravely abused by those people who supposedly has the responsibility to protect such principle: elected politicians, writers, and the citizens. Philippine Government has guaranteed the utmost protection on citizen's fundamental rights but it does not mean that they will not limit those acts which spread atrocious and reprehensible conducts.

With this overwhelming current issue concerning the freedom of speech, this paper will discuss on the effects of such issue, mainly on the exercise of such freedom on social media. Moreover, the discussion will include the reason why we need to limit the freedom of speech without violating the fundamental right imposed by our Constitution.

Introduction

Freedom of speech has been one of the most misunderstood concepts in the world. It is mainly due to the variety of interpretations attached to it. The **freedom of speech clause** has been interpreted in various ways. Some people believe that it protects absolutely any speech, anytime. Some people believe there can be reasonable restrictions on it. [206] Sometimes it is subject to questions on how can we determine if our speech has reached its limitations. It is also being used as a defense of individuals who throw hates on others by saying they are only exercising their freedom of expression.

The literature on freedom of speech is extensive and there is considerable disagreement about the appropriate scope of the freedom. Professor Adrienne Stone observed that the 'sheer complexity of the problems posed by a guarantee of freedom of expression' makes it unlikely that a single 'theory' or 'set of values' might be appropriate in resolving 'the entire range of freedom of expression problems.[207]

Before divulging into the legal issue surrounding the free speech clause, let us take a look on its origin and why it was created.

[206]Freedom of Speech. (n.d.) Retrieved from Revolutionary War and Beyond, website: http://www.revolutionary-war-and- beyond.com

[207] Australian Law Reform Commission. (n/d). Freedom of Speech. Retrieved from https://www.alrc.gov.au/publications/justifications-limits-freedom-speech

Early Americans wanted to be able to express their opinions about political candidates and laws they might pass. In addition to it, they were concerned about freedom of religious speech. Both English and colonial history had featured incidents of the religious views of some people being prohibited. These Americans wanted their right to express their views to be safeguarded from this type of government regulation.

James Madison, the 4th President of the United States, was the one who proposed the freedom of speech when he delivered his speech to the 1st Congress on June 18, 1789. On December 15, 1791, the freedom of speech was adopted in the First Amendment along with the freedom of the press, freedom of religion, right to assemble and petition.

The U.S. Supreme Court often has struggled to determine what types of speech is protected. Legally, material labeled as obscene has historically been excluded from First Amendment protection but deciding what qualifies as obscene has been problematic. Speech provoking actions that would harm others—true incitement and/or threats—is also not protected, but again determining what words have qualified as true incitement has been decided on a case-by-case basis. There are also certain limits to freedom of the press. False or defamatory statements – called libel – aren't protected under the First Amendment.[208]

Freedom of Speech in The Philippines

Philippines has been one of the signatories of the International Covenant on Civil and Political Rights since 1966. Said Covenant entered into force in the country in January 1987 and was included in our 1987 Constitution. The Philippine government has been protecting the civil and political rights of the Filipino citizens and penalizing with the strictest punishment of the law those who are violating such fundamental rights.

Article 3, Section 4 of the 1987 Philippine Constitution states:

> "No law shall be passed abridging the freedom of speech, of expression, or of the press or the right of the people peaceably to assemble and petition the government for redress of grievances".

In the dissenting opinion of Justice Carpio in the case of *Soriano v. Laguardia, et.al.*,[209] the freedom of expression clause is precisely a guarantee against both prior restraint and subsequent punishment. It protects from any undue interference by the government the people's right to freely speak their minds. The guarantee rests on the principle that freedom of expression is

[208] www.history.com
[209] G. R. No. 164785, March 15, 2010

essential to a functioning democracy and suppression of expression leads to authoritarianism.

But what if the citizens themselves are the ones who abuse their own rights, specifically the freedom of speech and use it to cover up the evils that they have done? Does the government have the responsibility to limit the abused right?

In the case of *Davao City Water District v. Aranjuez, et al.,*[210] the concurring opinion of Justice Leonen stated that freedom to express one's views enjoys a level of primacy among our constitutional guarantees. However, there is always a higher degree of judicial review of regulation that affects speech to ensure, among others, that it does not amount to a disguised form of censorship or that its exercise does not burden the same exercise of the same rights by others.

Thus, all speech are not treated the same. Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because of the relevant interests of one type of speech.

It is difficult, however, to choose which pieces of speech are worthy of protection from action and which can be used against someone in legal proceedings. Not everything said on social media can be taken at face value. What one person deems as offensive and disturbing may incite a different emotion in another person. Striking a balance between unfiltered free speech, political correctness, and censorship is difficult. Censoring what is allowed on social media may seem like it goes against our Constitutional Rights, but allowing a free-for-all on speech can lead to threats, bullying, and hate speech.[211]

The case of *Chavez vs. Gonzales and National Telecommunications Commission*[212] provided the distinctions that have been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech. The Supreme Court have ruled, for example, that in our jurisdiction slander or libel, lewd and obscene speech, as well as "fighting words" are not entitled to constitutional protection and may be penalized.

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[210] G.R. No. 194192, June 16, 2015
[211] Diem, N. (2014). Freedom of Speech and Social Media. Retrieved from https://lawstreetmedia.com/issues/law-and-politics/freedom-of-speech-social-media/
[212] G. R. No. 168338, February 15, 2008

Nowadays, internet became an extraordinary space of 'democratic expression' for it is 'free', open and accessible to (almost) everyone. The web can produce what is best but also what is worst. Capable or arousing or supporting massive social movements, it also became a place where information crosses disinformation, maintained in a kind of maintained fuzziness in order to manipulate the public opinion.[213]

With the innovative technology and modes of communication in this modern day, there are those who just say what they want to say, post what they want to post, oblivious of the effect that they can have on others. Other forms of abuse include spreading propaganda, malicious gossip and hate speeches. More often than not, people use social media to attack and mock others and quoting thereafter the phrase, "this is a free country; we can do what we want."

