ACCESS TO JUSTICE ASSESSMENT

FOR

PHILIPPINES
MINDANAO

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>i</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>5</td>
</tr>
<tr>
<td>Philippines Country Background</td>
<td>6</td>
</tr>
<tr>
<td>Key Populations and Access to Justice Challenges</td>
<td>12</td>
</tr>
<tr>
<td>Philippines: Elements of Access to Justice</td>
<td>13</td>
</tr>
<tr>
<td>Element I. Legal Framework</td>
<td>13</td>
</tr>
<tr>
<td>Element II. Legal Knowledge</td>
<td>21</td>
</tr>
<tr>
<td>Element III. Advice and Representation</td>
<td>25</td>
</tr>
<tr>
<td>Element IV. Access to a Justice Institution</td>
<td>33</td>
</tr>
<tr>
<td>Element V. Fair Procedure</td>
<td>41</td>
</tr>
<tr>
<td>Element VI. Enforceable Decision</td>
<td>48</td>
</tr>
<tr>
<td>Appendix</td>
<td>50</td>
</tr>
<tr>
<td>List of Acronyms and Glossary</td>
<td>52</td>
</tr>
</tbody>
</table>
Preface

Access to justice is the ability of citizens to seek and obtain remedies through formal or informal justice institutions, and in conformity with international human rights standards. The ABA Rule of Law Initiative (ABA ROLI) recognizes how essential accessing justice is to communities and individuals, especially the poor and the marginalized. The Access to Justice Assessment Tool (AJAT) is a research methodology developed by ABA ROLI to assess to what extent communities and individuals are able to use justice institutions to solve common justice problems. Because the AJAT was designed to be implemented by local civil society organizations, the AJAT has a dual purpose: to produce credible, objective evidence about a community's justice problems and to build local capacity to conduct quality research that a community can use to strengthen itself.

The AJAT breaks access to justice down into a number of components, the Elements of Access to Justice, each of which impacts a citizen's ability to use justice institutions to solve their justice problems. An assessment considers whether each element is present, evaluating both the formal justice system—-institutions established by the state to apply and enforce laws—and the informal justice system—-institutions that, although not sanctioned by the state, play a role in addressing justice issues.

Methodology

This report is the product of a partnership between Sentro ng Alternatuive Lingap Panligal (SALIGAN) and ABA ROLI. SALIGAN undertook the research in this report, using a research plan based upon the AJAT and developed during several workshops with ABA ROLI. SALIGAN then analyzed the data collected and drafted this report, with ABA ROLI providing multiple rounds of commentary and edits. After a final edit, the report was published in English and Cebuano.

The findings in this report are based on qualitative research methodologies, and are intended to present an informative analysis of access to justice in Mindanao, in the Philippines. Data for this report was collected through semi-structured interviews. Most interviews and focus groups were conducted between August 2010 and October 2011, although further research was conducted throughout 2011 and in January 2012.1 Research was conducted primarily in the Davao Region. Close to 150 people were interviewed, including citizens, judges, barangay and local government officials, private and legal aid lawyers, paralegals, civil society representatives, and community leaders. Records of individuals interviewed, whose names are kept confidential and whose time and assistance are highly appreciated, are on file with SALIGAN and ABA ROLI. Prior to, and during, the assessment process, a review of key legislation and secondary sources was also conducted.

The use of a qualitative methodology has some limitations. The requisite small sample size is more likely to yield information on individual experiences and perceptions than generalizable findings on institutional impacts. The research team strongly believes that use of a mixed-methods research would help to gain a more accurate picture of access to justice.

Acknowledgements

SALIGAN's Mindanao branch coordinator Raissa H. Jajurie led SALIGAN's work on this report. SALIGAN assembled a team of lawyers to conduct this report's research. Team members included Attorney Raymond Q. Salas and Attorney Francesca Lois V. Sarenas.

ABA ROLI's Access to Justice Advisor Jennifer Tsai led the development of the AJAT, with assistance from Legal Analyst Jim Wormington. An expert working group provided input and critical comments on the draft methodology. Members of the expert working group included Chief Persida Rueda Acosta, Philippines Chief Public Attorney; Juan Carlos Botero, Interim Executive Director and Director of the Rule

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1 Data collected from another civil society organization, Ateneo de Davao Legal Advocacy Works (AdDLAW), was also used in the report.
of Law Index at the World Justice Project; Stephen Golub, legal empowerment expert and law professor; Martin Gramatikov, a lecturer at Tilburg University and a member of the Measuring Access to Justice Project; Simeon Koroma, Executive Director of a Sierra Leonean paralegal services program, Timap for Justice; Zaza Namoradze, Director of the Budapest office of the Open Society Justice Initiative; and Annette Pearson, an international development consultant and expert on Colombia’s National Community Justice Houses. ABA ROLI extends sincere thanks to these individuals for their invaluable contributions to the development of the AJAT.

Access to Justice Advisor Jennifer Tsai worked with SALIGAN on the implementation of the AJAT, with support from Legal Analyst Jim Wormington and Program Associate Isha Mehmood, and the ABA ROLI Philippines office, with special thanks to Country Director Scott Ciment, Deputy County Director Renato B. Lopez, Jr., and Office Manager and Human Resources Director Fides Ferrer.
Executive Summary

Access to justice requires that all citizens are able to use justice institutions to solve common justice problems. Unless citizens have access to justice, the rights and duties enshrined in constitutions and laws are meaningless, and fail to provide protection to vulnerable groups. For access to justice to exist, justice systems and legal services must function effectively to reach the vulnerable groups they are intended to serve.

The purpose of this report is to present a comprehensive picture of the access to justice situation in Mindanao province, Philippines, with a focus on the primary justice needs of indigenous peoples and Moro communities living in poverty. The report discusses the key obstacles to access to justice that these citizens encounter in solving their justice problems. To do so, it breaks down access to justice into a number of components, the Elements of Access to Justice, discussed below, and considers the extent to which each element is present.

Philippines: Elements of Access to Justice

1. Legal Framework: Laws and regulations establish citizens’ rights and duties, and provide citizens with mechanisms to solve their justice problems.

The Philippines has a comprehensive legal framework that citizens can use in resolving their justice problems in the formal court, pursuant to the Rules of Court, and the alternative, community-based Barangay Justice System. Further, the Code of Muslim Personal Laws recognizes the legal system of Muslims as part of the law of the land, codifies Muslim personal laws, and provides for the administration and enforcement of the Code through the establishment of Shari’a courts. The Indigenous Peoples Rights Act provides for the recognition, the protection, and the promotion of the rights of indigenous cultural communities and indigenous peoples. It is the first law on ancestral domains in the world. There is no shortage of laws, rules, and standards in the Philippines. In some cases, the existence of multiple laws creates conflict. For example, many provisions of the Republic Acts contradict the usual application of the Rules of Court of the formal justice system, and provisions of the Indigenous People Rights Act, and in some cases the Code of Muslim Personal Laws, may also run afoul of the Rules of Court.

With respect to informal justice mechanisms, each tribal group has its own set of customary laws and its own legal framework. However, whether or not these customary laws still exist and to what extent they are still practiced vary from tribe to tribe. Tribes with strong self-identity are more likely to have preserved their customary laws.

2. Legal Knowledge: Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.

In general, citizens’ familiarity with how to access legal information is poor. Even with the availability of modern technology, most citizens do not know how to, or do not even consider, accessing legal information on their own. Even if citizens possess relevant legal information, few can understand it. The majority of citizens, both in urban and rural areas, are knowledgeable about the general functions of formal justice institutions, and, to a certain extent, the informal justice institutions in their respective communities. However, few are familiar with more specific aspects of justice institutions—for example, the functions and roles of the court and the prosecutor. Most citizens who have a working knowledge of these institutions are those who have been in contact with the justice system.

The lack of access to good information is an obstacle to having legal knowledge. Many citizens live far from the urban centers, where the majority of justice institutions are located. The farther citizens are from urban centers, the less likely they will have access to information through media or come into contact with justice sector actors in the formal justice system, the agencies of the
government mandated to respond to the needs of their sectors, and civil society. Poor levels of education and literacy also prevent citizens from obtaining information.

Government efforts to promote legal knowledge are limited. The National Commission on Indigenous Peoples focuses its efforts to promote legal education on community leaders rather than citizens; thus, community members typically depend on their leaders for information and decision-making. What information dissemination the National Commission on Indigenous Peoples does provide to citizens is limited in scale. As a result, legal knowledge of indigenous peoples, including familiarity with access to information, the roles and the functions of lawyers, and the mechanics of the formal justice system, remains low. The National Commission on Muslim Filipinos launched a Community Legal Education Program in August 2010. With this launch, the National Commission on Muslim Filipinos also announced that it would engage in training community-based paralegals. Although the efforts of the National Commission on Muslim Filipinos are commendable, their legal education initiatives have focused mainly in serving Metro Manila, and its reach has not extended to the provinces.

The Kinaiyahan Foundation, Inc. is one of the few civil society organizations that has an active presence in indigenous communities. Indigenous leaders credit the organization with most of the information they have on indigenous peoples’ rights as well as rebuilding their confidence and pride in their local customary laws. The Alternative Law Groups, Inc., as a coalition of progressive non-government organizations, use developmental, alternative, feminist, strategic and political legal interventions to empower the poor and the marginalized. These organizations have distinct programs for developmental legal assistance concerned with the pursuit of public interest, respect for human rights and promotion of social justice, including awareness-raising and skills-building on the laws and the justice system. As a coalition, Alternative Law Group members offer diversity in terms of expertise in issues and services while employing common strategies. Each member has a clear physical base and clearly defined organizational structures for its operations, and established sustained links with law schools.

3. **Legal Advice and Representation: Citizens can access the legal advice and representation necessary to solve their justice problems.**

The Constitution provides for measures that allow for adequate legal representation and assistance for citizens, and such legal representation and assistance should not be denied to any person by reason of poverty. Thus, the state is mandated to provide competent and independent counsel to the indigent accused.

In the formal justice system, the cost of hiring a private lawyer—estimates range from 10,000 PhP (USD 232.56) to 50,000 PhP (USD 1,162.79)—is out of reach for most citizens who earn on average 1,403 PhP (USD 32.63) per month. The Integrated Bar of the Philippines obligates lawyers to render service to indigent parties through its Legal Aid Program, which is implemented nationally by its chapters. The Integrated Bar of the Philippines has not, however, been able to disseminate information about its legal aid programs to citizens the programs are intended to serve. The majority of citizens are unaware of the legal aid programs provided by the Integrated Bar of the Philippines and continue to believe that lawyers cater only to those with money, tend to concentrate their practice in city centers, and rarely serve in the hinterlands, if at all.

The state provides representation to poor clients through the Public Attorney’s Office, which has significantly provided legal services throughout the country. The Public Attorney Office’s mission reflects the need to serve marginalized groups in seeking justice and accessing courts. Citizens are familiar with the services of the Public Attorney’s Office, and barangay and government leaders refer their constituencies to the Public Attorney’s Office when they are in need of legal advice or representation. However, the average annual caseload per Public Attorney lawyer numbers in the hundreds, and with such caseloads, the quality of service is likely to suffer.
Legal aid is also mandated in law schools. Law students are required to undergo a law student practice under the supervision of a lawyer. Efforts by law schools to improve access to legal representation have not, however, yet achieved that purpose. Alternative Law Group member-organizations also handle public interest cases. More significant, though, is the work of the Alternative Law Groups in developing community-based paralegals who readily assist communities with their legal issues and concerns. While Alternative Law Group programs on the formation of community-based paralegals are laudable, they are limited in scope. Paralegals might be perceived to have limited knowledge of the law and procedures, but are capacitated to engage in the legal system. At the level of the community, paralegals are the most accessible resource in terms of providing information on law and mediating conflicts.

In traditional justice systems, the litigants themselves appear before a council of elders, with limited representation through the eldest member of the family, in some cases. Appearing before these customary elders, litigants themselves can explain the case, reason out their defenses and argue their positions without the necessity of the technical expertise of a litigator, but the passionate discourse of one affected by the case. When Moros and indigenous peoples access the formal court systems, though, the National Council on Muslim Filipinos and the National Commission on Indigenous Peoples, respectively, provide representation to them, albeit such representation has yet to pass the test of adequacy and competency.

Access to legal advice and representation for the poor and the marginalized, particularly for Moros and indigenous peoples is limited in remote areas far from city centers. Especially in communities where the cultural heritage of Moros and indigenous peoples is still practiced, the idea of a lawyer is non-existent, except for the few who have been brought to appear in a case in the formal justice system, and forced to engage the services of a lawyer.

4. **Access to a Justice Institution:** Justice institutions exist, whether formal or informal, which are affordable and accessible, and process cases in a timely manner.

The Constitution allows the Supreme Court to promulgate such rules that provide for a simplified and inexpensive procedure for the speedy disposition of cases. In practice, courts in the formal justice system are not accessible, typically located in the town centers and far from Moro and indigenous communities. Accessing them entails significant costs, and delays are the norm with infrequent hearings and many postponements. Further, the procedures on trial are complex, the language used is strange in its legalese, and how the judge, lawyers and court personnel comport themselves adds to a perception that the courts are inaccessible. The major hurdle is the litigants’ lack of trust on the actors in the formal system. Many citizens complain of the low level of gender sensitivity in the courts and in the justice system, and the prevailing bias against women. One notable exception is the Barangay Justice System, which serves as an interface between the informal and formal justice systems.

The informal justice system is perceived to be more accessible than the formal justice system, as it is affordable and non-threatening, and processes cases quickly. Costs in engaging the system are few, sometimes including the payment of penalties, where livestock and monetary considerations are involved. Physical accessibility is typically not a problem as the venue of the conflict resolution is held locally. It is less threatening as the council of elders is respected in the communities, and litigants can express their views in a language with which they are familiar. The procedures are simple enough that parties understand. Disputes are resolved at most a month’s time; hence, delay is not a problem in the informal justice system.
5. **Fair Procedure**: Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and that disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.

The Philippine Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law. At the heart of the due process requirement is the ability to participate in the processes that would allow the state to deprive one of life, liberty, or property. In both criminal and civil cases, both parties – the complainant and the accused in criminal cases, and the plaintiff and the respondent in civil cases – are given the opportunity to participate in the process, including the submission of arguments and evidence. In practice, however, not every litigant is able to participate at every stage. At the trial stage, the opportunity to present evidence is not easy for most litigants, particularly for Moros and indigenous peoples. Even assuming that they have legal representation in court, they will still have to hurdle difficult technicalities in the rules followed during trial. For one, the language that the Philippine courts have adopted as the official language is English, a language that Moros and indigenous peoples neither speak or understand.

For the most part, the majority of citizens who use the *Barangay* Justice System are satisfied with the mediation process that they undergo. The mediator, the *Punong Barangay*, is usually able to persuade the parties to settle their dispute. Most of the time, complaints that are brought to *Barangay* Justice System are settled or dismissed, and no longer proceed to the courts.

The exact procedures in the traditional justice systems of the Moros and indigenous peoples vary from one ethno-linguistic group to another. Generally, these informal justice systems value mediation and arbitration. Different systems, akin to modern concepts of civil and criminal cases, make up most of the judicial infrastructure of informal justice systems. In some cases, informal justice systems compete with the formal justice system for a place in the life of the community.

6. **Enforceable Decision**: Justice Institutions are able to enforce their decisions, including through the use of sanctions.

In the formal justice system, the state enforces the judgment. Coercive force applied by institutions of the state— from the judiciary and the executive branches of government—are readily available. The challenge is to have the enforcement done swiftly, and in a fair and just manner.

In the informal justice system, enforcement of the results of mediation or arbitration proceedings relies mainly on social sanction, rather than on the coercive powers of the leaders in the community, where the justice system is practiced.
Introduction

Access to justice requires that all citizens are able to use justice institutions to solve common justice problems. Unless citizens have access to justice, the rights and duties enshrined in constitutions and laws are meaningless, and fail to provide protection to vulnerable groups. For access to justice to exist, justice systems and legal services must function effectively to reach the vulnerable groups they are intended to serve.

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The Elements of Access to Justice are described in the table below.

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<tbody>
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Philippines Country Background

Historical Context

National

The Republic of the Philippines is a sovereign country in Southeast Asia in the western Pacific Ocean. An archipelago comprising approximately 7,100 islands, the Philippines has three major island groupings, namely Luzon, Visayas, and Mindanao. The central government and most national agencies are found in the National Capital Region [hereinafter NCR] in Luzon. The capital is Manila.

With an estimated national population of approximately 94 million people, the Philippines is the world’s 12th most populous country. Multiple ethnicities and cultures are found throughout the islands. Successive waves of Austronesian peoples brought with them influences from Malay, Hindu, and Islamic societies. Trade introduced Chinese cultural influences. The Philippines has also been part of several empires: the Spanish empire, during the age of Imperialism, the United States, after the Spanish-American War of 1898, and the Japanese Empire, during World War II, until the official Philippine independence in 1945. These are discussed briefly below.

