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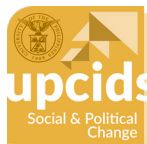
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# **The Philippine Judiciary:** Strengthening the Third Branch of Government

*Maria Ela L. Atienza*

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# **The Philippine Judiciary:** Strengthening the Third Branch of Government

*Maria Ela L. Atienza*



# The Philippine Judiciary: Strengthening the Third Branch of Government<sup>1</sup>

*Maria Ela L. Atienza<sup>2</sup>*

## Abstract

Using the constitutional performance assessment framework, this policy study looks at the following issues related with the Philippine judiciary: the changing nature of the structure and power in the judiciary as specified by the 1987 Constitution; the administration and delivery of justice; people's access to the courts; positive and negative perceptions of the judiciary and justice issues; judicial independence; and the manner of appointments. Focus is also on the changing role of the judiciary in Philippine politics, particularly the landmark rulings of the post-1986 Supreme Court; the role of Supreme Court Justice Hilario Davide in the impeachment trial of President Joseph Estrada and the Supreme Court's ruling on the assumption to the Presidency of Gloria Macapagal

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<sup>1</sup> This discussion paper is part of the study "The Philippine Judiciary: Strengthening the Third Branch of Government" under the Policy Studies for Political and Administrative Reform (PSPAR) project, which is funded by the GAA 2021 FCR Project: January to December 2021. The funding of this project was coursed through and administered by the University of the Philippines Center for Integrative and Development Studies (UP CIDS). This paper is also an updated version of one of the draft, unpublished background papers written in 2019 for the project "Constitutional Performance Assessment of the 1987 Constitution," supported by the International Institute for Democracy and Electoral Accountability (IDEA) and managed by the UP CIDS. The original 2019 background paper on the judiciary was written by this author. Summaries of the background papers can be found in Atienza et al. 2020a and 2020b.

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Arroyo in 2001; the implications of the impeachment of Chief Justice Renato C. Corona in 2012; and the removal of Chief Justice Maria Lourdes Sereno by the Supreme Court in 2018, in response to the quo warranto petition filed by the Solicitor General. What are the implications of these events and decisions on the strengthening and/or weakening of the judiciary vis-à-vis the executive and legislative branches of government? In conclusion, the chapter assesses the current status of the Philippine judiciary in Philippine politics, democracy, and development. It also highlights the challenges and needed reforms to address the problems besieging the judiciary. The study draws from available academic literature, government documents, literature from non-government and international agencies, media reports, proceedings of public fora, and focus group discussions.

*Keywords:* 1987 Constitution; judiciary; judicial independence; performance; Philippines; justice

## Introduction

The Philippine judiciary, particularly the Supreme Court, has gained a lot of public and scholarly attention since 1986. It has played an important role in settling political disputes and other issues, but it also became the subject of scrutiny in terms of its independence, attacks against it, and questions about public trust and confidence in the institution. Thus, it is important to assess the judiciary in terms of the provisions set out in the 1987 Constitution, as well as its performance of the functions mandated by the Constitution.

The assessment of the judiciary in relation to the 1987 Constitution will be divided into internal and external criteria, as set out by the International Institute for Democracy and Electoral Accountability (IDEA) and developed for the Philippines by this author and her colleagues (Atienza et al. 2020a, 2020b). “Internal criteria” are identified with the Constitution’s self-defined goals. They are assessed by examining what the constitutional provisions say about different

institutions designed to meet these criteria. Compliance with the internal criteria is assessed by looking at whether the technical requirements in the constitution have been met. Thus, internally, the paper will discuss the formation and organization of courts, as well as the manner of selection of judges and other reforms mentioned in the 1987 Constitution.

Meanwhile, the “external criteria” cover the assessment of the Constitution’s design using normative criteria on what a constitution should be and do in accordance with global practice and theory. Thus, the external criteria for the judiciary have five dimensions: (1) democratization and legitimacy; (2) decentralization; (3) social justice, human rights, and gender equality; (4) peace and conflict resolution; and (5) economic development. There is said to be “thin compliance” with the Constitution when there is straightforward evidence as to whether institutions were set up, appointments made, and laws adopted in a timely manner. However, there is “thick compliance” when the institution is meeting the substantive goals set out in the constitution and other normative goals used to assess a constitution, i.e., how do they fare in practice?

The paper relies on a documentary review of academic and other literature written about the judiciary, as well as focus group discussions (FGDs) conducted in 2019 with judges, prosecutors, public attorneys, court employees, and private lawyers in Metro Manila, Leyte, and Samar. Developments in the COVID-19 pandemic until 2022 are also incorporated.

The succeeding sections are as follows: (1) a description of the major provisions on the judiciary in the 1987 Constitution; (2) the assessment of the performance of the judiciary using internal criteria; (3) the assessment of the performance of the judiciary using the external criteria; and (4) the conclusions based on the assessment as well as recommended reforms and their scope—constitutional, legislative and/or administrative reforms. The paper concludes with an assessment on the current status of the Philippine judiciary in Philippine politics, democracy, and development. It also highlights the needed reforms to address challenges to the judiciary and its independence.