Students no longer need to petition or exercise their right to assemble in the streets to express their opinions. Just type, post it on Facebook, Twitter or other social media accounts and it's done! Even students' interactions are also widened by the rise of social media.

According to Richard Steppe, the dark side of the Internet leaves no one untouched, and causes critics to blame the providers of social networking services, rather than the users themselves. It is given that social media was taken for profit by the companies who owned and created them. The evil side of it is that, they protect their users rather than restrict the terms and policies they previously laid down to avoid abusing their fundamental rights, especially the freedom of speech.[214]

Sad to say, the mass media – which should be the bastion of responsible use of freedom of speech – is also its most frequent violator. More often than not, they display bias and can serve as tools for the powerful in swaying the public opinion as well as in destroying the reputation of others.[215]

Posting a picture of someone without his or her permission has gotten out of control. Let's consider scenarios like they might be just having fun or the one who posted a picture might think that it's okay because he/she knows the person on the picture and there is no need to get permission. However, these kinds of situations have gotten out of control. Maybe they did not post it out of malice but it can definitely destroy opportunities for a person or worse, it can ruin someone's reputation.

[213] Rayess, J. (2017). The limits of freedom of speech on social media. Retrieved from https://medium.com/@jaderayess/the-limits-of-freedom-of-speech-on-social-media-8cfd4e63d995

[214] Steppe, R. (2014). The freedom of speech on social networking services: Do we need protection against our own expressions?. Retrieved from https://www.law.kuleuven.be /apps/jura/public/art/50n3/steppe.pdf

[215] Freedom of speech does not mean you can say anything you want. Retrieved from https://www.eaglenews.ph

Freedom of speech gives us the right to verbally express how we feel, but not to degrade, humiliate, curse, and abuse people. Many people may disagree with government censoring, but consider all the suicides, attempted suicides, riots, that all could be avoided.[216]

We have engulfed ourselves into our virtual lives that we forget there are consequences to our actions, when we post something about someone.[217] Once you posted something, whether a picture or an information, it will be forever on the web. There are some people who suffer from mental and emotional distress. Imagine how much you protect yourself and your reputation but just because of someone who posted something about you, you're the one who suffers the repercussions. Not all people can afford a lawyer's services and not all people have the guts to save themselves from embarrassment particularly if you are already being judged by the community. More often, the targets of hate speeches are innocent people, and those undeserving of others criticism.

Many websites and apps do have "report" features so that a user can alert the webmasters that something has gone wrong. This begs the question, if someone says something terrible on social media, and it is reported but nothing happens, who is responsible for the fall out? It's an increasingly important topic across the world.[218]

There is a particular situation on Facebook that is getting more attention than it deserves. Several college students of a well-known university in the Philippines one day created a Facebook page. They called it Secret Files. The site encourages submission of "secret files" from students and faculty in the university who are not required to divulge their identity, but is voluntary. The Facebook page may be accessible by the public and is administered by the student-creators themselves. The page provides a disclaimer that it does not vouch or guarantee the accuracy of the events or circumstances submitted therein by contributors.[219]

While it encouraged free expression, there was nothing positive coming out of it. It ruined friendships, relationships and harmonious relations between the students and the school administration. The university felt helpless to go after the organizers who continue to hide in fictitious names and accounts.[220] Let us bear in mind that our speech can have a powerful impact on others. The words that we use linger much longer in our mind.

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[216]The Abuse of Freedom of Speech. (2017). Retrieved from https://www.ukessays.com/essays/general-studies/abuse-freedom-speech-8253.php

[217] *Ibid.*

[218] Diem, N. (2014, December 10). Freedom of Speech and Social Media.. Retrieved from https://lawstreetmedia.com/issues/law-and-politics/freedom-of-speech-social-media/

[219] Estrada, J. N. (2018). Balancing students' freedom of speech and expression in social media and the school's right to discipline. Retrieved from https://www.manilatimes.net/balancing-students-freedom-speech-expression-social-media-schools-right-discipline/376050/

[220] *Ibid.*

Like any other right, freedom of speech is not absolute. There are kinds of speeches that are restrained by the government.

For the past years, there have been several issues of threats being posted on social media using unverified or fake accounts. Considering the status of our technology in the country, it is hard to apprehend those people hiding in such accounts. We can all agree that the emergence of internet really helps us a lot but consequently, it does have a lot of negative impact. Noel Diem, a law street contributor in her article, asserted that social media can be used for internet bullying, which in some cases is worse than the traditional verbal bullying. Online gossiping and social media platforms allow the bullying to continually exist–a problem for both the bully and the bullied.[221]

People who are not mindful of such limits shall be held responsible for abusing this freedom. This simply means that we can be held liable for the consequences of our speech. This simply means that we cannot claim the right to freedom of speech when we use such right in a wrong way.[222]

In the early stages of Philippine jurisprudence, the rule was that speech may be curtailed or punished when "*it creates a dangerous tendency which the state has the right to prevent*." It is the standard of the dangerous tendency rule.[223] In *Eastern Broadcasting Corp. versus Dans, Jr.*[224], for a speech to be punishable there must be a rational connection between the speech and the evil apprehended. With the restoration of democracy, the clear and present danger rule is coming into favor. This rule is based on the question of proximity and degree of the substantive evils that Congress has the right to prevent.