In the history of Mindanao, the Sultanates of Sulu and Maguindanao, as well as the confederation of the Sultanates of Ranaw (Pat a Pangampong ku Ranaw), were already entrenched when the Spanish arrived in 1521. The Sultanates resisted Western colonization. More than 300 years after landing in Visayas, the Spanish were still unable to take effective control over “Moroland” in the south, and were largely confined to other parts of what is now the Philippines.

During the Spanish empire, Spain appointed a Governor-General to be in charge of the Islands. The Las Leyes de los Reinos de Indias (The Law of the Indies), and other Royal Decrees were legal precepts that emanated from Spain. In 1887, a Penal Code was introduced and two years later, a Civil Code, as well as other laws. The Governor-General supplemented these laws with his own legislative action. He was also the president of the Royal Audencia, or the Supreme Court. Shortly before the Americans defeated Spain in the Spanish-American war, a revolutionary government was set up, challenging the Spanish authorities. The revolutionary government in 1988 enacted the Malolos Constitution, but, with the defeat of the Filipinos to the Americans, the government soon gave way to American authorities. Notwithstanding the fact that Mindanao was largely unconquered, Spain sold Mindanao to the Americans in the Treaty of Paris on December 10, 1898, together with the conquered areas, i.e., Luzon and Visayas. What many view as an illegal annexation of Mindanao is the cause of the war between the Government of the Philippines [hereinafter GPH] and the Moro Islamic Liberation Front [hereinafter MILF].

When the Americans took over, they maintained many of the laws that were in place prior to 1898. Some of these laws have survived. Eventually, the Philippines became an independent Commonwealth of the Americans. The creation of the 1935 Constitution was largely based on the American system. Through this constitution, a representative government was adopted, with three separate and co-equal branches of government. In 1971, however, then-President Ferdinand Marcos declared martial law, on the grounds that there were threats against the state. The Marcos dictatorship ensued, abolishing the legislature and vesting legislative power in the President. Civilian courts continued to operate, but their functions were severely limited under General Order No. 3 (September 22, 1972). The courts were stripped of jurisdiction over cases involving national security or public order, any criminal cases against public officers, and any action questioning the legality or constitutionality of any decree or other acts issued by the President. Military courts took cognizance of criminal cases filed against civilians.
When the Marcos dictatorship was toppled through a bloodless civilian revolution, backed with military force, President Corazon Aquino established a revolutionary government. Her government enacted a Freedom Constitution, which was in force until the ratification of the 1987 Constitution. The Constitution in part restored the separation of powers of the three branches of government and enumerated the civil rights of citizens, as against the state.

**Mindanao**

Mindanao is the southernmost and the second largest island in the Philippines at an estimated 36,537 mi$^2$. It is the only area with a significant Muslim presence. Davao City is the capital of Mindanao.

The island group of Mindanao encompasses Mindanao Island itself and the Sulu Archipelago to the southwest, which consists of the islanda of Basilan, Jolo, and Tawi-Tawi, as well as outlying islands in Camiguin, Dinagat, Siargao, and Samal. Mindanao is composed of six administrative regions. These regions are further subdivided into 26 provinces; some of the areas are semi-autonomous Muslim areas. A governor who is elected by popular vote and can serve a maximum of three terms, consisting of three years each, heads each province.

The six administrative regions are, as follows:

Zamboanga Peninsula (Region IX) is located in Western Mindanao. The regional center is Zamboanga City, and its provinces are Zamboanga del Norte, Zamboanga del Sur, Zamboanga Sibugay, and the City of Isabela;

Northern Mindanao (Region X) is located in the north-central part of Mindanao. The regional center is Cagayan de Oro City. Its provinces and cities are Bukidnon, Camiguin, Lanao del Norte, Misamis Occidental, and Misamis Oriental.

Davao Region (Region XI) is located in the south-eastern part of Mindanao. The regional center is Davao City. Its provinces are Compostela Valley, Davao del Norte, Davao del Sur, and Davao Oriental.

Soccsksargen Region (Region XII) is located in central Mindanao. The regional center is Koronadal City. Its provinces and cities are South Cotabato with General Santos City, Cotabato, Cotabato City, Sultan Kudarat, and Sarangani Province.

Caraga Region (Region XIII) is located in the northeastern part of Mindanao. The regional center is Butuan City. Its provinces are Agusan del Norte, Agusan del Sur, Surigao del Norte, Surigao del Sur, and the Island Province of Dinagat.

Region X (Cagayan de Oro City, Bukidnon Province and Misamis Provinces); Region XI (Davao City and the three Davao Provinces with Compostela Valley Province); Region XII (General Santos City and the two Cotabato Provinces and Sarangani Province); Region XIII (Butuan City and the two provinces of Agusan and two provinces of Surigao) and ARMM, or the Autonomous Region for Muslim Mindanao.

The Autonomous Region of Muslim Mindanao [hereinafter ARMM] is composed of mainly Muslim provinces. Its provinces are Basilan (except the City of Isabela), Lanao del Sur, Maguindanao (except the City of Cotabato), Sulu, and Tawi-Tawi.

Mindanao’s estimated population of 21 million people is composed of three different groups: Christian settlers, indigenous peoples, or Lumad [hereinafter IPs], and the Moros.
Mindanao Historian Professor Rudy Rodil describes the IPs, which include approximately 35 tribes and sub-tribes indigenous to Mindanao, and the Moros, which refers to 13 ethno-linguistic Muslim groups, as follows:²

The name Moro was originally given by the Spaniards to those Muslims of northern Africa who occupied Spain for nearly eight centuries, from 711 to 1492 A.D, and later to the Moros of the Philippine archipelago. Now it refers to the 13 ethno-linguistic groups of the Maranao, Maguindanao, Tausug, Sama, Sangil, Iranun, Kalagan, Kalibugan, Yakan, Jama Mapun, Panimusuan, Molbog and Sama Dilaut, also popularly known to outsiders as Badjaos. They are mostly Moros, except for the Kalagan, who are only partly Muslim, and the Sama Dilaut, who are generally non-Moros. They constitute, according to the 2000 census, about 18.9% of the entire population of Mindanao and the Sulu archipelago and they are the majority population only in the provinces of Maguindanao, Lanao del Sur, Basilan, Sulu and Tawi-tawi and in fifteen other towns—one in Cotabato, nine in Lanao del Norte, two in Sultan Kudarat, two in Zamboanga del Norte, and one in Palawan.

The Lumad include approximately 35 tribes and sub-tribes indigenous to Mindanao, among which are, in alphabetical order - Ata Manobo, Bagobo, Banwaon, Bla-an, Bukidnon, Dibabawon, Higaunon, Mamanwa, Mandaya, Mangguwangan, Manobo, Mansaka, Matigsalug, Subanen, Tagakaolo, Talaandig, Tigwa, T’boli, Teduray and the Ubo Manuvi. There may be more because they normally refer to each other by their geographical and not by their ethno-linguistic names. They constitute, according to the 2000 census, about 8.5% of the entire population of Mindanao and the Sulu archipelago, and are the majority in only eleven towns - one in Agusan del Sur, four in Bukidnon, two in Davao del Sur, two in Maguindanao, one in Sarangani, and one in Zamboanga del Sur.

The name Lumad is Cebuano Bisaya but is the product of an agreement among representatives of 15 out of 18 ethno-linguistic groups that was arrived at during the founding congress of Lumad Mindanaw in June 1986.

Many IPs and Moros live in the hinterlands, in regions remote from urban areas, where courts, local government, and other institutions involved in the administration of justice are located. Although some IPs and Moros may live in the urban center, they are nonetheless marginalized because of their social status and lack of education.

Mindanao is a land of contradictions. While it is very rich in resources, many of its people are poor. According to the National Statistical Coordination Board³ [hereinafter NCSB], an average citizen has a monthly income of PhP 1,403 (USD 32.63), spending approximately PhP 974 (USD 22.65) of that amount on food needs.⁴ A family of 5 needs a monthly income of PhP 7,017 (USD 163.19) to subsist. Mindanao regions and provinces, particularly those that are IP- or Moro-

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⁴ In this report, Philippine Peso [hereinafter PhP] are converted to United States dollars [hereinafter USD] at the average rate of conversion at the time when interviews were conducted (PhP 43.00 = USD 1.00).
populated, such as Caraga and ARMM, registered the highest poverty incidence. Region XI, where both Davao Oriental and Davao City belong, posted a poverty incidence of 25.6 in 2009.5

Legal and Political Context

The 1987 Constitution is the highest law of the land. Article II, Section 1 states that the Philippines is a democratic and republican state, and that sovereignty resides in the people and all government authority emanates from them. This means that government is run by people who win in the electoral race, bringing with them the mandate to do so through the votes that they garner from the voting population. Those voted into office are thus considered representatives of the people and are accountable to the people.

The Constitution sets forth the government structure, allocating powers and responsibilities among the different branches thereof. There are three co-equal branches, the legislature, the executive, and the judiciary, which is discussed in a separate section below. Each branch is separate from the other two with its primary tasks.

Legislative powers are vested in a 2-chamber Congress, where district and party-list representatives comprise the House of Representatives, and 24 senators occupy the seats in the upper chamber. Together, their primary task is to enact laws that redound to the welfare of the people.

The implementation of such enacted laws is the primary task of the executive department, headed by the President. He or she is free to appoint department heads who are thus answerable to the President for the execution of laws that fall under their respective departments. These department heads, known as Secretaries, act in behalf of the President, and are under his or her control and supervision. Their acts are considered the acts of the President, except when the President chooses to overturn them.

The separation of powers among three co-equal branches of government is a safeguard against the concentration of powers in one authority, and serves as a check and balance among the branches. For example, the appointment of Department Secretaries and other high officials in the executive department by the President requires the concurrence of a body called the Commission on Appointments, which is composed of representatives of the political parties that are in Congress. The President appoints Supreme Court Justices as well as judges of the lower courts. The budget of all the branches, including those of the executive and of the judiciary are presented, deliberated and approved by the House of Representatives. These, and many other mechanisms for checks and balance, are features found in the Constitution.

Aside from the three branches, there are also constitutional bodies, such as the Commission on Human Rights, the Commission on Elections, Civil Service Commission, and the Commission on Audit. As constitutional bodies, these are independent of and are not under the control of any of the branches of government.

Judicial Institutions

Judicial power is vested in a Supreme Court and such lower courts that may be established by law.6

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5 2009 Official Poverty Statistics NCSB.
6 Section 1, Article VIII of the Constitution states, "[t]he judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of
The **Supreme Court** is the highest tribunal and the court of last resort. The Court has administrative supervision over all lower courts. Powers of the Court, defined in Article VIII of the Constitution, include the power to resolve actual controversies that involve legally and demandable rights and to determine whether there has been a grave abuse of discretion on the part of any government office. The Constitution also provides that the Supreme Court has the power to promulgate rules. The Supreme Court consists of a chief justice and 14 associate justices appointed by the president.

The **Court of Appeals** is vested with jurisdiction over appeals from decisions of the Regional Trial Courts and certain quasi-judicial agencies, boards or commission. The Court of Appeals consists of 69 justices, covering 23 different divisions, with 3 members each. The President appoints all of them. The Court may sit *en banc* for the purpose of exercising administrative, ceremonial or other non-adjudicatory functions.

The **Regional Trial Courts** (hereinafter RTC), formerly known as the Courts of First Instance, consist of 720 judges per each region of the country. They are courts of general jurisdiction, handling particular classes or kinds of cases assigned to them and cases not within the jurisdiction of Metropolitan Trial Courts. RTCs are established among the thirteen judicial regions in the Philippines (Regions I to XII and the NCR).

**Municipal Trial Courts** are found in every municipality. If the court covers more than one municipality, the court is called a **Municipal Circuit Trial Court**.

**Metropolitan Trial Courts** are found in the towns and cities of Metropolitan Manila area, as distinguished from other political subdivisions in the Philippines.

**Shari'a District Courts** are equivalent to RTCs, and were established in certain provinces in Mindanao, where the Muslim Code of Personal Laws are enforced. A Shari'a District Court is of limited jurisdiction, primarily hearing cases relating to family rights and duties and the contractual rights of Muslims in Mindanao. **Shari'a Circuit Courts** are equivalent to Municipal Circuit Trial Courts, and were established in certain municipalities in Mindanao. There are 5 Shari'a District Courts and 51 Shari'a Circuit Courts.

The **Court of Tax Appeals**, composed of a Presiding Judge and two Associate Judges, is vested with the exclusive appellate jurisdiction over appeals from the decisions of the Commissioner of Internal Revenue and the Commissioner of Customs on certain specific issues.

The **Sandiganbayan** is a special court composed of a Presiding Justice and eight Associate Justices, with exclusive jurisdiction over violations of the Anti-Graft and Corrupt Practices Act, the discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” Const., § 1, art. VIII.

7 Const., § 1, art. VIII. Other powers are: to promulgate rules, to exercise original jurisdiction over cases affecting ambassadors, or other public figureheads, to change, review, modify or reverse an appeal for *certiorari*, to exercise supervision over all courts of justice, and to appoint all officials of the courts.

8 Section 5(5), Article VIII of the Constitution states the Supreme Court has the power to “[p]romulgate 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.” Const., § 5, ¶ 5, art. VIII.
Unexplained Wealth Act, and other crimes or felonies committed by public officials and employees in relation to their office.
Key Populations and Access to Justice Challenges

SALIGAN focused on the following access to justice challenges affecting Moros and IPs in the Davao Region. In particular, Marilog District and Davao Oriental province served as pilot sites. Marilog District is more than 31 miles from Davao City, and its population consists of mostly IPs. Marilog itself encompasses the Marilog mountain range that is mostly ancestral domain. There are no major roads except for the main highway in Marilog District. Davao Oriental is the easternmost province of the country, whose capital is Mati City. The native language spoken in the province is Kamayo; Cebuano is also spoken in Davao Oriental.

- **Formal justice institutions are inaccessible, and there is a lack of legal representation for poor and marginalized populations.** This includes, among other things, a lack of special courts to address issues of the poor and the marginalized, a lack of courts in far-flung areas, a lack of adequate and sustainable legal representation of the poor and the marginalized in judicial and quasi-judicial institutions, and the discriminatory treatment of the poor and the marginalized in the language, procedures, and processes of courts and other tribunals.

- **Poor and marginalized populations lack the capacity to access, and avail themselves of, judicial, quasi-judicial, and other mechanisms for addressing their issues and concerns.** This includes a lack of access to legal education, a lack of community paralegals, and a lack of participation in the shaping and reshaping of laws and policies.

- **Members of the bar and the bench, and other justice stakeholders, lack legal education on issues affecting poor and marginalized populations.** There is a need to address the general lack of awareness of members of the legal profession, including lawyers, judges, and law students, on issues affecting the poor and the marginalized, and the special laws concerning these issues.

- **Alternative dispute resolution mechanisms lack recognition by the state.** While there are policy pronouncements that recognize alternative dispute resolution mechanisms, it is still the formal justice system—where adjudication is the norm—that the state prioritizes in terms of infrastructure, budget allocation, research, and overall support. The informal justice systems of the Moros and the IPs are rarely given attention.

- **Unfavorable policy formulation and implementation undermine the rights of poor and marginalized populations.** This encompasses policies from the executive, legislative and judicial departments of the government.

- **The judiciary and justice institutions generally lack transparency.** This includes the issues of politics and patronage in the appointment of members of the judiciary, corruption in the courts, quasi-judicial bodies, and other offices involved in the administration of justice, and the consequent lack of independence of the judiciary. This is also related to the issue of the low priority given to the judiciary in the national budget, the inadequacy of courts and court facilities, and other issues related to the lack of efficiency and effectiveness of the judiciary.
Philippines: Elements of Access to Justice

Element I. Legal Framework

Laws and regulations establish citizens’ rights and duties, and provide citizens with mechanisms to solve their justice problems.

Conclusion

The Philippines has a comprehensive legal framework that citizens can use in resolving their justice problems in the formal court, pursuant to the Rules of Court, and the alternative, community-based Barangay Justice System. Further, the Code of Muslim Personal Laws recognizes the legal system of Muslims as part of the law of the land, codifies Muslim personal laws, and provides for the administration and enforcement of the Code through the establishment of Shari’a courts. The Indigenous Peoples Rights Act provides for the recognition, the protection, and the promotion of the rights of indigenous cultural communities and indigenous peoples. It is the first law on ancestral domains in the world. There is no shortage of laws, rules, and standards in the Philippines. In some cases, the existence of multiple laws creates conflict. For example, many provisions of the Republic Acts contradict the usual application of the formal justice system, and provisions of the Indigenous People Rights Act, and in some cases the Code of Muslim Personal Laws, may run afoul of the Rules of Court.