## The Goals of the 1987 Constitution and Provisions on the Judiciary

In a previous study of the Philippine judiciary, Atienza and Baylon (2006, 355) stated that in the post-1946 and Marcos periods, “political patronage and interference threatened, and in the latter period actually overrode the independence of the judiciary.” When Ferdinand Marcos was overthrown in 1986 by People Power, the pursuit of a strong and independent judiciary began again.

The 1987 Constitution created a presidential system where the judiciary is one of the three co-equal branches of government. “Judicial power is vested in the Supreme Court and in lower courts” that may be established by law (Article VIII, Section 1). The Constitution also “contains innovative provisions to enhance the independence of the judiciary, especially the Supreme Court,” as it performs its “role as the guardian of the Constitution and the guarantor of the basic constitutional rights of the people” (Atienza and Baylon 2006, 355). As in most other sections of the Constitution, the experience of the judiciary under martial law influenced members of the 1986 Constitutional Commission, especially former members of the Supreme Court, to include provisions in the 1987 Constitution strengthening the independence of the judiciary. As Gatmaytan and Magno (2017, 106–29) argued, judicial empowerment in the 1987 Constitution is an application of Ginsburg’s insurance theory (Ginsburg 2003). The constitutional framers entrenched judicial review as a form of political insurance so that the Supreme Court can be a forum to challenge legislation and proposals to amend the Constitution. Likewise, the judiciary can provide horizontal accountability by serving as a stronger check on the executive branch.

Among the important innovations or reforms introduced by the 1987 Constitution (Article VIII) in the judiciary are as follows (Atienza and Baylon 2006, 355–56):

1. *Security of tenure.* While courts may be established or abolished by law, Article VIII, Section 2 establishes a new rule, which states that no law can be passed reorganizing the



judiciary when it undermines the security of tenure of the courts' members.

2. *Fiscal autonomy.* The judiciary now has fiscal autonomy. "Appropriations for the judiciary that shall be automatically and regularly released may not be reduced by the two Houses of Congress below the amount appropriated for the previous year."
3. *Judicial and Bar Council.* The Constitution created a Judicial and Bar Council (JBC). The members are the following: the Supreme Court's chief justice as ex officio chair, the Secretary of Justice and a representative of Congress as ex officio members, a representative of the Integrated Bar of the Philippines (IBP), a professor of law, a retired member of the Supreme Court, and a representative of the private sector. The regular members of the JBC are appointed by the Philippine president with the consent of the Commission on Appointments of Congress. The Council's principal function is to "screen and recommend appointees to the judiciary." The bases of screening appointments include "high standards of proven competence, integrity, probity, and independence." The JBC "prepares a list of at least three nominees for every [court] vacancy. It is from this list that the president makes a choice. The appointments need no confirmation from the Commission on Appointments of Congress," as was the case under the 1935 Constitution. The JBC's creation was also a departure from the practice during martial law, when former president Ferdinand Marcos "exercised absolute power to fill up vacancies in the judiciary without prior screening," except by his subordinates.
4. *Expanded Power of Judicial Review.* The Supreme Court's power of judicial review has been expanded to include not only the duty "to settle actual controversies involving rights which are legally demandable and enforceable" (Article VIII, Section 1) but also the power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part

of any branch or instrumentality of Government.” While some commentators argued that this nullifies the “long-standing doctrine of political questions as being beyond the pale of judicial power” (Atienza and Baylon 2006, 356), political law commentator and 1986 Constitutional Commission member Joaquin G. Bernas (1992, 263) said that this expanded definition of judicial power is not necessarily a negation of the political question doctrine. It was added to “emphasize that when abuse of discretion is committed even by the highest executive authority, the judiciary should not hide behind the political question doctrine” (Atienza and Baylon 2006, 356).

5. *Power to Review the Proclamation of Martial Law and the Suspension of the Writ of Habeas Corpus.* Article VIII, Section 18 explicitly grants the Supreme Court the power to review, “in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof.” This actually incorporates a 1971 Supreme Court ruling (*Lansang v. Garcia*, 42 SCRA 448) penned by Chief Justice Roberto Concepcion—who also became a 1986 Constitutional Commission member—which stated that “the grant of power to suspend the privilege of the writ of habeas corpus is neither absolute nor unqualified” (Atienza and Baylon 2006, 356).
6. *Judge of Presidential Elections.* Under the Constitution, the Supreme Court has the added responsibility of sitting as the “sole judge of all contests relating to the elections, returns, and qualifications of the president and vice president. This provision institutionalizes in the Constitution a statute already in force before the declaration of martial law in 1972 that constituted the Supreme Court as the Presidential Electoral Tribunal” (Atienza and Baylon 2006, 356).