Words, sentences and paragraphs emit effects. They incite emotions in listeners and readers. Language is never neutral. "*Language is never innocent*," wrote Roland Barthes, the prominent late literary theorist and philosopher. Due to the reckless use of our right to freedom of speech, the mandate to curtail freedom of opinion and expression is, unfortunately, becoming stronger.[225]

The even more shocking phenomenon is that this idea of curtailing the freedom of expression comes from democratic countries. Only by using language for the right purpose can we protect the unequivocal right to freedom of speech. However, this isn't a one-way street. Public figures,

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[221] Diem, N. (2014, December 10). Freedom of Speech and Social Media.. Retrieved from https://lawstreetmedia.com/issues/law-and-politics/freedom-of-speech-social-media/

[222] Freedom of speech does not mean you can say anything you want. Retrieved from https://www.eaglenews.ph

[223] Bernas, J. G. (2011). The 1987 Philippine Constitution: A Comprehensive Reviewer (2011 Edition). Quezon City: REX Printing Company, Inc.

[224] SCRA 628, July 19, 1985.

[225] Hussain, M. (2018, May). The misuse and abuse of freedom of speech. Retrieved from https://dailytimes.com.pk/256597/the-misuse-and-abuse-of-freedom-of-speech/

therefore, shouldn't use freedom of speech in a manner that makes it indefensible.[226]

JUSTIFICATION ON THE LIMITATIONS OF FREEDOM OF SPEECH

Under Article 19 of the International Covenant on Civil and Political Rights:

Article 19.

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order, or of public health or morals.[227]

There is no specificity on the acts that needs to be apprehended. Thus, the government limits the exercise of freedom of speech on a case-to-case basis depending on the gravity of the evil committed and the obscenity of the words being used.

In relation to justifications for limiting freedom of expression, the UN Human Rights Committee has stated:

> When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in

[226] *Ibid.*

[227] United Nations Treaty Series. (1976). International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966: Optional Protocol to the above-mentioned Covenant. Adopted by the General Assembly of the United Nations on 19 December 1966. Retrieved from https://treaties.un.org/doc/publication /unts/volume%20999/volume-999-i-14668-english.pdf

particular by establishing a direct and immediate connection between the expression and the threat.[228]

The common law and international human rights law recognize that freedom of speech can be restricted in order to pursue legitimate objective, such as the protection of reputation and public safety. Many existing restrictions on freedom of speech are a corollary of pursuing other important public or social needs, such as the conduct of fair elections, the proper functioning of markets or the protection of property rights.[229]

Another judicial approach is to address the question of legitimate objective by reference to considerations of the common law. For example, in *Monis v. The Queen*[230] *case*, it was observed that 'the common law has never recognized any general right or interest not to be offended' and that it would be incongruent with common law rules of defamation, to find as legitimate, a statutory purpose of preventing serious offence without any defense of truth or qualified privilege.

To the extent that contempt laws may be characterized as limiting freedom of speech, the laws may be justified as protecting the rights or reputations of others, and public order, because protecting tribunal proceedings can be seen as essential to the proper functioning of society. A limitation to freedom of speech based upon protecting the reputation of others should not be used to 'protect the state and its officials from public opinion or criticism'.[231]

Conclusion

The basic definition of freedom is to have the right to speak, to do what you want, to act and to think without restraint from anyone or anything but a person shall never use force and misrepresentation against his fellow being. It is important to mention that our freedom is not limitless and most countries have established limits to freedom enjoyed by their citizens especially in the freedom of speech. These limits are regularly set by the harm principle, established by John Stuart Mill, an English philosopher and one of the most famous advocates of freedom of speech.

[228] United Nations Human Rights Committee, *General Comment 34 on Article 19 of the ICCPR on Freedoms of Opinion and Expression*, UN Doc CCPR/C/GC/34 (12 September 2011))
[229] Australian Law Reform Commission. (n/d). Freedom of Speech. Retrieved from https://www.alrc.gov.au/publications/justifications-limits-freedom-speech
[230] 249 CLR 92 [223], 2013.
[231] United Nations Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E/CN.4/1985/4, Annex (28 September 1984) [37]. Cf *Nationwide* in relation to the constitutional implied right in Australia: *Nationwide News v Wills* (1992) 177 CLR 1.)

Our Constitution gives us the fundamental rights to enjoy our freedom and to safeguard them from intervention of the Government. However, such fundamental rights do not give permission or a validation that one can do whatever he wants that may harm or put someone in danger. As a citizen, one still has the responsibility to be mindful of one's own conduct. Sometimes, too much freedom will lead to undesirable consequences.

People can use social media as much as they want; they can post, they can say anything but once a statement crossed the limit, they can be liable to the consequences of their actions. As much as there are unprotected speeches, there are also a number of laws that penalize these kinds of speeches to protect our freedom from abuse. For instance, in the Philippines, we have our criminal laws, special laws *inter alia* to put a barrier and distinction to the speeches and words that we shall and shall not use.

The principle laid down by John Stuart Mill states that speech should only be limited in order to prevent harm to others. This principle is kind of broad and unspecific, but it is usually understood as causing direct harm to others and when free speech intervenes with other rights. One problem which is particularly bad is the proliferation of fake news and false information because it can have deep and serious consequences in the society.

Limitations do not have to be extreme or be drawn out of a dystopian future. There can be limitations that does not harm the freedom of speech of the majority, while at the same time protect the most vulnerable, thus ensuring the greatest good.

Expressing one's ideas is different from expressing one's opinion. Hence, there must be a strict and explicit line between the two because most of the time, people give statements which are more of an opinion rather than a constructive ideas about a particular matter.