With respect to informal justice mechanisms, each tribal group has its own set of customary laws and its own legal framework. However, whether or not these customary laws still exist and to what extent they are still practiced vary from tribe to tribe. Tribes with strong self-identity are more likely to have preserved their customary laws.

Analysis

The legal framework is the set of laws and regulations that is the foundation on which citizens can seek solutions to their justice problems. It establishes citizens’ rights and duties, and provides for citizens to bring legal proceedings to protect their rights. A comprehensive legal framework is essential: if the law does not grant rights to citizens in need, they will have no redress in case of abuse by those more powerful.

In this section, we examine the sources of laws that regulate justice institutions and issues. We begin with a comprehensive overview of the Rules of Court, alternative dispute resolution mechanisms, such as the BJS, that are part of the formal justice system, and the legal framework specific to IPs and Moro communities. We also discuss sources of law in the informal justice system.

Formal Justice System

The Bill of Rights,\(^9\) enshrined in the 1987 Constitution of the Philippines, embodies the legal framework. The Bill of Rights has 22 sections that include provisions on due process,\(^10\) equal protection,\(^11\) the right against unwarranted searches and seizures,\(^12\) the right against self-incrimination,\(^13\) right to bail,\(^14\) and the right to habeas corpus,\(^15\) among others.\(^16\)

\(^9\) CONSTITUTION OF THE PHILIPPINES, art. III (adopted February 2, 1987) [hereinafter Const.]
\(^10\) Const., art. III, § 1.
\(^11\) Id.
\(^12\) Const., art. III, § 2.
\(^13\) Const., art. III, § 17.
\(^14\) Const., art. III, § 13.
In addition to the Bill of Rights, Article XIII of the Constitution also contains provisions on social justice and human rights. This Article focuses on social and economic rights with sections on labor, agrarian and natural resources reform, urban land reform and housing, health, women, the role and the rights of people’s organizations, and human rights. Provisions under Article XIII generally require implementing legislation.

Rules of Court

One of the earliest versions of the Rules of Court of the Philippine Judiciary was a Criminal Procedure promulgated in 1900. Pursuant to Section 13, Article VIII of the 1935 Constitution, the Supreme Court drafted the modern Rules of Court, which became effective January 1, 1964. Since then, it has been amended a number of times. The current version of the Rules of Court is divided into five parts, the Rules on Civil Procedure, Special Proceedings, Criminal Procedure, Evidence, and Legal Ethics. We discuss the Rules of Civil Procedure and Criminal Procedure in detail, below.

The Rules of Court are frequently amended through resolutions from the Supreme Court to facilitate the speedy disposition of cases. The latest proposed amendments are being piloted in Cebu City. The Supreme Court has also promulgated the Writ of Habeas Data, the Writ of Amparo, and, most recently, the Rules of Procedure on Environmental Cases.

Civil Cases

In civil cases, the action is instituted upon the filing of a complaint or information with the court that has jurisdiction over the case. After the case is raffled to a specific branch court, the clerk of the court issues a summons to the respondent, who is directed to file an answer to the complaint. A pre-trial is set where the possibility of an amicable settlement is discussed, among other things. Trial ensues, and the presentation of evidence is done in the same order as in criminal cases. The burden of proof, a preponderance of the evidence, however, is less than that required in criminal cases. The aggrieved party can appeal the decision of the judge.

Criminal Cases

The Constitution extends guarantees to the accused, consistent with international human rights standards, including those found in the International Covenant on Civil and Political Rights [hereinafter ICCPR]. Some of these rights are: the right to be presumed innocent, the right to be heard, the right to be informed of the nature and cause of the accusation, the right to a speedy, 

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15 Id.
16 See Appendix for specific provisions of the Bill of Rights.
17 GENERAL ORDER No. 58 from the Office of the U.S. Military Governor on the Philippine Islands.
18 RULES OF CIVIL PROCEDURE (as amended Bar Matter No. 803, April 8, 1997). The 1997 Rules of Civil Procedure covers civil actions, both special and ordinary; appeals; and provisional remedies, as well as the procedure in Regional Trial Courts, the Court of Appeals, and the Supreme Court.
19 REVISED RULES OF CRIMINAL PROCEDURE (as amended by A.M. No. 00-5-03-SC, October 3, 2000, and by A.M. No. 02-2-07-SC and A.M. No. 05-8-26-SC, October 2, 2005).
20 The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity or information regarding the person, family, home and correspondence of the aggrieved party.
21 The petition for a writ of amparo is a remedy available to any person whole life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity
impartial, and public trial, the right to confrontation; and the right to compulsory process to secure
the attendance of witnesses and the production of evidence.\textsuperscript{22}

Generally, and depending on the gravity of the offense charged, criminal cases in the Philippines
undergo the following ten steps: filing of a complaint or information; preliminary investigation
(except for cases that are punishable by imprisonment of less than 4 years, 2 months, and 1 day);
issuance of a resolution by the prosecutor; issuance of a warrant of arrest by the judge;
arrainment; pre-trial; trial; promulgation of judgment; appeal; and final judgment. They are
discussed briefly, below.

During preliminary investigation, the prosecutor subpoenas the respondent to submit a counter-
affidavit. Affidavits of witnesses and other evidence may likewise be submitted. The prosecutor
may call for a clarificatory hearing, where the parties may be asked to clarify matters in the
affidavit that are vague. However, if the respondent cannot be subpoenaed, or if subpoenaed,
does not submit counter-affidavits within a ten-day period, the investigating prosecutor shall
resolve the complaint based on the evidence presented by the complainant.\textsuperscript{23}

The investigating prosecutor then makes a resolution after considering all the evidence
presented, and submits it for review to the provincial or city prosecutor to decide whether
probable cause\textsuperscript{24} to arrest exists. Upon approval, the resolution is forwarded to the judge. The
respondent may, at this point, subject the resolution to a review by the Department of Justice.\textsuperscript{25}

At the arraignment, the information\textsuperscript{26} is read to the respondent—now referred to as the
“accused”— and the accused is asked to make a plea of “guilty” or “not guilty.” The reading is
made in open court and is done in a language known to the accused. At this stage, the accused
should be assisted by counsel, and if the accused has none, the court assigns a lawyer from the
Public Attorney’s Office [hereinafter PAO] or any member of the Integrated Bar of the Philippine
[hereinafter IBP] as counsel.\textsuperscript{27}

Pre-trial ensues, where the parties agree upon matters regarding plea-bargaining, the stipulation
of uncontroverted facts, and the marking of evidence.

When the accused pleads “not guilty,” the prosecution first presents evidence during trial. The
order is reversed when there is a plea of guilt. The prosecutor represents the state and has

\textsuperscript{22} Const., art. III, § 4, ¶ 2.
\textsuperscript{23} Rules of Court, § 3(d), Rule 112.
\textsuperscript{24} “Probable cause” is to be determined personally by the judge after examination under oath or
affirmation of the complainant and the witnesses he may produce, and particularly describing the
place to be searched and the persons or things to be seized Art.3, Sec. 2 of the Philippine
Constitution; from the perspective of the prosecutor, “probable cause” is a well founded belief that
a crime has been committed and the respondent is probably guilty thereof and is determined in
the preliminary investigation. Rules of Court, § 1, Rule 112.
\textsuperscript{25} Rules of Court, ¶ 5, § 4, Rule112; DEPARTMENT CIRCULAR No. 70 REGARDING 2000 NATIONAL
PROSECUTION SERVICE RULE ON APPEAL; DEPARTMENT CIRCULAR No. 70-A REGARDING DELEGATION
OF AUTHORITY TO REGIONAL STATE PROSECUTORS TO RESOLVE APPEALS IN CERTAIN CASES.
\textsuperscript{26} An information or complaint is defined as a sworn written statement charging a person with an
offense, subscribed by the offended party, any peace officer, or other public officer charged with
the enforcement of the law violated. Rules of Court, § 3, Rule 110.
\textsuperscript{27} Section 7, Rule 116 of the Rules of Court allows the appointment of a non-lawyer—a resident
of the province and of good repute for probity and ability—for the defense of the accused, should
there be no lawyer in the locality.
control over the conduct of the prosecution. The prosecutor calls on witnesses, including in some cases the complainant, to give testimony in open court.

The accused, through his counsel, is given the chance to take part at this stage by conducting cross-examination and re-cross examination of the prosecution witnesses. After the prosecution has presented the principal evidence, the accused conducts direct examination of his witnesses. After cross-examination by the prosecutor, the defense counsel may then conduct re-direct examination on matters that the witness testified to during cross-examination. Both the prosecution and the accused have opportunities to present rebuttal evidence and sur-rebuttal evidence, respectively. Documentary and object evidence are also proffered to the court.

Once the accused has submitted his evidence and rested, the case is now considered submitted for resolution. The judge is then given time to review the evidence presented and to make a decision as to the guilt of the accused. If there is proof beyond a reasonable doubt that the accused has committed the crime charged, the judge must convict the accused and sentence him in accordance with the scale of penalties prescribed by law. If the judge finds the threshold of guilt has not been met, the accused will be acquitted. Acquittals are not appealable. Convictions, however, are appealable to the next higher court.

Katarungang Pambarangay, or Barangay Justice System

In 1978, President Ferdinand Marcos promulgated Presidential Decree 1508, establishing an alternative, community-based mechanism, Katarungang Pambarangay, or Barangay Justice System, [hereinafter BJS], for dispute resolution of conflicts at the barangay level. The BJS was designed not only to decongest the formal courts but also to address inequalities in access to justice, particularly for marginalized populations. New BJS rules, as embodied by Local Government Code of 1991, repealed Presidential Decree 1508. Under the Rules, all disputes between and among residents of the same city or municipality are to be brought to the barangay first for conciliation and mediation, before they are brought before regular courts. Criminal cases, where the imposable maximum penalty is less than one year of imprisonment or a fine of PhP 5,000.00 (approximately USD 116.00), are included in mediation.

28 The private complainant may choose to hire the services of a lawyer to represent him for the civil aspect of the case, which is presumed to be instituted with the criminal case, unless there is reservation on the part of the private complainant to file a separate civil action for damages.

29 Rules of Court, § 7, Rule 117. When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused has pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution of the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

30 Barangay is the smallest political unit in the political system of the Philippines.

31 The objectives of the Decree are to perpetuate and recognize the time-onored tradition of amicably settling disputes among family and barangay members without judicial resources, to promote the speedy administration of justice and implement the constitutional mandate to preserve and develop Filipino culture and to strengthen the family as a basic social institution, to lessen the indiscriminate filing of cases in courts that contributes to the heavy and unjustifiable congestion of dockets, and to relieve the courts of docket congestion and thereby enhance the quality of justice dispensed by the courts.


33 Id., § 408.
The complainant should first lodge a complaint with the barangay, whether in written or oral form. The elected head of the village or barangay, the Punong Barangay, shall, within the next working day, send out a notice to the respondent to inform him of the complaint and to request his appearance before a panel of three mediators. The panel is chosen by the parties from a pool of mediators who comprise barangay residents, called the Lupong Tagapamayapa. The Punong Barangay has 15 days within which to assist the parties in arriving at an amicable settlement. If a settlement is not reached, the disputing parties shall agree to appear before a second panel of mediators, the Pangkat Tagapagkasundo, who are selected by the Punong Barangay from the Lupong Tagapamayapa. The Pangkat Tagapagkasundo shall then continue mediation efforts for the next 15 days from the time of its constitution, extendable for another 15 days. If the parties continue to fail to reach a settlement, the Punong Barangay shall issue a Certification to File Action, which the complainant may now bring to the regular court, together with his complaint. If the complainant forgoes the BJS and goes directly to court, the court will not entertain the case until the complainant has complied with the BJS processes first.

The parties can agree, at any point of the process prior to an agreed settlement of the complaint, to submit the dispute to arbitration by the Punong Barangay or by the Pangkat.

In practice, there are many variations to the processes that are involved in the BJS. In many barangays, there is a lower-level mediation process that happens in the purok, before the case is brought up to the barangay. According to interviews with barangay officials, while there is no procedure set by law for this level of mediation, this additional layer of mediation allows the parties to access even more easily the services within the barangay for mediation. This way, the parties are able to mediate their case before a justice institution that is geographically closer to their homes.

Alternative Dispute Resolution

Alternative Dispute Resolution [hereinafter ADR] in the Philippines, such as the BJS, is a traditional practice that can be traced to pre-colonial times. To regulate ADR and harmonize it with existing modern legal structures, laws were promulgated, such as PD 1508, mentioned above. In 1953, the Philippine Arbitration Law was enacted to supplement the Civil Code provisions on compromises and arbitrations. This law recognized that arbitration is a speedy and an effective method of settling disputes.

The current law on ADR, the Alternative Dispute Resolution Act, was borne primarily from globalization and advances in technology, especially in communications and transportation, that in turn brought with them a rise in commercial transactions, as well as disputes arising from such transactions.

According to this law, it is the policy of the state to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. To achieve this, the use of ADR as a means to achieve speedy and impartial justice and “de-clog” court dockets is encouraged. In promulgating the ADR Act, the state provided the means for the use of ADR as an efficient tool and an alternative procedure for the resolution of

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34 Among the pilot sites, this is true for Barangay Central, Mati City; Barangay Bobon, Mati City; and Barangay 23-A, Davao City. Purok is an even smaller unit than the barangay. While it is not a recognized political unit with elected officials, most barangays have divided their territories into puroks for better administration.
35 REPUBLIC 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 (enacted April 2, 2004, Law No. 9285) [hereinafter the Alternative Dispute Resolution Act].
appropriate cases. The state has enlisted active private sector participation in the settlement of disputes through ADR. ADR procedures include arbitration, mediation, and conciliation.

In 2009, the Supreme Court promulgated the Special Rules of Court on Alternative Dispute Resolution. On December 4, 2009, the Secretary of Justice signed Circular No. 98 as the Implementing Rules and Regulation [hereinafter IRR] of the ADR Act. The IRR, which took effect on December 21, 2009, also established the Office for Alternative Dispute Resolution.

ADR in the context of the latest law and rules was promulgated primarily to address international commercial disputes. Aside from this, this law is still very much in its early stages of implementation, and it is doubtful if any application of the new rules have been experienced or maximized by IPs and Moros in the community.

Code of Muslim Personal Laws

The Muslim Personal Laws in the Philippines, according to history, were first codified during the Sulu Sultanate when the Diwan Tausug was promulgated as the principal personal codex of Sulu. The Sultan of Maguindanao later promulgated the Luwaran sa Maguindanao, a more comprehensive codex around the middle of 18th century.

In 1946, after the Philippines became independent from the United States, several laws were passed that recognized certain aspects of Muslim personal laws. Republic Act 386 or the New Civil Code recognized marriages among Muslims and mixed marriages between Muslims and Christians. There was also a law that recognized divorce among Muslims. In 1971, another law was enacted to extend the applications on Muslim marriages for another ten years after the expiration of the 20-year period stipulated in New Civil Code.

President Ferdinand Marcos promulgated the Code of Muslim Personal Laws [hereinafter CMPL] through Presidential Decree 1083 in 1977. CMPL recognizes the legal system of Muslims in the Philippines as part of the law of the land, codifies Muslim personal laws, and provides for the administration and enforcement of the Code through the establishment of Shari'a courts.

While the CMPL was signed into law in 1977, it could not yet become operational. In 1982, as preparation for the Code’s implementation, the Ministry of Muslim Affairs 4th created the Philippine Shari’a Institute to provide Shari’a legal education for prospective Shari’a bar examinees, law practitioners and judges. In 1983, the Supreme Court approved the “Special Rules of Procedure in the Shari’a Courts” and conducted the first Special Bar Examinations for would-be Shari’a counselors. It was only in 1985 – eight years after its promulgation – that the first Shari’a courts were opened and the CMPL finally became operational.

Indigenous Peoples Rights Act

The Indigenous Peoples Rights Act [hereinafter IPRA] provides for the recognition, the...
protection, and the promotion of the rights of indigenous cultural communities and indigenous peoples.\textsuperscript{42} It is the first law on ancestral domains in the world. IPRA states that development programs, projects, and activities must be developed, taking into consideration the recognition and the protection of ancestral domain/land rights, indigenous peoples’ right to self-governance and empowerment, their right to cultural integrity, and principles of social justice and human rights.\textsuperscript{43}

More specifically, in addition to the right to communal ownership of land, IPRA recognizes the following rights: to remain in their ancestral domains; to be compensated justly and resettled in case of displacement; to enjoy safe and clean air and water; to uphold tribal laws and traditions, including implementation of their own judicial system; to transfer land/property to other members of their community in accordance with their tribal laws; to enjoy the fruits of their communal lands; to exercise self-governance; to be protected in their community and intellectual property; to practice their own religion and ceremonies; to acquire, practice, and preserve indigenous knowledge systems; to enjoy equal rights for indigenous women and children, as similarly enjoyed by other Filipinos; and, to have access to basic services and opportunities to improve their lives.