For us to become rational and accountable citizens, we must adhere to the highest standards in exercising our freedom of speech. As much as possible, with the thriving system of communication that we have this era, there must be consequential limitations attached to it. Freedom of speech is not always in verbal form, it can also be exercised through writing. Such freedom with some forms, it really needs a limitation.

Jeepney Modernization: Your Ride to Change

Eza E. Paguya

Manila, which, in the wider metropolitan area has a population of more than 12 million- is one of the most densely-populated cities in the world. It suffers from gridlock and in 2015 was named the worst city to drive in. [232] According to Waze, the world's largest community-based traffic and navigation app, drivers in the Philippines are among the least satisfied in the world according to its 3rd annual global Driver Satisfaction Index.[233]

Mass transport in NCR spans rail, bus, jeepney and tricycles as well as taxis and the more recent Transportation Network Vehicle Services (TNVS) such as Grab and Angkas. A section of lower income groups have their own motorcycles, while higher income folks largely commute by private cars (and even helicopters).[234]

The government's approach to mass transport is overwhelmingly to rely on the private sector. The Light Rail Transit (LRT)-1, LRT-2 and Philippine National Rail (PNR) railway lines are all government-owned, although LRT-1's operation and maintenance is run by a private corporation. Metro Rail Transit (MRT)-3 is privately-owned and government operated. The remaining public transportation system of buses, jeepneys, tricycles, taxis, TNVS and ferries are all privately-owned.[235]

This privatization-driven approach has resulted in insufficient trains, buses and jeepneys for the growing population, uncomfortable and poorly maintained and at times unsafe vehicles, and an extremely fragmented and unreliable public transportation system.

Some say that volume of cars would equate to economic boost, is it? That is according to Matthias Sweet, a researcher at the McMaster Institute for Transportation and Logistics at McMaster University. He looked at both a measure of travel delay (in the average annual hours of delay per auto

[232] BBC NEWS, Manila Transport Crisis: Commuters outraged by "leave earlier" advice, available at http://www. Bbc.com/news/amp/world-asia—49983397 (Last accessed December 21, 2019)

[233] Dominguez Marketing Communications, Inc.,Waze Driver Satisfaction Index for 2017, available at https://www.dominguezmarketing.net/waze-driver-satisfaction-index-2017 (Last accessed December 22, 2019)

[234] Sonny Africa, Solving The Ncr Mass Transport Crisis, available at https://www.ibon.org/solving-the-ncr-mass-transport-crisis, October 28, 2019 (Last accessed December 21, 2019)

[235] *Id.*

commuter) and travel capacity (in the average daily traffic per freeway lane throughout an entire metro network).[236]

Using data from sources like the Census Bureau and Federal Transit Administration, he also tried to control for other factors that might impact economic growth, like the skill and education of the local labor force, the reach of its transit infrastructure, or the density of jobs.[237]

His results, which are a bit counter-intuitive, suggest that higher levels of congestion are initially associated with faster economic growth.[238]

However, in a study conducted by The Centre for Economics and Business Research, a London-based consultancy, and INRIX, a traffic-data firm, have estimated the impact of such delays on the British, French, German and American economies. To do so, they measured three costs: how sitting in traffic reduces productivity of the labour force; how inflated transport costs push up the prices of goods; and the carbon-equivalent cost of the fumes that exhausts splutter out.[239]

It would be gleaned from the result of the study that it does harm the economy and adds pollution to the environment. The current administration is not blind to this and in fact asks Congress to give the Chief Executive an emergency power in order to fix the problem of traffic jams in NCR but Congress and the Executive branch did not see it eye to eye regarding the issuance of the emergency power.

According to a study entitled Analysis of Delay Caused by Midblock Jeepney Stops with Use of Simulation, stops of jeepneys in the road increases the delay of traffic jams. The capability to objectively quantify delays attributable to jeepney stops is important in advocating policies to improve design and operation, for the improvement of the public transit system as a whole. [240]

The government heeds the call in cooperation with the Department of Transportation. The Passenger Utility Vehicle Modernization Program (PUVMP) was created. Do note that PUVMP is not a law but a department order issued by Department of Transportation. The department order no.

[236] Emily Badger, How Traffic Congestion Affects Economic Growth, *available at* https://www.citylab.com/transportation/2013/10/how-traffic-congestion-impacts-economic-growth/7310/ (Last accessed November 28, 2019).
[237] *Id.*
[238] *Id*
[239] The cost of traffic jams*, available at* https://www.economist.com/the-economist-explains/2014/11/03/the-cost-of-traffic-jams (Last Accessed November 27, 2019).
[240] Palmiano, Hilario & Yai, Tetsuo & Ueda, Shimpei & Fukuda, Daisuke. (2004). Analysis of Delay Caused by Midblock Jeepney Stops with Use of Simulation. Transportation Research Record. 1884. 65-74. 10.3141/1884-08.

2017-11[241] or The Omnibus Guidelines on The Planning and Identification of Public Road Transportation Services and Franchise Issuance paved the way to Passenger Utility Vehicle Modernization Program (PUVMP). It was done on the basis of addressing concerns regarding the current transportation system and all stakeholders that are affected.