IPs, in turn, are under a duty to maintain ecological balance and to restore the denuded areas within the ancestral domain. The IPRA also created the National Commission on Indigenous Cultural Communities and Indigenous Peoples, mandated to protect and promote the interests and wellbeing of the Indigenous Cultural Communities [hereinafter ICCs] and IPs, and is composed of seven commissioners belonging to ICCs and IPs appointed by the President.\textsuperscript{44}

As shown above, there is no shortage of laws, rules, and standards in the Philippines. In some cases, the existence of multiple laws creates conflict. For example, many provisions of the Republic Acts contradict the usual application of the formal justice system, and IPRA provisions, and in some cases the CMPL, may run afoof the Rules of Court.

\textit{Informal Justice System}

Each tribe group has its own set of customary laws and its own legal framework. However, whether or not these customary laws still exist and to what extent they are still practiced vary from tribe to tribe. Tribes with strong self-identity are more likely to have preserved their customary laws.

Personal criminal cases, such as murder or injuries, are usually settled under customary law. In instances where these cases reach the formal court, there is often a conflict between both systems because, under the formal laws, criminal cases cannot be settled. However, in some courts the judge will give allowances to the parties if the parties belong to an indigenous group. According to an attorney interviewed, in Davao RTC Branch 15, cases involving IPs are usually dismissed for a lack of interest to prosecute or a lack of available witnesses for the prosecution. The case is settled under customary law, and the parties no longer appear for hearings scheduled in formal court.

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\textsc{Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes} (No. 8371, 1977) [hereinafter IPRA].
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\textsuperscript{42} IPRA, Chap. 1, § 2.
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\textsuperscript{44} Available at: tricap10.webs.com/indigenouspeoplesact.htm.
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While there appears to be enough space in the legal framework for informal justice systems to thrive in indigenous and Moro communities, thereby creating pluralist legal systems, the interface between both the formal and informal justice systems must be fleshed out more.

Recommendations

**Formal Justice System**

- Further research on the laws that establish citizens’ rights and duties, and available mechanisms, should be done. While it appears that many laws exist, the issue that needs attention is how these laws are operationalized.

**Informal Justice System**

- More research and knowledge development of informal justice systems are necessary. This recommendation comes with the caveat that IPs may be weary of revealing their culture to outsiders because of perceived discrimination against them. Some believe that outsiders look down on their culture because they think that traditional ways are inferior.
Element II. Legal Knowledge

Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.

Conclusion

In general, citizens’ familiarity with how to access legal information is poor. Even with the availability of modern technology, most citizens do not know how to, or do not even consider, accessing legal information on their own. Even if citizens possess relevant legal information, few can understand it. The majority of citizens, both in urban and rural areas, are knowledgeable about the general functions of formal justice institutions, and, to a certain extent, the informal justice institutions in their respective communities. However, few are familiar with more specific aspects of justice institutions—for example, the functions and roles of the court and the prosecutor. Most citizens who have a working knowledge of these institutions are those who have been in contact with the justice system.

The lack of access to good information is an obstacle to having legal knowledge. Many citizens live far from the urban centers, where the majority of justice institutions are located; the farther citizens are from urban centers, the less likely they will have access to information through media or come into contact with justice sector actors in the formal justice system, the agencies of the government mandated to respond to the needs of their sectors, and civil society. Poor levels of education and literacy also prevent citizens from obtaining information.

Government efforts to promote legal knowledge are limited. The National Commission on Indigenous Peoples focuses its efforts to promote legal education on community leaders rather than citizens; thus, community members typically depend on their leaders for information and decision-making. What information dissemination the National Commission on Indigenous Peoples does provide to citizens is limited in scale. As a result, legal knowledge of indigenous peoples, including familiarity with access to information, the roles and the functions of lawyers, and the mechanics of the formal justice system, remains low. The National Commission on Muslim Filipinos launched a Community Legal Education Program in August 2010. With this launch, the National Commission on Muslim Filipinos also announced that it would engage in training community-based paralegals. Although the efforts of the National Commission on Muslim Filipinos are commendable, their legal education initiatives have focused mainly in serving Metro Manila, and its reach has not extended to the provinces.

The Kinaiyahan Foundation, Inc. is one of the few civil society organizations that has an active presence in indigenous communities. Indigenous leaders credit the organization with most of the information they have on indigenous peoples’ rights as well as rebuilding their confidence and pride in their local customary laws. The Alternative Law Groups, Inc., as a coalition of 19 progressive non-government organizations, use developmental, alternative, feminist, strategic and political legal interventions to empower the poor and the marginalized. These organizations have distinct programs for developmental legal assistance concerned with the pursuit of public interest, respect for human rights and promotion of social justice, including awareness-raising and skills-building on the laws and the justice system. As a coalition, ALG members offer diversity in terms of expertise in issues and services while employing common strategies. Each member has a clear physical base and clearly defined organizational structures for its operations, and established sustained links with law schools. Of the 19 NGOs, 6 have programs in Mindanao. 45

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45 They are LRC; PANLIPI; PBPF; PLRC; PROCESS-Panay; and SALIGAN.
Analysis

In order to obtain solutions to their justice problems under the legal framework, citizens must have legal knowledge – an understanding of their basic rights and duties and the steps and strategies they need to employ to solve their justice problems, or at least that they have been wronged in some way. At the same time, justice institutions have a responsibility to provide good information to citizens who rely on their services. In this section, we discuss to what extent citizens are able to acquire the necessary knowledge, understanding, awareness, and ability to exercise their rights, supported by responsive justice institutions.

In general, citizens’ familiarity with how to access legal information is poor. Even with the availability of modern technology, most citizens do not know how to, or do not even consider, accessing legal information on their own. Even if citizens possess relevant legal information, few can understand it. As one lawyer stated, “Anywhere in the world, laws are rarely simple and easy to understand . . . which is why there is a need for people in the legal community.”

The majority of citizens, both in urban and rural areas, are knowledgeable about the general functions of formal justice institutions, and, to a certain extent, the informal justice institutions in their respective communities. However, few are familiar with more specific aspects of justice institutions—for example, the functions and roles of the court and the prosecutor. Most citizens who have a working knowledge of these institutions are those who have been in contact with the justice system.

Obstacles That Prevent Citizens from Having Legal Knowledge

The lack of access to good information is an obstacle to having legal knowledge. Citizens of Barangay Kagawad, in Marilog, who regularly attend meetings and gatherings in the community are aware of the existence of the formal justice institutions and their offices. Those who live in remote areas, however, have no access to information. Travel from the hinterlands to the town center of Marilog takes approximately half a day, on trails going up and down the mountain. Citizens who live in the hinterlands have no electricity, running water, or access to any media.

Poor levels of education and literacy also prevent citizens from obtaining information. According to a barangay official interviewed, the literacy rate in Marilog is approximately 10%. Only citizens who can read are likely to be informed about the formal legal system or understand information distributed by the NCIP. Because of the remoteness of communities in Marilog, the level of education of the community is very low. For the few who have managed to learn how to read, there is no access to information. Only a few have access to the media because there is no electricity, and they cannot afford to subscribe to television, radio or print journalism.

Government Efforts to Promote Awareness of Laws

National Commission on Indigenous Peoples

According to an interview with officers of the National Commission on Indigenous Peoples [hereinafter NCIP], the NCIP focuses its efforts to promote legal education on community leaders rather than citizens; thus, community members typically depend on their leaders for information and decision-making. What information dissemination the NCIP does provide to citizens is limited

46 The literacy rate given by the barangay official in Marilog is starkly different from official sources on literacy in Davao Region, which ranges from 82% to 90% or higher. The education center of Davao Region, in particular, Davao City, has a very high literacy rate, with studies from the Department of Science and Technology indicating the literacy rate to be as high as 98.3%. To explain this discrepancy, it is likely that most of the illiterate in Davao Region are the IPs who live in the hinterlands, particularly in Marilog.
in scale. For example, during delineation of ancestral domain and when “Free, Prior and Informed Consent” [hereinafter FPIC] is sought, the NCIP is required to conduct Information, Education, and Communication [hereinafter IEC] on citizen rights. This is also the case when there is a particular project to be implemented or proposed within the ancestral domain.

The NCIP does not have IEC as a program but can only incorporate it in some of its activities because of budgetary constraints. As a result, legal knowledge of IPs, including familiarity with access to information, the roles and the functions of lawyers, and the mechanics of the formal justice system, remains low. The informal justice system is most familiar to IPs, as it is part of their culture and systems, and most accessible to them. Two datu47 of the IPs in Marilog shared during interviews that, initially, they were excited about the existence of the NCIP; however, their experience with the institution “quickly soured them of hopes that the NCIP might be the answer to the troubles of the IPs.”

National Commission on Muslim Filipinos

The National Commission on Muslim Filipinos [hereinafter NCMF] launched a Community Legal Education Program [hereinafter CLEP] in August 2010. With this launch, the NCMF also announced that it would engage in training community-based paralegals. In conjunction with the Legal Support for Detainees Program [hereinafter LSDP], in which the NCMF sponsors visits with women detainees in several jails and reviews the detainees’ cases, the paralegal training program was intended to “lessen the number of detainees in [the jail system… Many of them [would not be] there in the first place if they [had been] knowledgeable of their rights.”

Although the efforts of the NCMF are commendable, like the LSDP, CLEP’s initiatives have focused mainly in serving Metro Manila, and its reach has not extended to the provinces.

Civil Society Efforts to Enhance Citizens’ Legal Knowledge

The Kinaiyahan Foundation, Inc. is one of the few civil society organizations—if not the only—that has an active presence in the indigenous communities in Marilog. The indigenous leaders interviewed in Marilog credit the organization with most of the information they have on indigenous peoples’ rights as well as rebuilding their confidence and pride in their local customary laws.

Alternative Law Groups: Legal Education and Paralegal Formation

The Alternative Law Groups, Inc. [hereinafter ALG] is a coalition of 19 progressive non-government organizations [hereinafter NGOs]48. ALG members use developmental, alternative,

47 A Datu is the title of a traditional political leader, commonly used by both Moros and un-Islamized indigenous peoples.
48 ALG members include: Ateneo Human Rights Center [hereinafter AHRC]; Alternative Law Research and Development Center, Inc. [hereinafter ALTERLAW]; The Albert Schweitzer Association, Philippines, Inc. [hereinafter ASAP]; Balay Alternative Legal Advocates for Development in Mindanaw, Inc. [hereinafter BALAOD- Mindanaw]; Children’s Legal Bureau [hereinafter CLB]; Environmental Legal Assistance Center, Inc. [hereinafter ELAC]; EnGendeRights, Inc. [hereinafter EnGendeRights]; Free Rehabilitation, Economic, Education and legal Assistance Volunteers Association, Inc. [hereinafter FREELAVA]; KAISAHAN Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan [hereinafter KAISAHAN]; Kanlungan Center Foundation, Inc. [hereinafter KANLUNGAN]; Legal Rights and Natural Resources Center, Inc. – Kasama sa Kalikasan/Friends of the Earth - Philippines – LRC-KSK/FOEI-Phils. [hereinafter LRC]; Tanggapang Panligal Ng Katutubong Pilipino [hereinafter PANLIPI]; Paglilingkod Batas Pangkapatiran Foundation [hereinafter PBPF]; Pilipina Legal Resources Center, Inc. [hereinafter PLRC]; Participatory Research Organization of Communities and Education Towards Struggle for Self-Reliance – Panay [hereinafter PROCESS-Panay];
feminist, strategic and political legal interventions as a means to empower the poor and the marginalized. These organizations have distinct programs for developmental legal assistance concerned with the pursuit of public interest, respect for human rights and promotion of social justice. As a coalition, ALG members offer diversity in terms of expertise in issues and services while employing common strategies. Each member has a clear physical base and clearly defined organizational structures for its operations, and established sustained links with law schools. Of the 19 NGOs, 6 have programs in Mindanao.

Education is one of the major components of ALG members' programs. Based on a belief that the poor and the marginalized can best defend their rights if they are empowered with legal knowledge, the education program engages in activities that equip them with necessary knowledge about relevant laws. While the program is primarily directed towards the education of marginalized groups, recent education activities have targeted policymakers and implementers, including judges, local government officials, and police officers.

A major component of ALG's education program is paralegal formation. The objective of paralegal formation is to develop within organizations or communities of marginalized sectors pools of paralegals who will have the knowledge and capacity that will enable them to respond to the legal needs of their organizations and communities. In 2006, the ALG organized a National Paralegal Conference, which gathered more than 100 paralegals from different sectors to discuss common issues in accessing the justice system. As the first national gathering of grassroots paralegals, the conference was able to raise the profile of paralegalism at the national level and to enhance understanding of paralegalism among government officials and paralegals themselves. Visiting the Supreme Court, the paralegals presented a manifesto on access to justice issues containing recommendations to the Supreme Court on improving access to justice.

The challenge of paralegalism is, while paralegals receive recognition from CSOs working in the community, they lack any status in the formal justice system. There are also a limited number of paralegals. A barangay official in Marilog expressed that he was interested in supporting paralegal trainings but admitted that few citizens in his barangay would qualify to be trained as a paralegal.
Element III. Advice and Representation

*Citizens can access the legal advice and representation necessary to solve their justice problems.*

**Conclusion**

The Constitution provides measures that allow for adequate legal representation and assistance for citizens, and such legal representation and assistance should not be denied to any person by reason of poverty. Thus, the state is mandated to provide competent and independent counsel to the indigent accused.

In the formal justice system, the cost of hiring a private lawyer—estimates range from 10,000 PhP (USD 232.56) to 50,000 PhP (USD 1,162.79)—is out of reach for most citizens who earn on average 1,403 PhP (USD 32.63) per month. The Integrated Bar of the Philippines obligates lawyers to render service to indigent parties through its Legal Aid Program, which is implemented nationally by its chapters. The Integrated Bar of the Philippines has not, however, been able to disseminate information about its legal aid programs to citizens the programs are intended to serve. The majority of citizens are unaware of the legal aid programs provided by the Integrated Bar of the Philippines and continue to believe that lawyers cater only to those with money, tend to concentrate their practice in city centers, and rarely serve in the hinterlands, if at all.

The state provides representation to poor clients through the Public Attorney’s Office, which has significantly provided legal services throughout the country. The Public Attorney Office’s mission reflects the need to serve marginalized groups in seeking justice and accessing courts. Citizens are familiar with the services of the Public Attorney’s Office, and barangay and government leaders refer their constituencies to the Public Attorney’s Office when they are in need of legal advice or representation. However, the average caseload per Public Attorney numbers in the hundreds per year, and with such caseloads, the quality of service is likely to suffer.

Legal aid is also mandated in law schools. Law students are required to undergo a law student practice under the supervision of a lawyer. Efforts by law schools to improve access to legal representation have not, however, yet achieved that purpose. Alternative Law Group member-organizations also handle public interest cases. More significant, though, is the work of the Alternative Law Groups in developing community-based paralegals who readily assist communities with their legal issues and concerns. While Alternative Law Group programs on the formation of community-based paralegals are laudable, they are limited in scope. Paralegals might be perceived to have limited knowledge of the law and procedures, but are capacitated to engage in the legal system. At the level of the community, paralegals are the most accessible resource in terms of providing information on law and mediating conflicts.

In traditional justice systems, the litigants themselves appear before a council of elders, with limited representation through the eldest member of the family, in some cases. Appearing before these customary elders, litigants themselves can explain the case, reason out their defenses and argue their positions without the necessity of the technical expertise of a litigator, but the passionate discourse of one affected by the case. When indigenous and Moro peoples access the formal court systems, though, the National Council on Muslim Filipinos and the National Commission on Indigenous Peoples, discussed above in Element 2, provide representation to them, albeit such representation has yet to pass the test of adequacy and competency.

Access to legal advice and representation for the poor and marginalized, particularly for Moros and IPs is limited in remote areas far from city centers. Especially in communities where the cultural heritage of Moros and IPs is still practiced, the idea of a lawyer is non-existent, except for the few who have been brought to appear in a case in the formal justice system, and forced to engage the services of a lawyer.
Analysis

Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.\(^{53}\)

Even if citizens have legal knowledge, they will likely struggle to navigate justice institutions on their own. Citizens should be able to avail themselves of advice and representation, including free legal advice and representation, when confronted with a justice problem. Governments bear the responsibility to provide legal services to poor citizens. Where they cannot, other organizations, such as civil society organizations, pro bono lawyers, and even paralegals may provide these services. In this section, we explore the legal, political, and institutional factors that affect whether citizens can access necessary legal advice and representation.