The announcement of the privatization of jeepneys was not received well by the drivers and operators alike. The Transport group Pinagkaisang Samahan ng mga Tsuper at Opereytors Nationwide announces its nationwide strike last September 30,2019, against the government's jeepney modernization plan and the decision of the Land Transportation Franchising and Regulatory Board LTFRB) to revoke the franchise of 20 of its members. [242]

Even in Cebu City, LTFRB has warned the PUJ operators joining the transport strike. The regional director of the Land Transportation Franchising and Regulatory Board (LTFRB) in Region 7 (Central Visayas) told public utility jeepney (PUJ) operators in Cebu to avoid paralyzing public transport if they decide to participate in the nationwide transport strike. Eduardo Montealto, a retired Army colonel who now heads the LTFRB-7, warned drivers and transport operators of the possible consequences of violating the existing regulations covering holders of certificate of public convenience (CPC), otherwise known as a franchise.[243]

Despite the negative response of the drivers and operators, the government is pushing through with the modernization. Though numbers are hard to come by, various estimates say there are somewhere between 180,000 and 270,000 franchised jeepneys on the road across the Philippines, with some 75,000 in Metro Manila alone.[244] The iconic jeepney even had its mark in New York[245]. Dubbed as the king of the road, will soon have to use its brake, turn off its head lights, and park for good to pave the way to the new king that will soon start its race.

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[241] Department of Transportation, The Omnibus Guidelines on The Planning and Identification of Public Road Transportation Services and Franchise Issuance, D.O. no. 2017-11 (June 19, 2019).

[242] The Manila Times, Transport Strike, Septemebr 29, 2019, available at https://www.manilatimes.net/2019/09/29/todays-headline-photos/transport-strike-2/623459 (Last accessed December 21, 2019)

[243] John Rey Saavedra, LTFRB warns PUJ operators joining transport strike, September 27, 2019, available at https://www.pna.gov.ph/articles/1081641 (Last accessed December 21, 2019)

[244] Ashley Westerman, A Push To Modernize Philippine Transport Threatens The Beloved Jeepney, *available at* https://www.npr.org/sections/parallels/2018/03/07/591140541/a-push-to-modernize-philippine-transport-threatens-the-beloved-jeepney (Last accessed November 28, 2019).

[245] Stacy Dela Fuente, Philippine Jeepney hits the street of New York, *available at* https://www.msn.com/en-ph/entertainment/celebrity/philippine-jeepney-hits-the-streets-of-new-york/ar-AAC36WZ (Last accessed November 27, 2019).

Careful crafting of the said Department Order intends to benefit the nation as a whole. Among the benefits of PUVMP is first, job creation, safe and reliable and comfortable means of transportation, improvement in the public transport system will encourage commuters to leave their cars at home more often and lastly, improved air quality wherein the Physical upgrading of the PUVs will be subjected to emission standards (Euro V, Euro VI) which will lower greenhouse gas emissions.[246]

In a fast-paced world, wherein change is constant and inevitable, everyone wants an immediate solution. It is a feat that we have to upgrade our transportation system for the greater good. The route may be slow, financially tough and a tedious process but we have to remember that success does not come easy. Hard work and unity would be the key.

The government needs our support more than criticism. Let us help each other push forward for the realization of this modernized jeepneys. Let us hope for the best that this could solve if not eradicate the gridlock that our everyday brothers and sisters are experiencing as commuters especially in the National Capital Region. After all, we will never know unless we try.

[246] *Id*

Role of the Philippines on Environmental Issues

Marian Baylon and Neslie Marie M. Acain

Introduction

Planet Earth, our home, is simply one of its own kind and no planet in the known universe exists just like it. Earth, which places third from the order of planets from the sun is the only confirmed planet in the known universe that hosts life[247].

Earth is the fifth largest planet in our solar system with a radius of 3, 959 miles and so far is the only planet known to have water on its surface. The Earth has been described, for thousands of years, by some cultures, using the Germanic word, "earth," which means simply "the ground" while other planets in the solar system are named for a Greek or Roman deity.[248] Over 71% of the planet's surface is covered by a body of water, which is mostly in the oceans.[249] The planet has an elliptical orbit that goes around the sun which is what results in seasons. It takes roughly 365.26 days for the Earth to complete one rotation around the sun and what we generally celebrate as a "new year".

With Earth's unique atmosphere, that is the sole planet in the known universe that can host life, it comes at no surprise at just how rich in biodiversity the planet is and how abundant the different ecosystems are. Biodiversity refers to the variety of living species on Earth, including plants, animals, bacteria, and fungi.[250] It is the most complex and vital feature of our planet. As a professor at Oxford University once put, "Without biodiversity, there is no future for humanity."[251] To view it more philosophically, biodiversity can be seen as a collection of knowledge learned throughout evolution as species have learned to adapt, thrive and survive over millions of years in a vastly varying environmental conditions the Earth has experienced.[252] Understanding how we can protect the Earth's rich biodiversity through various means plays a huge role in how we can help save the planet from total degradation because while Earth's biodiversity is so rich that many species have yet to be discovered, many species are being threatened with extinction due to human activities, putting the Earth's magnificent biodiversity at risk.

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[247] https://www.nationalgeographic.com/science/space/solar-system/earth/
[248] *Ibid.*
[249] https://www.space.com/54-earth-history-composition-and-atmosphere.html
[250] https://www.nationalgeographic.org/encyclopedia/biodiversity/
[251] https://www.theguardian.com/news/2018/mar/12/what-is-biodiversity-and-why-does-it-matter-to-us
[252] *Ibid.*

The simplest aspect to consider in order to understand just how diverse biodiversity is: species. According to a news article by The Guardian, about 1.7 million species of animals, plants and fungi have been recorded, but there are likely to be 8-9 million and possibly up to 100 million. The heartland of biodiversity is the tropics, which teems with species. In 15 hectares (37 acres) of Borneo forest, for example, there are 700 species of tree – the same number as the whole of North America.[253] This glimpse of how diverse it can get only highlights the fact that these species all coexist among each other in different ecosystems.

From tiny viruses and bacteria unseen by the naked eye and were unknown for millennia to the largest mammal to roam the Earth, the extent of the planet's diversity is unfathomable. From reproduction to natural death, our environment shapes its species and in turn, every specie shapes its environment. That is the concept of ecology.[254] This branch of science endeavours to understand how living organisms interact in different organisms and how each of these organisms help out in the survival of one another.

Different countries offer variations of landscapes, depending on the geographical location of each. Teeming with species that thrive in tropical areas are those organisms that were made to adapt to such and for animals and the same is true for the polar opposite. This means that there are many different species that can only be found in certain locations and that each country plays its own roles in protecting the natural resources of their own and to protect the different wildlife that flourish in their location.

Factors Contributing to the Current Status of the Environment

As an established common enemy of our planet, climate change has rapidly contributed to the collapse of many ecosystems, has caused the extinction of many animals, and is continuing to threaten millions more. What has been occurring is now coined as, "ecological collapse". It refers to a situation where an ecosystem suffers a drastic, possibly permanent, reduction in carrying capacity for all organisms, often resulting in mass extinction. However, many ecosystems are able to withstand natural catastrophes and whether or not it does depend largely on different factors surrounding each circumstance.

According to NASA, the Earth's climate has changed all throughout history. In the last 650,000 years there have been seven cycles of glacial advance and retreat, with the abrupt end of the last ice age about 11,700 years ago marking the beginning of the modern climate era — and of human

[253] https://www.theguardian.com/news/2018/mar/12/what-is-biodiversity-and-why-does-it-matter-to-us
[254] https://www.nature.com/scitable/knowledge/library/ecologists-study-the-interactions-of-organisms-and-13235586/

civilization. Most of these climate changes are attributed to very small variations in Earth's orbit that change the amount of solar energy our planet receives.[255] However, another factor that contributed to the rapid changes in the temperatures of the planet are human activities. Years of exploitation on natural resources and abuse of the environment has put the world on a fast-paced shuttle towards disintegration.

It had been long established by numerous concrete scientific evidence that an active move to combat the worsening of climate change's effect must be adopted by each country and yet for the longest time, these warnings have been falling on deaf ears. Decades ago, scientists would warn that strong research and scientific shows there were at least 20 more years to save the Earth, but now, at 2020, that number has dwindled down to 18 months.[256] Good governance and politics play a major role in the combat to stop climate change. For example, the cutting carbon dioxide emissions by 45% by 2030 is said in one article in the BBC to keep the global temperatures below 1.5C this century, this huge cutback would only be made possible through political steps.

Corporations and large companies that are responsible for the emissions of carbon dioxide and other harmful gases would only be cutback or limited from doing its operations through well-established statutes and a firm stand for a greener environment.

Take for example, meat production companies take a large amount of area needed to farm the animals, especially for mass-produced meat and products. These areas being used for warehouses, farming equipment, meat-production plants and the processes that are being done to produce these products have an enormous environmental impact. Livestock farming alone contributes to land and water degradation, biodiversity loss, acid rain, coral reef degeneration and deforestation. Not only should we feel bad about the billions of animals dying but we are also contributing to a practice that is actively hastening the slow collapse of our planet.[257]

Additionally, livestock farming has a whopping 18% contribution to the greenhouse gas emissions worldwide which is even a higher percentage than the emissions from planes, ships, trucks, cars and other means for transport put together. This is a blatant example of just how important it is for there to be proper legislation for companies like these and for the people to be informed enough to make better lifestyle choices that would positively impact the environment rather than the opposite.

[255] https://climate.nasa.gov/evidence/
[256] https://www.bbc.com/news/science-environment-48964736
[257] theconversation.com/five-ways-the-meat-on-your-plate-is-killing-the-planet-76128

Salient Environment Issues

As previously discussed, the planet is experiencing an alarming rate of degradation due to numerous reasons, namely: global warming, acid rain, air pollution, urban sprawl, waste disposal, ozone layer depletion, water pollution, and climate change.

Some of the most important environmental issues to keep an eye on today include air pollution, climate change, global warming, land pollution and water pollution.

Air pollution refers to the release of pollutants into the air that are detrimental to human health and the planet as a whole[258]. Countries around the world are tackling various forms of air pollution. China, for example, is making strides in cleaning up smog-choked skies from years of rapid industrial expansion, partly by closing or canceling coal-fired power plants. In the U.S., California has been a leader in setting emissions standards aimed at improving air quality, especially in places like famously hazy Los Angeles. The Paris Agreement, ratified on November 4, 2016, is one effort to combat climate change on a global scale. And the Kigali Amendment seeks to further the progress made by the Montreal Protocol, banning heat-trapping hydrofluorocarbons (HFCs) in addition to CFCs.[259]

Climate change is a long-term change in the average weather patterns that have come to define Earth's local, regional and global climates. Changes observed in the Earth's climate since the early 20th century is primarily driven by human activities, raising Earth's average surface temperature. These human-produced temperature increases are commonly referred to as global warming. **Global warming** is the long-term heating of the Earth's climate system. Both terms are frequently used interchangeably, though the former refers to both human and naturally produced warming and the effects it has on our planet.[260]

Land pollution refers to the deterioration of the earth's land surfaces. Furthermore, it occurs mainly due to the indirect and direct effects of human activities. Similarly, when we misuse the land resources, land pollution happens. It is a global issue that needs to be fixed immediately. The unnecessary materials contaminate the quality of our land. For instance, even the garbage on the streets is a kind of land pollution only.[261] Around the world, people and governments are making efforts to combat pollution. Recycling, for instance, is becoming more common. In recycling, trash is processed so its useful materials can be used again. Glass, aluminum cans, and many types of plastic can be melted and reused. Paper can be broken