The Constitution provides measures that allow for adequate legal representation and assistance for citizens, and such legal representation and assistance should not be denied to any person by reason of poverty.\(^{54}\) Thus, the state is mandated to provide competent and independent counsel to the indigent accused. Article VIII, Section 5 of the Constitution grants the Supreme Court the power to 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 under-privileged. The Rules of Court instruct that attorneys are obligated not to reject the cause of the defenseless or oppressed for any reason.\(^{55}\) Further, if, upon investigation, it appears that a party is destitute and unable to employ an attorney, a court may assign an attorney to render professional aid free of charge to any party in a case.

Republic Act 7438\(^ {56}\) provides that a public officer must inform an individual who is arrested or detained of his right to remain silent and to have competent and independent counsel, “preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation.”\(^ {57}\) If a suspect cannot afford the services of his own counsel, the investigating officer must provide him with competent and independent counsel. The law further provides that, before a custodial investigation report is signed (or thumb-marked, if the suspect does not know how to read and write), it shall be read and adequately explained to him by counsel in a language known to the suspect. Failure to do so renders the investigation report null and void. In the absence of any lawyer, no custodial investigation shall be conducted and the investigating officer can only detain the suspected person in accordance with the allowable periods for legal detentions.\(^ {58}\)

The majority of citizens who were interviewed believes that only those who can afford a lawyer can go to court, and, if a pro bono lawyer represents a citizen, the citizen will suffer in quality of representation, compared to a litigant who has fully paid for legal services.

The following table illustrates the minimum legal fees associated with two typical cases: first, a civil case brought by an IP to protect his ancestral domain from encroachment, and, second, a criminal case in which a Moro hires a lawyer to defend him.

\(^{53}\) Const., § 11, art. III (Bill of Rights).
\(^{54}\) Const., § 12 (1), art. III (Bill of Rights).
\(^{55}\) Rules of Court, § 20, Rule 138.
\(^{57}\) Id., § 2, ¶ b.
\(^{58}\) Const., § 14, ¶ 2, art. III (Bill of Rights). This is operationalized by criminalizing the act of “delay in the delivery of detained persons to the proper judicial authorities” under Art. 125 of the Revised Penal Code.
<table>
<thead>
<tr>
<th>Type of Fee</th>
<th>For a member of an <strong>IP</strong> who will file a land conflict case to protect his/her <strong>ancestral domain</strong> from encroachment</th>
<th>For a <strong>Moro</strong> who would secure the services of a lawyer to defend his <strong>criminal case</strong> accusing him of a crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance Fee</td>
<td>PhP 10,000.00 (USD 232.56)</td>
<td>PhP 30,000.00 (USD 697.67)</td>
</tr>
<tr>
<td>Preparation of Proper Pleadings</td>
<td>PhP 3,000.00 (USD 69.76)</td>
<td></td>
</tr>
<tr>
<td>Appearance fees, at a minimum of 10 hearings</td>
<td>PhP 10,000.00 (USD 232.56)</td>
<td>PhP 10,000.00 (USD 232.56)</td>
</tr>
<tr>
<td>Preliminary investigation</td>
<td></td>
<td>PhP 3,000.00 (USD 69.76)</td>
</tr>
<tr>
<td><strong>Total amount</strong></td>
<td>PhP 23,000.00 (USD 534.88)</td>
<td>PhP 43,000.00 (USD 1,000.00)</td>
</tr>
</tbody>
</table>

The above amounts merely indicate the minimum charges in a civil case and a criminal case. The reality may reflect higher amounts. IP and Moro litigants interviewed describe securing a lawyer as something that “only the rich can afford,” and state acceptance fees are typically a minimum of PhP 50,000.000 (USD 1,162.79), much higher than the above quote from the IBP Davao City chapter. The average daily minimum wage in the Davao region is PhP 260.00— PhP 291.00 (USD 6.00— USD 6.77).

**Formal Justice System**

**Integrated Bar of the Philippines**

The Integrated Bar of the Philippines [hereinafter IBP] is an official body composed of individuals whose names appear in the Roll of Attorneys of the Supreme Court. Rule 139-A of the Rules of Court provides that the fundamental purpose of the IBP is to elevate the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more responsibly. The Philippine Supreme Court issued guidelines on the conduct of lawyers, the **Code of Professional Responsibility** [hereinafter CPR]. Canon 14 of the CPR states that a lawyer shall not refuse his or her services to the needy and shall not decline an appointment as **counsel de oficio** or as **amicus curiae** or a request from the IBP for rendition of free legal aid. When a lawyer accepts a **pro bono** case, he shall observe the same standard of conduct governing his relations with paying clients. Canon 20 of the CPR emphasizes that, even if a person can afford to pay the services of a lawyer, a lawyer shall charge only fair and reasonable fees.

Aside from the mandate of the individual lawyer through his oath as a lawyer, the IBP carries out its objective of discharging its public responsibility more responsibly through the **National Committee on Legal Aid** [hereinafter NCLA]. Under such office, each of the 83 IBP Chapters has its own local or chapter legal aid committee. The IBP Legal Aid Program is divided into two parts: the **Traditional Legal Aid Program**, which focuses on legal counseling and representation for the poor. The other part of the legal aid program, the **Development Legal Aid**, which, as the name suggests, engages in services directed at legal empowerment of the poor, such as trainings for paralegals.

IBP has detailed guidelines on establishing and operating legal aid offices in all its chapters. According to its guidelines, the spirit of public service should underlie all legal aid offices. The problem, however, centers on how each chapter implements its legal aid program. According to one private lawyer who once was a member of the Cebu City IBP Chapter, the Cebu City IBP Chapter’s legal aid program was well organized with lawyer-members classified according to their expertise on environmental, labor, or other public interest cases. A committee was set up to
distribute these cases to lawyers, and lawyers received a modest stipend from the IBP for their pro bono representation. This is in stark contrast to the legal aid program in the IBP Davao chapter, in which only one lawyer handles all legal aid cases.

The IBP has not been able to disseminate information about its legal aid programs to citizens the programs are intended to serve. The majority of citizens are unaware of the legal aid programs provided by the IBP and continue to believe that lawyers cater only to those with money, tend to concentrate their practice in city centers, and rarely serve in the hinterlands, if at all. The few private lawyers who render free legal assistance have been involved previously with an alternative law group or a legal clinic at a law school. A judge shared, though, that an IBP Chapter usually offers free legal consultations during annual fiesta, a festivity to commemorate the founding of a barangay, a municipality, or its patron saint, and some lawyers provide free legal services, often to their relatives.

Public Attorney’s Office

The Public Attorney’s Office [hereinafter PAO] is the principal law office of the government extending free legal assistance to indigent persons in criminal, civil, labor, administrative, and other quasi-judicial cases. Section 6 of the PAO law provides that clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.

The PAO’s mission reflects the need to serve marginalized groups in seeking justice and accessing courts. Muslim citizens and IPs point to the services of PAO whenever they think of free legal services. Even Punong Barangays and leaders of government offices refer their residents and constituencies to the PAO when they are in need of legal advice or representation. According to them, PAO lawyers are culturally sensitive and familiar with the legal issues of Moro and indigenous communities. A trial court judge also expressed satisfaction with how PAO lawyers prepare for their defense.

One problem, though, lies with the perception by litigants of PAO lawyers as young and inexperienced, and thus providing inadequate representation. Citizens’ comments to this effect indicate that they were dissatisfied by the performance by PAO lawyers in court, such as on direct and cross-examination of witnesses and in arguments before the court. As a PAO lawyer observed, the lawyer-client trust needs to be cultivated more to fully gain citizens’ trust. Further, a citizen’s dissatisfaction with his PAO lawyer may be related to his lack of knowledge of the justice system and court procedures. Increasing citizens’ legal knowledge thus becomes essential in order for citizens to appreciate the work of the PAO.

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59 Republic Act Reorganizing and Strengthening the Public Attorney’s Office (PAO), Amending for the Purpose Pertinent Provisions of Executive Order 292, Otherwise Known as the “Administrative Code of 1987,” as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor (No. 9406) [hereinafter PAO law], § 2.

60 PAO law, § 6.

61 “The [PAO] exists to provide the indigent litigants, the oppressed, marginalized and underprivileged members of the society free access to courts, judicial and quasi-judicial agencies, by rendering legal services, counseling and assistance in consonance with the Constitutional mandate that “free access to courts shall not be denied to any person by reason of poverty” in order to ensure the rule of law, truth and social justice as components of the country’s sustainable development.” PAO Mission, available at: http://www.pao.gov.ph.
In its Accomplishment Report for 2010, the PAO noted the following clients served:

<table>
<thead>
<tr>
<th>Clients Assisted and Cases Handled</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of clients assisted</td>
<td>4,802,494</td>
</tr>
<tr>
<td>Total number of cases handled</td>
<td>632,524</td>
</tr>
<tr>
<td>Average number of clients assisted by each lawyer</td>
<td>3420</td>
</tr>
<tr>
<td>Average number of cases handled by each lawyer</td>
<td>452</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Number of Winning Appealed Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquittals from Reclusion Perpetua 62</td>
</tr>
<tr>
<td>Acquittals from Reclusion Temporal 63</td>
</tr>
</tbody>
</table>

| Total No. of Winning Appealed Civil and Special Cases | 175 |
| Acquittals and Other Favorable Dispositions | 148,467 |

<table>
<thead>
<tr>
<th>Accused benefited from:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Acquittal</td>
<td>12,562</td>
</tr>
<tr>
<td>B. Demurrer to evidence granted</td>
<td>1,562</td>
</tr>
<tr>
<td>C. Case provisionally dismissed</td>
<td>40,029</td>
</tr>
<tr>
<td>D. Case permanently dismissed</td>
<td>31,151</td>
</tr>
<tr>
<td>E. Motion to quash granted</td>
<td>1,142</td>
</tr>
<tr>
<td>F. Released on bail</td>
<td>23,439</td>
</tr>
<tr>
<td>G. Motion for release on recognizance granted</td>
<td>9,116</td>
</tr>
<tr>
<td>H. Released in accordance with Art. 29, RPC 64</td>
<td>7,483</td>
</tr>
<tr>
<td>I. Granted with probation</td>
<td>4,952</td>
</tr>
<tr>
<td>J. Released on other grounds</td>
<td>17,031</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Outreach Activities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Inquest Investigation &amp; Custodial Interrogation</td>
<td></td>
</tr>
<tr>
<td>• Total no. of clients assisted</td>
<td>93,749</td>
</tr>
<tr>
<td>2. Nationwide Lawyers’ Jail Visitation</td>
<td></td>
</tr>
<tr>
<td>• No. of prisoners interviewed</td>
<td>201,220</td>
</tr>
<tr>
<td>• No. of prisoners provided with assistance</td>
<td>220,013</td>
</tr>
</tbody>
</table>

The average caseload per PAO lawyer is 452 cases per year, which is large. With a caseload as heavy as this, the quality of service is likely to suffer.

**Law Student Practice Rule**

Under Rule 138-A of the Rules of Court, a law student may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school. The law student is required to have successfully completed his third year of a regular four-year prescribed legal curriculum and

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62 *Reclusion perpetua* is an afflictive penalty that literally means “perpetual incarceration.” Article 27 of the Revised Penal Code states that “any person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon.”

63 According to Article 27 of the Revised Penal Code, the penalty of *reclusion temporal* shall be from twelve years and one day to twenty years.

64 Article 29 states that offenders who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, save for some exceptions.
enrolled in a recognized law school’s clinical legal education program approved by the Supreme Court. A member of the IBP must supervise the law student’s appearance in court, and sign any documents filed with the court. The privileged communications rule between attorney and client shall apply to similar communications made to or received by the law student, acting for the legal clinic. Similarly, the law student shall comply with the standards of professional conduct governing members of the Bar, and failure of an attorney to provide adequate supervision of the student’s practice may be a ground for disciplinary action.

Citizens, however, were not familiar with these types of services provided by law schools in their area. Further, in Mati City, there are no law schools, through which legal advice and representation is possible.

**Mandatory Legal Assistance for Lawyers**

As part of its mandate to promulgate rules to the admission to the practice of law and the integrated bar, the Supreme Court requires lawyers to perform legal aid service. Bar Matter No. 2012, Rule on Mandatory Legal Aid Service [hereinafter Rule on Mandatory Legal Service], issued on February 10, 2009, seeks to enhance the duty of lawyers to society as agents of social change and to the courts as officers by helping improve access to justice. Under the rule, practicing lawyers are obligated to render free legal aid services in all cases involving indigent citizens, where the assistance of a lawyer is needed. A lawyer is required to provide 60 hours of free legal services, approximately 5 hours per month, to indigent clients per year. The Supreme Court ultimately suspended the implementation of the Rule on Mandatory Legal Service after lawyers’ protests against the rule. Since its suspension, the Supreme Court has tasked the IBP to consult its chapters on their proposed revisions to the Rule on Mandatory Legal Service.

**Legal Representation for Moros**

On January 30, 1987, Executive Order 22-A was issued creating the Office of Muslim Affairs [hereinafter OMA]. OMA’s powers and functions include the provision of such services as legal assistance, medical aid, relief, and other forms of assistance to uplift Muslim communities. The Legal Service Office of OMA shall be responsible for providing Muslim Filipinos with the legal education and assistance in case of litigation involving their persons or interests. Republic Act 9997, signed on February 10, 2010, created the National Commission on Muslim Filipinos [hereinafter NCMF], replacing the functions of the OMA.

Legal services provided, however, by the NCMF are not well-known among Moro communities. For them, they have not heard of OMA or the NCMF providing legal services, either through legal representation or legal education. In an interview with an NCMF official, he admitted that their legal services are limited because of budgetary constraints, with 77% of the budget allocated to personnel services and the rest spent on operations. In the Davao Region, there is only one lawyer and three non-lawyer legal officers. While there are private lawyers who handle cases related to issues affecting Muslim communities, Muslim citizens prefer representation by a Muslim lawyer who presumably can understand their situation and argue their cases better before the courts.

Emerging trends, though, point to young Muslim professional lawyers establishing non-profit organizations to provide free legal assistance to Muslims, such as the Manila-based Muslim Legal Assistance Foundation [hereinafter MUSLAF] and a Mindanao-based Bangsamoro Lawyers Network [hereinafter BLN]. They work on human rights violations committed against Moros,

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65 E.O. 22-A, § 5(c).
66 E.O., § 14.
67 REPUBLIC ACT CREATING THE NATIONAL COMMISSION ON MUSLIM FILIPINOS DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES AND APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES (No. 9997, February 10, 2010).
providing emergency legal responses during illegal arrest, detention, or torture. Their work, though, has yet to generate familiarity among Moro communities.

**Informal Justice System**

**IPs**

The IRPA provides that IPs shall have the right to use traditional justice institutions to adjudicate disputes. The NCIP has jurisdiction over claims and disputes involving IPs, and all cases pertaining to the implementation, enforcement, and interpretation of IPRA. Parties to a dispute must exhaust remedies under customary law before initiating a case before the NCIP. NCIP personnel interviewed claim that the policy has been strictly implemented and enforced, and that, when disputes are elevated from the community level to the NCIP Regional Office, these are remanded to the community for application of the customary laws, in order to ensure the exhaustion of all possible options for settlement at their tribes. Most cases before the NCIP involve the presence of a non-IP as the other party.

At the NCIP, there are lawyers who assist IPs when IPs face charges or complaints or have complaints filed before the NCIP Regional Hearing Officer. These lawyers represent IPs pro bono, but they only represent them in cases that affect the ancestral domain. Cases involving only a few IPs are not accepted, unless they involve a tribal leader and the outcome of his criminal case affects the ancestral domain. Under customary law, the eldest member of the litigant’s clan provides representation.

For IPs, their customary laws are deemed sacred. Respect is manifested by following what the council of elders has agreed upon or the parties have settled on. A citizen who raises a similar matter of a case that was already settled before the council of elders is subject to contempt by the whole tribe. The tribe itself considers it taboo to discuss anything already resolved through the customary justice system.

An NGO worker describes the traditional justice system of IPs as “a hierarchical system of governance.” Members of the tribe respect their tribal chieftain, and dare not question the chieftain’s decisions. Similar to the traditional system of governance, a council of elders typically heads the informal justice system, and the decision of the council, or any settlement made at the level of the council, should be given the heaviest weight of respect. In terms of advice and representation, IPs receive advice and representation from their relatives.

**Moros**

For the Moros, their own justice system is linked with their religious beliefs and traditional practices. Traditional justice system for Muslim communities still abound in the presence of religious leaders such as the imam, *ulama* and *datus*, acting as arbitrators or mediators.

Representation in these traditional justice mechanisms happens through the eldest member of the family who acts as counsel on behalf of their relative-litigant. For most of them, this traditional system of justice is the more preferred mode of settling disputes because it is less costly and takes less time to resolve cases than the formal justice system, and does not make disputants “wash their laundry in public.”