[258] https://www.nrdc.org/stories/air-pollution-everything-you-need-know#sec1
[259] https://www.nationalgeographic.com/environment/global-warming/pollution/
[260] https://climate.nasa.gov/resources/global-warming-vs-climate-change/
[261] https://www.toppr.com/guides/chemistry/environmental-chemistry/land-pollution/

down and turned into new paper. Recycling reduces the amount of garbage that ends up in landfills, incinerators, and waterways. Austria and Switzerland have the highest recycling rates. These nations recycle between 50 and 60 percent of their garbage. The United States recycles about 30 percent of its garbage.[262]

Water pollution is defined as the presence in groundwater of toxic chemicals and biological agents that exceed what is naturally found in the water and may pose a threat to human health and/or the environment.[263]

One of the biggest problems with water pollution is its transboundary nature. Many rivers cross countries, while seas span whole continents. Pollution discharged by factories in one country with poor environmental standards can cause problems in neighboring nations, even when they have tougher laws and higher standards. Environmental laws can make it tougher for people to pollute, but to be really effective they have to operate across national and international borders. This is why we have international laws governing the oceans, such as the 1982 UN Convention on the Law of the Sea (signed by over 120 nations), the 1972 London (Dumping) Convention, the 1978 MARPOL International Convention for the Prevention of Pollution from Ships, and the 1998 OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic. The European Union has water-protection laws (known as directives) that apply to all of its member states. They include the 1976 Bathing Water Directive (updated 2006), which seeks to ensure the quality of the waters that people use for recreation. Most countries also have their own water pollution laws.[264]

Climate Change's Effect on Developed Countries versus Developing Countries

Admittedly, climate change will affect every individual's lives at some capacity but immediate effects have been shown to be more severe for some countries depending on its economic growth, geographic location and other factors. Despite it being a global phenomenon felt by everyone, the distribution of effects however, is not uniform.

Developing countries are more likely to suffer the severe and immediate effects of climate change. Coincidentally, most developing countries are in the tropical area which naturally are in warmer climates and its economy relies highly on climate sensitive sectors such as agriculture, forestry and tourism.[265] A rapid change in the temperature could mean a decline in said country's economy, for example.

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[262] https://www.nationalgeographic.org/encyclopedia/pollution/
[263] https://www.environmentalpollutioncenters.org/water/
[264] https://www.explainthatstuff.com/waterpollution.html
[265] https://www.schroders.com/en/us/insights/economic-views/climate-change-and-the-global- economy-regional-effects/

Regions like Africa will experience a decline in their crop yields and would also have unfortunate As temperatures rise further, regions such as Africa will face declining crop yields and will struggle to produce sufficient food for domestic consumption, whilst their major exports will likely fall in volume.[266]

This effect will be made worse for these regions if developed countries are able to offset the fall in agricultural output with new sources, potentially from their own domestic economies as their land becomes more suitable for growing crops. Developing countries may also be less likely to create drought resistant harvests given the lack of research funding[267].

Highly vulnerable regions in the emerging world include Sub-Saharan Africa and South and South East Asia, according to the World Bank.

In South Asia, cities such as Kolkata and Mumbai will face increased flooding, warming temperatures and intense cyclones. Loss of snow melt from the Himalayas will also reduce the flow of water into the Indus Ganges and Brahmaputra basins.

Meanwhile in South East Asia, Vietnam's Mekong Delta, which produces most of the rice, is especially vulnerable to rising sea levels. For Sub-Saharan Africa, food security will be a major challenge due to droughts and shifts in rainfall.

Many developing nations are situated in low latitude countries and it is estimated that 80% of the damage from climate change may be concentrated in these areas.[268]

In the contrast, the European Union should have different focuses for different countries in terms of climate change adaptation and mitigation. For rapidly developing countries such as China and India the EU should focus on mitigation of greenhouse gas emissions. For the least developed countries there should be a focus on adaptation.[269]

What can be gleaned on from the foregoing facts is that the disproportionate effects are felt severely by developing countries such as the Philippines and it is left completely vulnerable to frequent flooding, droughts and the likes. The Philippines on its own is very vulnerable to floods and just recently has Jakarta, Indonesia experience a torrential downpour that has led to many flash floods that are causing the country to “sink” as its rivers have began to overflow.

[266] *Ibid.*
[267] *Ibid.*
[268] *Ibid.*
[269] *https://eldis.org/document/A56652*

Actions Taken

Our best bet for saving our planet is most definitely stronger laws that aim to decrease the production of harmful gases, the complete banning of plastic as a resource for packaging in mass production companies, and many more.

However, there are countries that have taken bigger steps already and implementing enormous change as their contribution to society. Iceland for example, has relied majorly on wind power as their primary energy supply. This usage of renewable energy is a very green initiative that carries with it positive effects. Other countries are attempting to switch to renewable energy as well.

NASA believes that the two main actions can be done to deal with climate change and it is to "mitigate" and "adapt".[270]

Mitigation – reducing climate change – involves reducing the flow of heat-trapping greenhouse gases into the atmosphere, either by reducing sources of these gases (for example, the burning of fossil fuels for electricity, heat or transport) or enhancing the "sinks" that accumulate and store these gases (such as the oceans, forests and soil). The goal of mitigation is to avoid significant human interference with the climate system, and "stabilize greenhouse gas levels in a timeframe sufficient to allow ecosystems to adapt naturally to climate change, ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner"[271].

Adaptation – adapting to life in a changing climate – involves adjusting to actual or expected future climate. The goal is to reduce our vulnerability to the harmful effects of climate change (like sea-level encroachment, more intense extreme weather events or food insecurity). It also encompasses making the most of any potential beneficial opportunities associated with climate change (for example, longer growing seasons or increased yields in some regions).[272]

The Philippines is currently pushing back against air pollution through the implementation of various laws and ordinances. One of these is Republic Act No. 8749, or the Philippine Clean Air Act of 1999. RA 8749 currently serves as the foundation for the country's air quality management. It aims to raise awareness about pollution prevention. The RA also aims to enforce regulatory standards upon stationary sources of pollution, such as factories

[270] https://climate.nasa.gov/solutions/adaptation-mitigation/
[271] *Ibid.*
[272] *Ibid.*

and power plants. In 2019, the country is slated to lead the regional forum on health and environment in the Asia-Pacific region.[273]

Additionally, there are now a number of assisted climate change adaptation programmes and projects that are being implemented in the Philippines. Among these are the Millennium Development Goals Fund 1656: Strengthening the Philippines Institutional Capacity to Adapt to Climate Change funded by the Government of Spain, the Philippine Climate Change Adaptation Project (which aims to develop the resiliency and test adaptation strategies that will develop the resiliency of farms and natural resource management to the effects of climate change) funded by the Global Environmental Facility(GEF) through the World Bank, the Adaptation to Climate Change and Conservation of Biodiversity Project and the National Framework Strategy on Climate Change (envisioned to develop the adaptation capacity of communities), both funded by the GTZ, Germany.[274]

How Environmental Laws Play a Huge Role

Laws have long served the purpose of protecting an individual's rights but they do not only serve that limited purpose. Environmental law has a unique opportunity to set requirements on what steps are necessary to mitigate the effects of climate change to protect us.[275]

Environmental law governs how human beings interact with their environment. It covers a wide variety of topics such as air quality, water quality, waste management, chemical safety, contaminant cleanup and hunting and fishing. Many of these areas are relevant to climate change, namely, air quality.

The Clean Air Act of 1970 serves as a fitting example. Because of the Clean Air Act, the U.S. Environmental Protection Agency set standards for what kind of toxic air pollutants that factories, cars and trucks can release into the "ambient air." Their objective was to improve air quality and protect the ozone layer.[276]

Legal efforts to address climate change, which is caused by emission of greenhouse gases, started at the international level with the 1992 United Nations Framework Convention on Climate Change, but have struggled to take root in the United States at the federal, regional and state levels.[277]

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[273] https://www.flipscience.ph/health/how-bad-air-pollution-philippines/
[274] http://bagong.pagasa.dost.gov.ph/information/climate-change-in-the-philippines
[275] https://theecologist.org/2019/may/28/environmental-law-and-climate-breakdown
[276] *Ibid.*
[277] https://www.eli.org/keywords/climate-change

Environmental laws not only aim to protect the environment from harm, but they also determine who can use natural resources and on what terms. Laws may regulate pollution, the use of natural resources, forest protection, mineral harvesting and animal and fish populations.[278]

Philippine Environmental Laws

As previously mentioned, each country has specific laws that are tailored for each unique environmental circumstance. Naturally, the Philippines have long adopted various environmental laws in an effort to save the environment.

Some environmental laws that have been passed on, however, are given more importance and are usually discussed more often. To name a few, there are: "Wildlife Resources Conservation and Protection Act", "National Cave Resources Management and Protection Act" and "The Indigenous Peoples Rights Act of 1997".

The "Wildlife Resources Conservation and Protection Act", endeavors to achieve the following objectives as stated in Section 2 of R.A 9147:

> "Sec. 2. Declaration of Policy. It shall be the policy of the State to conserve the country's wildlife resources and their habitats for sustainability. In the pursuit of this policy, this Act shall have the following objectives:
>
> a. to conserve and protect wildlife species and their habitats to promote ecological balance and enhance biological diversity;
>
> b. to regulate the collection and trade of wildlife;
>
> c. to pursue, with due regard to the national interest, the Philippine commitment to international conventions, protection of wildlife and their habitats; and
>
> d. to initiate or support scientific studies on the conservation of biological diversity."[279]

Similarly, R.A 8371's purpose is to protect the natural resource that is owned by the indigenous people and to protect their ancestral domain from being owned as private and public property. However, this particular law is subject to many disputes and conflict but its policy remains the same, with the following objectives:

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[278]https://legalcareerpath.com/what-is-environmental-law/
[279]R.A 9147, Sec. (2)

"Sec. 2. Declaration of State Policies.- The State shall recognize and promote all the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall recognize, respect and protect the rights of ICCs/ IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinctions or discriminations;

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and;

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, their rights to their ancestral domains."[280]

[280] R.A 8371, Sec. (2)

Conclusion

Throughout history, people and societies have adjusted to and coped with changes in climate and extremes with varying degrees of success. Climate change (drought in particular) has been at least partly responsible for the rise and fall of civilizations. Earth's climate has been relatively stable for the past 12,000 years and this stability has been crucial for the development of our modern civilization and life as we know it. Modern life is tailored to the stable climate we have become accustomed to. As our climate changes, we will have to learn to adapt. The faster the climate changes, the harder it could be.

The history of the evolution of the world shows us clearly that humans, animals and all living organisms alike have adapted to the changes of the world. However, if there is one thing one must remember is to recognize one's own impact on the environment. All will be for naught if one does not value the planet we're living on.

We are but only privileged tourists on this Earth, we must care for it for future generations to enjoy the abundant beauty its nature holds. Now more than ever is the time to be vigilant in the fight for saving our planet. "*There is no planet B."* No effort is too insignificant in the fight to keep our home.