The CMPL was enacted so that Islamic law and its principles of equity and justice, to which the Filipino Muslim communities adhere, can provide an essential basis for the fuller development of Muslim communities.

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69 CMPL, Preamble, ¶ 2.
**Community-based Paralegals**

There is no law recognizing the paralegal as a professional. However, the alternative practice of law strives to develop paralegals in the community. Community-based paralegals undergo training on relevant laws of the sector in which they specialize, are able to explain specific laws to community members, and serve as a first response to disputes involving community members’ rights. Depending on the amount of training they undergo, paralegals may also assist in drafting simple forms and collecting information to establish the facts of the case, as well as securing evidence.

The role of paralegals in their communities has been significant in terms of addressing immediate legal issues and concerns, as well as multiplying the work of ALGs at the community level. The paralegal can provide legal literacy sessions, refer and assist community members to access the services of different local government units and national government agencies, mobilize community support to common issues relating to their area, and draft resolutions and affidavits to be presented to appropriate offices. A former ALG lawyer interviewed shares that the work that community-based paralegals do lightens the burden for lawyers and, in some cases, even complements the work that lawyers do.

There are limitations, though, on the work of paralegals. They cannot appear before the Regional Trial Court and higher courts. A judge relates that a non-lawyer may appear in a Municipal Trial Court, especially if there are no available lawyers available to represent a person. But he opines also that this might not be true anymore as there are already lawyers in every court through the presence of the PAO. Paralegals can appear before quasi-judicial agencies such as the National Labor Relations Commission [hereinafter NLRC] and the Department of Agrarian Reform [hereinafter DAR]. The NCIP allows non-lawyers to appear as representative of IPs, but discourages this practice for fear that the non-lawyer might not render adequate representation. The NCIP lawyer handles such representation, if the IP cannot afford one.

**Recommendations**

- The Mandatory Legal Aid Service for lawyers, expanding the concept of the practice to law to include litigation, as well as legal education, research and advocacy, should be implemented.
- The free legal aid programs of the PAO, law school-based law clinics and law student practice, and the ALG, should be popularized, along with the work of ALGs, focusing on specific marginalized sectors, expanding the traditional concept of a lawyer beyond litigation, and exhausting other avenues for conflict resolution.
- The work of community-based paralegals should be mainstreamed, paralegals should be recognized for the work they do in representation before quasi-judicial bodies, and paralegal training programs should be accredited.
- Technical aspects of court procedures should be made simple for citizens to understand. Indigenous justice systems should be strengthened, and research should focus on self-representation of litigants.
Element IV. Access to a Justice Institution

Justice institutions exist, whether formal or informal, which are affordable and accessible, and process cases in a timely manner.

Conclusion

The Constitution allows the Supreme Court to promulgate such rules that provide for a simplified and inexpensive procedure for the speedy disposition of cases. In practice, courts in the formal justice system are not accessible, typically located in the town centers and far from Moro and IP communities. Accessing them entails significant costs, and delays are the norm with infrequent hearings and many postponements. Further, the procedures on trial are complex, the language used is strange in its legalese, and how the judge, lawyers and court personnel comport themselves adds to a perception that the courts are inaccessible. The major hurdle is the litigants’ lack of trust on the actors in the formal system. Many citizens complain of the low level of gender sensitivity in the courts and in the justice system, and the prevailing bias against women. One notable exception is the BJS, which serves as an interface between the informal and formal justice systems.

The informal justice system is perceived to be more accessible than the formal justice system, as it is affordable and non-threatening, and processes cases quickly. Costs in engaging the system are few, sometimes including the payment of penalties, where livestock and monetary considerations are involved. Physical accessibility is typically not a problem as the venue of the conflict resolution is held locally. It is less threatening as the council of elders is respected in the communities, and litigants can express their views in a language with which they are familiar. The procedures are simple enough that parties understand. Disputes are resolved at most a month’s time; hence, delay is not a problem in the informal justice system.

Analysis

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.\(^{70}\)

In this section, we analyze the extent to which citizens are able to use justice institutions to solve their justice problems. We consider whether citizens are able to afford the costs of bringing a justice problem before the institution, and whether the justice institution is physically accessible and processes cases in a timely manner.

Formal Justice System

The Constitution allows the Supreme Court to promulgate such rules that provide for a simplified and inexpensive procedure for the speedy disposition of cases. Republic Act 6033\(^{71}\) requires courts to give preference to criminal cases involving indigent litigants. Trial in these cases shall commence within three days from arraignment, and no postponements of hearings shall be granted, with limited exception. Prosecutors are also required to conduct a preliminary investigation in a criminal case within three days from filing. Republic Act 6034\(^{72}\) provides that any indigent litigant may, upon motion, ask for an adequate travel allowance to enable him and his witnesses to attend the hearing of a criminal case. However, these laws giving preference to indigent litigants fail to be implemented. Access to the formal justice system is still unaffordable, inaccessible, threatening and characterized by delays and postponements.

\(^{70}\) Const., § 16, art. III (Bill of Rights).

\(^{71}\) REPUBLIC ACT (No. 6033, August 4, 1969) [hereafter RA 6033].

\(^{72}\) REPUBLIC ACT (No. 6034, August 4, 1969) [hereinafter RA 6034].
Accessibility

The Supreme Court's Blueprint for Action of the Judiciary identified basic sector access as an obstacle to access to justice. It states that,

[the courts are perceived to be inaccessible especially by the marginalized sectors. The inaccessibility covers both the judicial processes and the physical layout of the Halls of Justice . . . . Another constraint in communicating with the basic sectors is the issue of language. The [ordinary citizen or] common tao does not fully understand the law and court procedures because these are written in English and proceedings are in the same language. Hence, questions and answers during trial have to be translated. Litigants have no recourse but to trust what their lawyers say in court even if the latter are unable to adequately explain what is happening.

The procedures on trial are complex, the language used is strange in its legalese, and how the judge, lawyers and court personnel comport themselves adds to this perception. Moros and IPs are also wary of going to the formal court system because of cultural sensitivities that might be in conflict with their own respective belief systems. One example is how rape cases are not treated in confidentiality as they are supposed to be. For Muslims, it is against their culture to make the incident public. This is compounded by the problem of the non-availability of Muslim lawyers who can represent the litigants and understand this apprehension and can handle the case with more acute sensitivities.

The major hurdle is the litigants' lack of trust on the actors in the formal system. This might due to a number of factors such as judges’ unfamiliarity with the laws and regulations involving basic sectors, such as the IPRA. Many complain of the low level of gender sensitivity in the courts and in the justice system, and the prevailing bias against women.

Affordability

Courts

The Asian Development Bank commissioned a study in 2009 that estimates the typical cost of a criminal case that is handled pro bono to reach as high as PhP 70,300 (USD 1,597.73). This amount approximates the subsistence budget for a Filipino family of six for an entire year and is three times more than the average annual savings of a Filipino family, according to government statistics.

Section 18, Rule 141-A of the Rules of the Court provides that indigent-litigants are exempt from the payment of legal fees. A PAO law also exempts PAO clients from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal. Photocopying of transcript of stenographic notes [hereinafter TSN], notarization of affidavits and other documents, are free of charge.

The Supreme Court, in their Blueprint of Action for the Judiciary, a predecessor of the Action Program for Judicial Reform, considers litigation cost as a barrier to access to justice, stating

the apparent rising cost of litigation has reportedly prevented some individuals from seeking redress from the courts, and has dissuaded them from pursuing judicial action, or even worse, has constrained them to seek alternative ways of obtaining justice. For the marginalized sector of the populace, filing a case in court or being dragged into a court battle is not only time consuming but also a

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74 REPUBLIC ACT (No. 9406), § 6 [hereinafter RA 9406].
heavy burden on their meager budget. Any expense beyond their regular family
budgets will be a serious blow to their present state. Their physical presence in
court hearings depletes them of the time to work and earn a living.

While the Supreme Court has attempted to make courts more accessible and affordable, IPs and
Moros have yet to experience this.

BJS

The BJS is more affordable than the formal courts for the majority of citizens interviewed. 
*Barangays* only charge a minimal fee, and some even waive it for indigent clients as well as for
violence against women Cases [hereinafter VAWC], as provided by Republic Act 9262. But this
village-level system is limited in its jurisdiction, covering only light offenses. Nevertheless, the
BJS has been an effective venue for people to settle their conflicts.

Proximity

What is most telling is how far formal courts are from poor communities. An indigenous people
would recount that their barangay is 16 kilometers away from the town center *(poblacion)* and
from there they would have to pay P35 (USD 0.81) per person for the *habal-habal* ride. Such
amount is a big percentage of the day’s earnings of the family. Some Moro communities
meanwhile would take around 30 minutes’ walk to reach the nearest barangay center. In Marilog,
Davao City, the distance of the barangay to the farthest residence may take around half a day of
walking. In contrast, traditional justice systems have been more accessible, more affordable, non-
threatening, and fast in their delivery of justice. It is thus not surprising that Moros and IPs refer
their disputes primarily to their respective traditional or religious leaders. Their trust on the one
who mediates or decides on their cases is a significant factor in the choice of forum.

Citizens view the BJS as more accessible than the formal court systems. Liberal in how they treat
cases, BJS mediators have a higher level of trust for litigants as they allow the litigants to speak
in their own language, and lawyers are prohibited from engaging in the process, unless they are
the litigants.

Processing Cases

Disposition of cases in the trial courts are viewed as slow and characterized by backlogs. A
practicing lawyer laments that the cases that are supposed to be under summary procedure are
not disposed of fast enough. Some cases can reach up to five years to resolve at the trial level,
excluding the appeal period. A judge points to the lawyer’s penchant for filing of different motions,
resulting in trial postponements and eventually backlog. A local government official noted
however, that the judge has control of his or her court, and can actually dispose of cases within
the timeframe as prescribed by the rules. Local communities can only observe that the delays
have brought much difficulty to them as they have to spend a lot of time and other resources in
going to the courts. A prolonged litigation results in disinterest to pursue a case, particularly
among the poor and marginalized. The Table below shows the disposition rates of courts in the
Philippines.

75 *Barangays* now have power to issue a *Barangay Protection Orders* [hereinafter BPOs] *ex-
parte*, ordering a person from committing from any violence against women and children.
76 A form of local transportation, primarily a motorcycle with wooden planks attached as
extensions that can seat as many as 13 persons, depending on the “structure” attached; it is
usually used in the inaccessible mountainous places, and is popular in Visayas and Mindanao
The Environmental Rules set timeframes for disposition of cases by environmental courts. Sec. 5, Rule 4 of the said Rules mandate that for civil cases, "(t)he court shall have a period of one (1) year from the filing of the complaint to try and decide the case. Before the expiration of the one-year period, the court may petition the Supreme Court for the extension of the period for justifiable cause." The Rules further mandate that the court shall prioritize the adjudication of environmental cases. For criminal cases, the court shall dispose the case within a period of ten (10) months from the date of arraignment, and to conduct continuous trial, which shall not exceed three (3) months from the date of the issuance of the pre-trial order. Innovation such as this and the strict compliance to the timeframes would readily speed up the trial process. Another innovation is the submission of judicial affidavits in lieu of a direct examination of the witness and the one-day examination rule for witnesses.

BJS

The BJS is an available forum that bridges the gap between formal and traditional justice systems. While national law limits the jurisdiction of the BJS, the BJS is attuned to the practical and cultural sensitivities at the village level. The BJS provides citizens with an institution that is affordable, accessible, and fast.

In the BJS, cases move faster because there is a simple procedure for conciliation and mediation. The reason might be that the punong barangay has control of the BJS and he or she is not dictated by strict rules of procedure. In fact, different barangays have created innovative methods in carrying out mediation. While the law allows mediation proceedings to terminate within 15 days and another 15 days in case of arbitration, most of the cases can be resolved in one session before the BJS. This would ensure that any hearings scheduled would surely proceed, and postponements might be due to non-appearance of the parties, and not of the mediator.

In a barangay where the majority are Muslim communities, the Punong Barangay ensures that all conflicts are resolved at the traditional justice system first before the barangay intervenes, and in most of the cases brought before him, it does not reach the second layer of mediation, i.e., in the Lupong Tapamayapa. In another barangay, Purok leaders can also make mediate conflicts within their areas, and thus lessen the burden on the barangay. There are also Muslim members of the Lupong Tagapamayapa, from which the Pangkat Tagapagkasundo, or conciliation team, is formed when the conflict is not successfully mediated by the Punong Barangay. The effective and speedy disposition of cases, and the trust imposed upon the BJS is reflected in the high level of
cases settled amicably at the barangay level. For one barangay the officers of which were interviewed for this research, out of the approximately 30 cases every month, only 2-3 cases are not successfully mediated or arbitrated. In these cases, a certification to file action is issued, and the complainant may now opt to file his or her complaint with the courts. The chart below from the National Statistical Coordination Board indicates a high level of settlements made.

Other

Aside from poor governance, a major limitation on access to justice in the Philippines is the lack of adequate resources, personnel and facilities in local courts, especially in more remote areas. Weak basic infrastructure is one of the problems courts in the Autonomous Region of Muslim Mindanao (ARMM) face. The lack of equipment not only impedes the prompt and efficient dispensation of justice, but also undermines the public’s confidence in the judicial system’s capacity to resolve conflicts. The event allowed participants to discuss challenges within the local courts. Nenita Nuñeza, a court clerk from Upi municipality, said that lack of proper storage cabinets limits her ability to serve her community. The workshop also covered court policies and procedures on disposing records, papers, exhibits of closed cases and old furniture. Once the Supreme Court reviews and finalizes the report, furniture and equipment will be procured and deployed to all first level courts in ARMM to address identified needs.

Traditional Conflict Resolution System

In contrast, traditional justice systems have been more accessible and more affordable, and have processed cases faster than the formal justice system. It is thus not surprising that Moros and IPs refer their disputes primarily to their respective traditional or religious leaders. Their trust of the one who mediates or decides on their cases is a significant factor in the choice of forum.

For the Moros, their traditional justice system is still the preferred forum as considerations of costs, delay, technicalities and cultural sensitivities come into play. There are also costs in availing the services of the “kamal” or the mediators in the traditional justice system for some Moro groups, including the Kagans, such as the provision of food during the mediation process.

77 In 2007, the Philippine Supreme Court launched several judicial reform projects to support lower courts and partnered with the U.S. Agency for International Development (USAID) to provide basic furnishings to regional trial courts in the ARMM. Recently, ABA ROLI assisted the Supreme Court in conducting a needs assessment survey for the 33 first level ARMM courts. Survey results showed that the courts are in very poor condition, with court officials often providing their own chairs or desks to perform their duties. The survey also found that court employees either use old rice sacks or cardboard boxes to store files or simply stack documents in hallways. None of the courts had filing or storage cabinets, and very few had the means to secure evidence or even petty cash.

78 The Kagans is the dominant ethno-linguistic group native to the Davao provinces. The majority of them embraced Islam prior to colonization, although some have chosen to be un-Islamized.
as well as other logistical matters. Nevertheless, there is still a relatively high level of satisfaction on the use of this justice system. Decisions sometimes also indicate the payment of a fee that are divided between the complainant and the “kamal”. While this might be considered as a fee, it is paid after the settlement and not before the dispute resolution process, thereby lessening the obstruction against the use of the traditional system at the outset.

In the traditional justice system, the Qur’an and hadith, as well as local customs, are used as guidelines in arriving at a settlement of the dispute. In the mediation process, and both parties are able to air their respective sides. When an allegation is made, and there is no witness, the party is made to swear on the Qur’an. And when there is a finding of fault against a party, s/he is also made to swear on the Qur’an that s/he will no longer do the act complained of.

In the traditional justice system, it is possible to resolve a dispute in a matter of days. In one of the areas covered by the research, the traditional leaders said that usually, even before the actual face-off, there are also preparatory steps taken, like “caucuses” among the contending parties. At the datu level, the case is resolved in 2 or 3 days, and when it reaches the level of the Shari’a leader, settlements can be made in one session. If the parties fail to appear before him despite a subpoena issued to them, the leader allows a postponement up to a two more times. If only one of the parties appear before him, he usually goes to their place. If none of the parties appear, he presumes that they have lost interest in the case. There is no system of appeals even in arbitration award, as the decision of the mediator-arbitrator, who is usually the religious leader, is binding and cannot be changed.

The satisfaction level in relation to the traditional justice system among members of the Muslim community is very high.

The majority of the disputes brought before the traditional system are not serious, such as rumor mongering, bullying, and fights over domestic animals encroaching on a citizen’s land. Land grabbing or land conflicts are another type of cases that are brought to the traditional system. In extreme cases, graver offenses, especially those that dwell in immorality, are no longer brought to the formal or traditional court, but are resolved extra-judicially. This opens the matter to retaliation. In these types of disputes, the conflict should be brought to the formal justice system.

**Indigenous Justice System**

Among the IPs, the traditional forum for redress is the council of elders. Quasi-judicial offices such as the NCIP, as well as the barangays, would defer to the council and refer thereto conflicts among IPs that are brought to their attention. The council of elders perform mediation and conciliation proceedings, but may go into arbitration as well, when necessary. A study on indigenous dispute resolution mechanisms by the Supreme Court would indicates that generally, such system is non-adversarial, non-confrontational and participatory. Being participatory and communal in nature, the process is open to all. The aggrieved, the offender, their families, women, children and all other concerned members of the community may participate in the settlement process. Jurisdiction of the council of elders is only for conflicts involving individuals or groups of the same tribe. It may also mediate conflicts involving parties from different tribes, when the council of elders is requested to do so.

Technically, only civil cases can be settled at the level of the council of elders. However, customary practices also include criminal cases being settled at the datu level. “Agaw asawa,” which literally means abducting another man’s wife, is a common problem encountered by the elders in the Matigsalog area. This practice happens when a man elopes with a married woman, not his wife, and the woman usually brings with her, her child or children. Settlement of this type

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79 Hadith means the traditions of Prophet Muhammad.
of cases involves the payment of a sum of money, which the aggrieved husband can use to pay for dowry in getting another wife. Part of the settlement is that the custody of the children goes to the husband. No fees are required in the dispute settlement process, except probably for the costs of the rituals performed by the council of elders before starting the ceremony as well as monetary considerations or livestock contribution as penalties.

Land conflicts among indigenous peoples, and between a non-IP and an IP are also common, and the elders practically resolve each step of the way and try to reach an amicable settlement among the parties. Justice is seen as more of restorative, rather than punitive, looking at the action committed, rather than the person who committed it. An NGO cited an example of how tools distributed to the community were stolen by an IP-member, who then fled away. The community members decided to contribute so that the stolen tools can be retrieved. The community was able to generate sufficient funds and buy all the needed tools. When that member returned to the area, and the NGO sought penalty for his misdeed, the tribal leader remarked that the tools were already retrieved so there is no more misdeed for the action done by that individual. For the community, the person who stole the tools has already been forgiven as the act done was already compensated or repaired. A person is only made accountable if the act done is not yet repaired, either by himself/herself or through another person. Sometimes, if a litigant cannot accomplish the penalty sought, the datu himself has to find ways to raise the funds or secure livestock.

It would only take the indigenous justice system a maximum of 30 days within which to settle or make a decision on conflicts. The settlement process may even take only a day, but including other processes for the implementation may lengthen the period. There is no appeal system, as the indigenous community respects the decision of the council of elders. The problem though lies with the non-IP litigant who consented originally but later repudiates the said decision. The NCIP has original and exclusive jurisdiction over cases involving the indigenous peoples within their ancestral domain, subject to the certification of the tribal elders that the case has undergone the customary processes. Even if a non-IP does not want to be subject to the customary practices, as long as the issue involved an IP in an ancestral domain, the NCIP still has jurisdiction. There are jurisdictional issues regarding cases involving the Torrens Titling System, which is different from a Certificate of Ancestral Domain Title [hereinafter CADT], the title issued to indigenous peoples under IPRA. The issue is whether it is the NCIP or the regular courts that have jurisdiction over questions involving titles issued to indigenous peoples. These are questions are still unresolved. What is clear though is that the NCIP is not an appeals court, but it extends assistance in the execution of the decisions promulgated or agreements arrived at in the indigenous justice systems. It has injunction powers, can issues subpoenas as well as perform other powers necessary in its performance as a quasi-judicial agency.

Respect and trust on the traditional justice system can be traced to the over-all trust that members of the community have on their leaders. The use of the indigenous system is driven by such respect for the customary laws and the elders, as well as practicality, there being no other accessible conflict resolution mechanism.

Generally, the level of satisfaction in relation to the traditional justice system is very high among the indigenous peoples and NCIP personnel. In the course of the interviews conducted, no incident was ever raised regarding dissatisfaction among members of the tribe over the traditional justice system. Members of an indigenous community would characterize their customary justice as speedy, both with respect to the time of arriving at a resolution and the immediate execution of the amicable agreement or decision of the elders. They also expressed partiality for their own system of justice, saying that it is sensitive to their traditions, culture and practices. They also described it as fair, and the solution arrived at is perceived as permanent, considering that any resolved dispute can no longer be discussed anymore. There is also pride in the fact that the conflict is resolved within their domain, without need for the intervention of the courts.
However, one NGO worker who has worked closely with the IPs recounted the dissatisfaction of an IP woman in Marilog who had filed a case for divorce against her husband. The husband had taken another wife without her consent. The council ruled that the proceedings shall take place without the complainant-wife taking part in it. The council voted against the divorce, and she expressed her displeasure in the process and the outcome. Apparently, the father of the husband is part of the council of elders.

In recent times, with the influx of mining and agribusiness plantations in ancestral domain areas, that traditional justice system has been challenged to resolve issues related to such encroachment. Aside from asserting the traditional justice system’s power to resolve these issues, IPs have resorted to community education, empowerment, mobilization and advocacy as important strategies to enable communities to resolve conflicts, rather than going to the formal justice system. The use of media and direct appeals to government agencies are also significant modes of bringing their messages across a wide audience. They maintain that going to the courts do not work in their favor, as litigation takes a lot of money, time and efforts, which they do not always have. There are frustrations though in engaging government agencies as there are perceptions of corruption and prejudice against IPs.

**Recommendations**

- Minimum financial requirements for the status of indigency, and liberalize the documentary proof for such requirements should be reviewed and revised.
- The rules on costs as indicated in the Environmental Rules, such that payment of court fees of cases involving the poor and marginalized--not just those categorized as indigents--are waived, should be applied. Alternatively, a lien should be applied on the damages awarded in civil cases as compliance with the requirement for filing fees.
- More research should be done focusing on litigation costs and a long-term strategy should be developed to address high litigation costs.
- Positions for judges and court personnel should be filled, and laws addressing sectoral concerns and cultural sensitivity to Moros and IPs should be incorporated in their capacity-building programs.
- Courts should be made physically accessible to citizens so that they will always have the option to make use of them. The achievements of the Enhanced Justice on Wheels (EJOW) Program would be even greater if there were a fulltime judge to hear cases on the buses on a regular basis. Mobile courts should be made “mobile,” in such a way that they travel to remote areas, and include as part of their function, legal literacy to communities, when hearings are already finished.
- Programs should be developed that aim at popularizing the functions of courts and other justice institutions, highlighting the role of the community in the justice system.
- A constitutional requirement should be implemented that teaching the Constitution is part of school curricula, such that youth are more aware of public institutions.
- Required timelines of case dispositions should be strictly implemented, and similarly with the environmental rules, timelines should be set in which cases should be disposed of from the time of the filing until the issuance of a decision, otherwise, judges should explain the delay and request that an extension of time be allowed for him to resolve a particular case.
Element V. Fair Procedure

Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.

Conclusion

The Philippine Constitution guarantees that "(n)o person shall be deprived of life, liberty, or property without due process of law". At the heart of the due process requirement is the ability to participate in the processes that would allow the state to deprive one of life, liberty, or property. As discussed above in Element 1, in both criminal and civil cases, both parties – the complainant and the accused in criminal cases, and the plaintiff and the respondent in civil cases – are given the opportunity to participate in the process, including the submission of arguments and evidence. In practice, however, not every litigant is able to participate at every stage. At the trial stage, the opportunity to present evidence is not easy for most litigants, particularly for Moros and IPs. Even assuming that they have legal representation in court, they will still have to hurdle difficult technicalities in the rules followed during trial. For one, the language that the Philippine courts have adopted as the official language is English, a language that Moros and IPs neither speak or understand.

For the most part, the majority of citizens who use the BJS mechanism are satisfied with the mediation process that they undergo. The mediator, the Punong Barangay, is usually able to persuade the parties to settle their dispute. Most of the time, complaints that are brought to BJS are settled or dismissed, and no longer proceed to the courts.

The exact procedures in the traditional justice systems of the Moros and the IPs vary from one ethno-linguistic group to another. Generally, these informal justice systems value mediation and arbitration. Different systems, akin to modern concepts of civil and criminal cases, make up most of the judicial infrastructure of informal justice systems. In some cases, informal justice systems compete with the formal justice system for a place in the life of the community.

Analysis

A fair procedure followed by justice institutions allows citizens to make arguments in support of their case and, where factual issues are in dispute, to call witnesses. It also ensures that disputes are resolved impartially and without improper influence. In this section, we review the procedures followed by justice institutions to resolve disputes, and the factors that affect whether, in practice, Moros and IPs are given the opportunity to present their cases in the formal justice system, the BJS, and the informal justice system.

The Philippine Constitution guarantees that "(n)o person shall be deprived of life, liberty, or property without due process of law". At the heart of the due process requirement is the ability to participate in the processes that would allow the state to deprive one of life, liberty, or property.

Under this element, the court's rules of procedure should not be skewed in favor of one party to the disadvantage of the other. All parties should have the same opportunity to present their arguments in court, and to support these with evidence. All that is necessary for one to be able to make full use of the opportunity should be afforded to him or her. Aside from the right of representation, a party should have the faculty to compel the attendance of witnesses whose

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81 Const., § 1, art. III.
82 Id.
testimony is material to the party's complaint or defense. And should witnesses have reason to fear retaliation for their testimony, the justice system should afford them protection, and encourage them to speak the truth.

The judge or mediator should therefore be insulated from improper influence to ensure his or her impartiality. Aside from legal standards for their independence, they should not be beholden to anyone because of their appointment to their position or for their salary, benefits, or any emoluments that they derive from their office. They should also be free from the threat of dismissal or any disciplinary action except for official misconduct, and according to established criteria and procedure. They should likewise feel safe and should not be subjected to threats to their security so that they can mediate and adjudicate without fear of reprisal.

For a party to understand and take part in the proceedings, it is likewise necessary that he or she has familiarity with the language that is used in court, so as not to impede his or her ability to present the case in court.

**Formal Justice System**

*Citizens’ Opportunity to Effectively Present Their Case*

As discussed above in Element 1, in both criminal and civil cases, both parties – the complainant and the accused in criminal cases, and the plaintiff and the respondent in civil cases – are given the opportunity to participate in the process, including the submission of arguments and evidence.

In practice, however, not every litigant is able to participate at every stage. In criminal cases, the accused are often not granted the opportunity to submit their counter-affidavits and those of their witnesses. While the Rules of Court state that a preliminary investigation should be conducted after a complaint has been filed for crimes, where the penalty is at least four years, two months, and one day, in many cases, the arrest is done first and the preliminary investigation, later, if at all.

Further, warrantless arrests, allowed in three exceptional circumstances under Section 5, Rule 113 of the Rules of Court, may deprive the accused of the opportunity to submit evidence of lack of probable cause. When a person is arrested without a warrant, an inquest proceeding is conducted to determine whether there is sufficient evidence for the continued detention of the accused and prosecution of the case in court. If the crime for which the detainee is arrested is one that requires a preliminary investigation, the inquest officer is required to seek the detainee’s permission to be detained beyond the maximum number of hours, in order that a preliminary investigation can be conducted. Under Article 125 of the Revised Penal Code, a person cannot be detained beyond a maximum of 12, 18, or 36 hours—depending on the gravity of the crime for which he was arrested—without being formally charged in court. For this reason, inquest proceedings are summary, and are usually conducted within hours after the warrantless arrest.

In most cases, inquests become very mechanical processes on the part of the inquest officer, who typically fails to explain to the detainee the merits of conducting a preliminary investigation, and the importance of submitting a counter-affidavit at this stage. Particularly for the Moros, who at this time of the “global war on terror,” are subjected to religious profiling, and are suspected in many terrorism-related crimes, this critical stage in the criminal procedure is almost always a lost opportunity to deter incarceration for a baseless charge.

At the trial stage, the opportunity to present evidence is not easy for most litigants, particularly for the Moros and IPs. Even assuming that they have legal representation in court, they will still have to hurdle difficult technicalities in the rules followed during trial. For one, the language that the Philippine courts have adopted as the official language is English. Under the Philippine Constitution, the national language is Filipino, but for purposes of communication and instruction, the official languages are Filipino and English. Local languages are considered auxiliary
languages. In the formal justice system, the provision is operationalized by having English as the medium in court, both in written and oral communications. All pleadings and court orders are in English, and testimonies of witnesses in the official records are in English. If and when the witness does not communicate in English, as is the case for many Moros and IPs, a court interpreter translates their testimonies into English. The reason is the need for appeals judges to understand the language used in the trial court and reflected in the court records that they have to review. As a result, however, witnesses and litigants struggle in understanding the already very technical procedure in a language that they neither speak nor understand.

Witnesses can be compelled to testify in court by virtue of a subpoena ad testificandum and to bring with them material documents through a subpoena duces tecum. However, even with these mechanisms, parties still find it hard to extract accounts from witnesses, where there may be threats to their life and safety. While the Department of Justice has a Witness Protection Program, for criminal cases, it is not foolproof and does not provide an incentive for witnesses to surface. Witnesses for the accused, for example, may not always be willing to be placed under a program run by the Department of Justice—the same Department that has control over the prosecution.

**Reasoned decision**

A judge is required to make reasoned decisions, and to put the same in writing, stating the fact and the law on which s/he had based them. Both the Rules on Criminal Procedure and Rules on Civil Procedure set forth the same constitutional standard, aside from stating that the decision must be personally and directly prepared by the judge and signed by him or her.

**Impartiality of Adjudicators and Mediators**

As mentioned above, the Philippine legal system is largely presidential in form. As such, it has three co-equal branches of government, working independently of each other. The branches have their respective powers and functions that the other two branches cannot intervene with. Hence, the legislative and the executive branches cannot interfere with the work of the judiciary. This separation of powers also serves as a check-and-balance mechanism, where one branch can probe into or even correct an error or abuse of another branch.

An indicator of the independence of the judiciary is the assurance that it shall have fiscal autonomy under Section 3, Article VIII of the Constitution. While its annual budget is deliberated on and approved by the House of Representatives, once approved, the funds are automatically and regularly released.

Judges are enjoined under the Canon of Judicial Conduct to “uphold the integrity and independence of the judiciary.” The Canon of Judicial Conduct states that judges should be vigilant against any attempt to subvert the independence of the judiciary and resist any pressure from outside sources. They should inhibit themselves from hearing cases where a party or counsel is their close relative, or giving the impression that others can improperly influence them. They should likewise not be swayed by public or popular opinion.

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83 Const., § 6, Article XIV.
84 REPUBLIC ACT ON WITNESS PROTECTION, SECURITY, AND BENEFIT (No. 6981, 1991).
85 Const., § 14, art. VIII.
86 Rules of Court, § 1, Rule 120.
87 Rules of Court, § 1, Rule 36.
88 CANON OF JUDICIAL CONDUCT, Canon 1.
89 CODE OF JUDICIAL ETHICS, Number 12.
90 CODE OF JUDICIAL ETHICS, Number 13.
**Transparent Appointment Process**

The President appoints judges and justices from a shortlist of three names for each vacancy submitted by the Judicial and Bar Council [hereinafter JBC]. The JBC is chaired by the Chief Justice, the Secretary of Justice, a representative of the Congress as an *ex officio* member, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. Increasingly over the years, however, local political endorsements have influenced applications for judgship. Local political leaders further supplement the salaries and logistical needs of judges (as well as prosecutors and PAO lawyers). While this may help in augmenting the inadequate budget of the judiciary, it also compromises the position of judges in the cases that they handle, especially in small-town settings, where local political leaders may be susceptible to abuse their power for their self-interest or to please supporters who may have cases filed in court. A laudable effort from civil society is the Supreme Court Appointments Watch [hereinafter SCAW], which strongly lobbies for making transparent JBC interviews of Supreme Court applicants.

Judges are under the supervision of the Supreme Court. The Supreme Court has the power to enact any administrative and disciplinary action against members of the bench. Any attempt to have a judge suspended or dismissed on grounds of improper influence must be brought through the Supreme Court processes.

**Salaries**

The Congress of the Philippines determines the salaries of judges and court personnel. The low salary grade among those who comprise the judiciary makes recruitment of qualified judges difficult and is a cause of corruption in the judiciary. Recent laws have been passed to address this by increasing the salaries of judges. Further, local government units give allowances, bonuses, and gifts to judges and court personnel. While this may help in giving judges and court personnel the salary difference that they might deserve, it is not good governance practice. The amount given is usually not transparent and may even make the judges and the court personnel indebted to local leaders.

**Safety and security**

Judges are vulnerable to violence and threats of violence because of the nature of their work. Inside the courtroom, security guards protect them. Outside of the courtroom, they are more vulnerable to acts of vengeance from aggrieved parties or to threats intended to get a favorable decision. Hence, some judges employ bodyguards, or request bodyguards from the security sector, especially when powerful parties are involved in a case they are hearing.

According to the National Union of People’s Lawyers [hereinafter NUPL], the Philippines is the third most dangerous country for judges, after Colombia and Iraq. According to NUPL, 20 judges have been killed in the past decade (2000-2010) in the Philippines.

**Citizens’ ability to make voluntary and informed decisions to settle**

When parties to a dispute are not equally situated, with one party at a more advantageous position, the agreement that they may enter into may be skewed in favor of the latter. The advantage of one over the other may emanate from better knowledge about the law and legal processes, or from greater political clout, more connections to those in power, or a bigger bank account, among others. It becomes incumbent on the mediator to ensure that the settlement will not perpetuate such imbalance of power.

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BJS

For the most part, the majority of citizens who use the BJS mechanism are satisfied with the mediation process that they undergo. The mediator, the Punong Barangay, is usually able to persuade the parties to settle their dispute. He or she impresses upon the parties the relative ease for settling the dispute before the BJS, comparing it to the ordeal that they will undergo before the formal courts. According to a barangay official in Barangay Bonbon, Mati City, the Punong Barangay may find it expedient to remind the person whom he or she thinks is the one at fault that it would be better for that person to settle and make restitution to the aggrieved party, rather than risk the possibility of a finding of guilty or a conviction in formal court.

Most of the time, complaints that are brought to BJS are settled or dismissed, and no longer proceed to the courts. According to the Moro Punong Barangay of a barangay in Mati, the success of mediation at this stage depends largely on the skills of the Punong Barangay (or the Purok leader or the members of the Pangkat Tagapagkasundo):

The success or failure of mediation depends highly on the mediator—on how he or she is able to bring the parties to agree to a settlement. The most important [] is this: in mediation, I go down to the level of the disputants. But when it comes to implementation of the law, I try to bring the people up to the standard of the law.

Informal Justice System

Citizens’ Opportunity to Effectively Present Their Case

The exact procedures in the traditional justice systems of the Moros and the IPs may vary from one ethno-linguistic group to another. Generally, these informal justice systems value mediation and arbitration. Different systems, akin to modern concepts of civil and criminal cases, make up most of the judicial infrastructure of informal justice systems.

In some cases, informal justice systems compete with the formal justice system for a place in the life of the community. This may be true in “modernizing mixed communities” such as Davao City. In one barangay in Davao City with a substantial number of Moros, it is the BJS, as mandated by the Local Government Code, which most community members recognize as the justice institution to which they would turn to resolve a dispute. In other areas, where the traditional way of life is stronger, the indigenous systems of conflict resolution continue to predominate.

In most of these systems, the complaining party and the person who has allegedly aggrieved the complaining party are made to recount their stories and propose a fair remedy to their community elder or a group of elders. Similar to the BJS, there is no need to hire a lawyer. In some Moro and IP systems, a respected relative, typically an elder of the family or clan, may represent a party. Witnesses are also welcome in most of these traditional systems, but there are different ways of eliciting information. For the Muslim Moros, for example, the swearing on the Qur’an is one important method of discovering the truth. Deliberations among the elders may take long, depending on the specifics of the dispute at hand, but it will not be as long as a civil or criminal case in the formal courts. According to mediators interviewed, there may be settlements that are reached in the first mediation session. No appeals process is in place. The lack of one may both be good, as it shortens the period for the final resolution of the dispute, or bad, as the person who feels aggrieved by the decision of the elders is left without any other recourse.

If an amicable settlement reached between the parties cannot be implemented because the responsible party is not able to pay for the “blood money” (for the Muslim Moros) or the “kasalaan”92 (for the indigenous peoples), the role of the village elder becomes even more

92 Kasalaan means, loosely, a “fine.”
important. For both Moros and IPs, the mediator or the elder covers the unpaid amount. The mediator usually feels obliged to do this to have the dispute finally resolved.

In the traditional systems, disputants do not have any difficulty understanding the procedure or the rights involved in the case, as the local language is used. The fact that there are no costs in using this system also helps a great deal in ensuring that the parties to the dispute do take part in the processes. Disputants need not hire a lawyer, pay a filing fee, or travel a long distance to participate.

**Impartiality of the mediators in the traditional justice system**

Elders who hear cases are usually respected people of the community, so much so that they can easily call on witnesses to appear for their testimony. They are accountable to the community, and, while there is no supervision over them by the local government unit, few allegations of corruption and partiality are made. One reason may be because the position of a village elder may not be coveted for its access to funds or connections. Hence, traditional mediators usually serve, not for the sake of the power or the financial resources that the position entails, but most probably, with the cleanest of intentions.

**Recommendations**

**Formal justice system**

- Citizens who want to seek redress should not be discouraged by the technical procedure for bringing a case before the formal justice system. The procedure should be simplified and abridged so that the judge can easily adjudicate. The Philippine Supreme Court has, in fact, drafted the Proposed Rules for Hearing and Adjudicating Disputes.\(^93\) The rules have reduced the steps in civil and criminal cases that are not subject to summary procedure, and have eliminated rules that were deemed superfluous or not applicable in the Philippine setting. The Rules will be piloted the City of Cebu\(^94\) and should be a most welcome development. However, the Supreme Court should supplement this possible change in the Rules with measures that would address the delays that are caused by judges themselves.

- The court should also be made physically accessible to citizens. One recommendation would be to appoint a full-time judge to preside over the already existing Enhanced Justice on Wheels [hereinafter EJOW] Program to hear cases on a regular basis.

- With respect to the BJS, mediators—whether Purok leaders, the Punong Barangay, members of the Lupon, and even Barangay Kagawads who are given mediation work when they are designated “Officers of the Day”—should have skills enhancement in the area of mediation. Because barangay officials may change every 5 years, capability-building activities should be continuing. The training module should cover not only topics like facilitation, listening skills, and the basics of the legal system, but also those that are geared towards cultural and gender sensitivity.

**Informal justice system**

- There should be clearer policies regarding the recognition and practice of the informal justice systems. While there are constitutional provisions and laws that recognize the Moro or IP traditional dispute-resolution mechanisms, it is still not clear which conflicts are covered by these mechanisms. To illustrate, some cases such as murder that are brought before the traditional system are more serious than those allowed under the BJS.

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\(^93\) Available at: http://sc.judiciary.gov.ph/admin matters/others/Proposed Rules for Hearing and Adjudicating Disputes.pdf.

\(^94\) Available at: http://newsinfo.inquirer.net/135133/cebu-is-pilot-area-for-new-court-rules.
• Members of the Moro and IP justice systems should receive continuing mediation trainings. As mentioned above, the success of the mediation rests, for the most part, on the mediator’s compliance with the roles expected of him or her and the ability to use the skills necessary for those roles.
Element VI. Enforceable Decision

Justice institutions are able to enforce their decisions, including through the use of sanctions.

Conclusion

In the formal justice system, the state enforces the judgment. Coercive force applied by institutions of the state—from the judiciary and the executive branches of government—are readily available. The challenge is to have the enforcement done swiftly, and in a fair and just manner.

In the informal justice system, enforcement of the results of mediation or arbitration proceedings relies mainly on social sanction, rather than on the coercive powers of the leaders in the community, where the justice system is practiced.

Analysis

In order for a justice institution’s resolution to a dispute to be meaningful, citizens must be able to enforce it in the outside world, including through the use of sanctions against individuals who refuse to comply with the justice institution’s decision. In this section, we discuss what procedures exist to provide for negotiated agreements, awards and judgments to be enforced after they become final and executory and the obstacles that prevent them from being enforced.

The test of whether a justice institution is able to put a dispute to rest is the ability to implement the resolution arrived at, and to have such resolution be permanent. If a party refuses to comply with the resolution, the system must be able to apply coercive force or a social sanction toward this end.

Formal Justice System

In the formal justice system, the state enforces the judgment. Coercive force applied by institutions of the state—from the judiciary and the executive branches of government—are readily available. The challenge is to have the enforcement done swiftly, and in a fair and just manner.

In criminal cases, when there is a judgment of conviction, the defendant is placed under custody at a detention facility. When the judgment is for acquittal, the accused is to be released immediately. There should be no more costs at this stage.

In civil cases, when there is an award of damages or an order for the payment of a sum of money, the losing party is required to comply with the order of payment. If the losing party is non-compliant, the state may sanction him by having his property attached. There should not be any additional costs for executing decisions of the courts, but, in practice, the sheriff typically requests a share in the property to be levied from the winning party. The amount varies, depending on the value of the attached property, and may be as substantial as 10% of the whole property.

Unless repudiated within 10 days, agreements entered into under the BJS are considered enforceable. The Lupong Tagapamayapa of the barangay shall execute enforcement of the agreement within six months from the date of the settlement. Beyond this period, it shall be the regular courts that have jurisdiction for enforcement of the agreement.95 The Katarungang Pambarangay is thus required to submit a regular report to the court.

95 LGC, § 41; see RA 7160.
Informal Justice System

Enforcement of the results of mediation or arbitration proceedings in the informal justice system relies mainly on social sanction, rather than on the coercive powers of the leaders in the community, where the justice system is practiced. Leaders who run the traditional justice systems of both the Moro and IPs are expected to not only help in the mediation or arbitration process, but to likewise enforce the outcome of such processes. When a party who is adjudged to be at fault is ordered to pay the adverse party by way of penalty or as part of the settlement, the leaders take it upon themselves to make sure that such payment is made. If and when a party is not able to pay, the leader-mediator, in many cases, raises funds to satisfy the unpaid amount for the sake of peace and to protect the trust of the people in the system. It is believed that the benefiting party sees the import of the leader-mediator’s gesture, and will be more conscious of his future actions.

While traditional leaders’ authority is still evident, perhaps in varying degrees, their judgment—particularly in what is roughly the equivalent of a criminal case in the formal justice system, is not always easy to exercise in the form of coercive force, where the formal legal system may have a stronger influence.

<table>
<thead>
<tr>
<th>Enforcement of a judgment in the Shari’a justice system</th>
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<tbody>
<tr>
<td>In a Shari’a justice system implemented Muslim religious leaders who were appointed by a revolutionary group, the leaders discovered an unmarried woman in close proximity with an unmarried man, and determined the act to be in violation of Shari’a law. Upon finding both the woman and man guilty, the Shari’a court sentenced them to, and enforced, lashings. Aware of the multiple layers of authority that they share with other institutions and legal systems, the Muslim religious leaders introduced themselves and the jurisdiction of the Shari’a justice system to the local political leadership.</td>
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</table>

Recommendations

It is what happens after an agreement is made or a judgment is promulgated that indicates whether the justice institutions—formal or traditional—have been effective mechanisms. To ensure that the system is an effective mechanism in the delivery of justice, the enforcement of agreements or judgments should be given ample attention. Towards this end, it is recommended that:

**Formal justice system**

- The Supreme Court should ensure that there are no additional costs for the enforcement of judgments. The fees solicited by the sheriff or other court personnel should not be tolerated, and the practice of soliciting a fixed fee or a percentage of the amount involved in the execution should be disallowed and penalized.

**Informal justice system**

- It should be clear that public funds should not be used to cover the unpaid balance of the pecuniary award or whatever penalty is imposed. While the mediator and the community may decide to raise such amount, the same should not be taken from funds of the local government unit, as these are allocated for mandated expenses, as provided in the unit’s budget.
Appendix

1987 Philippine Constitution
Article III Bill of Rights

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

Section 2. 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, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Section 4. 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.

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

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

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Section 9. Private property shall not be taken for public use without just compensation.

Section 10. No law impairing the obligation of contracts shall be passed.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, incommunicado, or other similar forms of detention are prohibited.

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

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

Section 13. 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 be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

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

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

Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

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

Section 17. No person shall be compelled to witness against himself.

Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Section 20. No person shall be imprisoned for debt or non-payment of a poll tax.

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Section 22. No ex post facto law or bill of attainder shall be enacted.
List of Acronyms and Glossary

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
</tr>
<tr>
<td>Agaw asawa</td>
<td>The cultural practice of “stealing” another person’s wife</td>
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<tr>
<td>ALG</td>
<td>The Alternative Law Groups, Inc, a coalition of non-government organizations with legal program components that adhere to the principles and values of alternative or developmental law</td>
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<tr>
<td>Barangay</td>
<td>The smallest unit of government/ administrative division in the Philippines. It is also the Filipino term for “village”</td>
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<tr>
<td>Barangay kagawad</td>
<td>A member of the barangay’s legislative council, chosen through popular elections</td>
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<tr>
<td>BPO</td>
<td>Barangay Protection Order, which is issued by the barangay to women victims of domestic violence, in accordance with Republic Act 9262</td>
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<tr>
<td>CADT</td>
<td>Certificate of Ancestral Domain Title, which is issued by the National Commission on Indigenous Peoples, as evidence of the recognition of the title of the concerned IPs over the territories identified and delineated</td>
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<tr>
<td>CLEP</td>
<td>Community Legal Education Program</td>
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<tr>
<td>CMPL</td>
<td>Code of Muslim Personal Laws, enacted through Presidential Decree 1083. The law covers rules for Muslim Filipinos on the issues of marriage, divorce, property relations, paternity and filiation, parental authority, and succession</td>
</tr>
<tr>
<td>CPR</td>
<td>Code of Professional Responsibility</td>
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<tr>
<td>Datu</td>
<td>A title meaning “chieftain”</td>
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<tr>
<td>DENR</td>
<td>Department of Environment and Natural resources</td>
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<tr>
<td>DOJ</td>
<td>Department of Justice, an office under the Executive branch of the government mandated to uphold the rule of law by serving as the principal law agency in the Philippines</td>
</tr>
<tr>
<td>EJOW</td>
<td>Enhanced Justice on Wheels program of the Department of Justice</td>
</tr>
<tr>
<td>FPIC</td>
<td>Free and Prior Informed Consent; usually used in the context of the Indigenous Peoples Rights Act (IPRA) in securing the permission of the IPs to allow projects/ developments inside their ancestral domain</td>
</tr>
<tr>
<td>Habal-habal</td>
<td>Is a form of local transportation, primarily a motorcycle with wooden planks attached as extensions and can seat as many as 13 persons, depending on the “structure” attached; it is usually used in the mountains and otherwise inaccessible places in</td>
</tr>
</tbody>
</table>
Visayas and Mindanao

IBP Integrated Bar of the Philippines

ICCPR International Covenant on Civil and Political Rights

ICCs/IPs Indigenous Cultural Communities/ Indigenous Peoples

IEC Information-education campaigns

IPRA Indigenous Peoples Rights Act (1997)

JBC Judicial and Bar Council

Kasalaan/ Kasalanan Directly translated as “fault”

Katarungang pambarangay Barangay Justice (system)

LGC Local Government Code

LSDP Legal Support for Detainees Program of the National Commission for Muslim Filipinos

Lupong Tagapamayapa The administrative body created by law to operationalize the BJS; this is headed by the Barangay Captain with 10-20 members

Moro The native inhabitants of Mindanao and other adjacent islands, and their descendants. The term was coined by the Spanish colonizers who called them such, after the Moors that had colonized Spain for hundreds of years

NCIP National Commission on Indigenous Peoples

NCMF National Commission on Muslim Filipinos

NGOs/ CSOs Non-government organizations/ civil society organizations

OMA Office of Muslim Affairs; the immediate precursor of the National Commission on Muslim Filipinos (NCMF)

Pangkat Tagapangkasundo A group of conciliators in the BJS; composed of 3 members of the Lupon, they facilitate conciliation when mediation by the Barangay Captain fails to result into an amicable settlement

Punong barangay Barangay captain; elected chief executive and legislative officer of the village

Purok A political subdivision of the barangay, especially in the rural areas

Qur’an The central religious text of Islam; for Muslims, the texts are the direct words of God that had been revealed to humankind by way of Prophet Muhammad (peace be upon him)
Sandiganbayan  Roughly translated as “People’s Advocate,” it is a special court which has jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees in relation to their office.

Shari’a  Refers to Islamic law, as provided in the Qur’an, prophetic traditions (hadith), and other secondary sources of law

Shari’a courts  The courts that are tasked to interpret the Shari’a, but in the Philippine context, it may mean the courts that were created through Presidential Decree 1083, also known as the Code of Muslim Personal Laws, to resolve cases between Muslims on issues emanating from the Code. However, in some Muslim communities, Shari’a “courts” have been set up, even without authority from the state

TSN  Transcript of Stenographic Notes

VAWC  Anti-Violence Against Women and their Children Act, enacted through Republic Act 9262

Zina  The crime of having intercourse with someone who is not one’s husband or wife