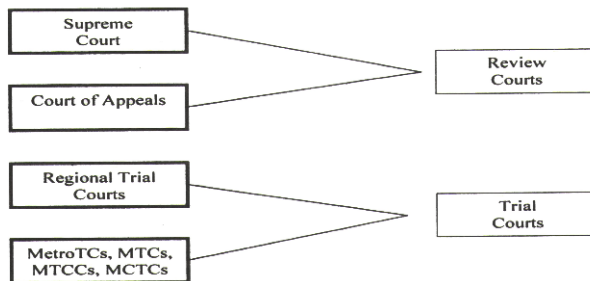
## Assessment: Internal Criteria

### Formation and operation of courts

*Are courts formed and operating according to the provisions in the 1987 Constitution? There is more than thin compliance in this area since courts are formed and generally attempt to operate according to the Constitution.*

The Supreme Court and all other courts created not only by the present Constitution but also by previous and current laws are working and generally operating according to functions set by law. The present Philippine judiciary is composed of the regular courts that are engaged in the administration of justice (Figure 1). They are organized into four tiers or levels, with the top tiers—the Supreme Court and the Court of Appeals—acting as review courts and the third and fourth tiers generally categorized as trial courts. This four-tier system is often referred to as the integrated judicial system.

**Figure 1.** The Four-Level Integrated Court System in the Philippines

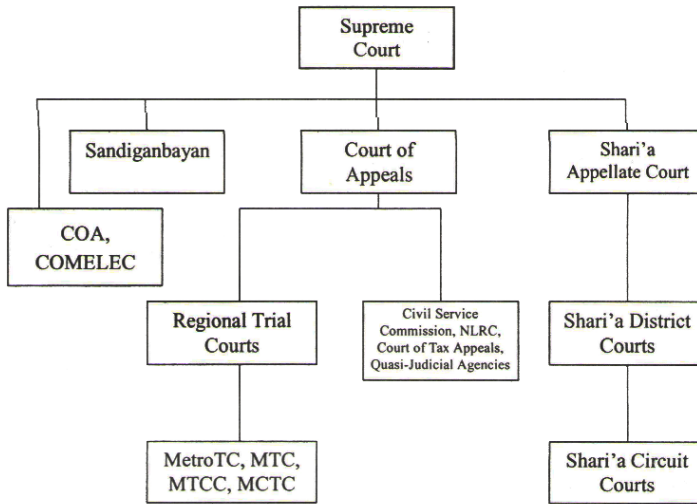


Source: Narvasa 1996, 3.

However, aside from the regular courts in the four-level system, the Philippine judicial system also has special courts (e.g., Court of Tax Appeals, the anti-graft court Sandiganbayan, and Shari'a courts that interpret and apply the Code of Muslim Personal Laws) and quasi-courts. Thus, the regular courts in the integrated judicial system, with the special and quasi-courts together, comprise what is called the total

Philippine court system (Figure 2). Decisions of quasi-courts<sup>3</sup> are appealable to the Court of Appeals, except decisions of the Commission on Elections (COMELEC) and the Commission on Audit (COA), which may be elevated for review directly to the Supreme Court.

**Figure 2.** The Philippines' Expanded or Total Court System



Source: Atienza and Baylon 2006, 358.

The Supreme Court performs judicial, adjudicatory, administrative, and rule-making functions. Other institutions and stakeholders recognize the Supreme Court as the interpreter of the law and the final arbiter in controversies and disputes. This includes the vacancy in the Office of the President that required Vice President Gloria Macapagal-Arroyo to assume the Presidency in 2001, and the legality of the

3 Quasi-courts are other agencies that exercise some judicial functions in order to assist the regular courts in de-clogging their dockets, "especially with regard to cases requiring specialized skills, training or knowledge for their proper disposition" (Atienza and Baylon 2006, 363–64). The Constitution-created quasi-courts are the Constitutional Commissions, namely the Civil Service Commission (CSC), the Commission on Elections (COMELEC), and the Commission on Audit (COA). Examples of quasi-courts created by laws are the National Labor Relations Commission (NLRC), Land Registration Authority, Social Security Commission, and so on.

declaration of martial law in Mindanao in 2017 and its extensions until 2019. It has administrative powers and provides the rules of court and procedures. It also supervises all lower courts, members of the judiciary, and members of the Integrated Bar of the Philippines (IBP). For instance, lawyers must take mandatory continuing legal education (MCLE) every four years so that they are updated with new laws and rules of jurisprudence. In interpreting laws and ruling on the constitutionality of other actions of other government branches and agencies, the Supreme Court also makes laws, and in the process is sometimes also accused of encroaching on the powers of other branches.

As will be explained later on, while courts have been formed, there are issues regarding their numbers, as well as the adequacy of judges, court personnel, and resources to meet the demands of the population.

### Selection of justices and judges

*How are justices and judges selected? Is the process in accordance with the 1987 Constitution? There is thin compliance with the provisions of the Constitution since the general processes are followed. However, there are questions about the role of politicians and other influential groups in the process, and there are complaints about the slow process of filling up vacant courts and the lack of applicants in provincial and local courts.*

As mentioned in the previous section on the reforms instituted in the 1987 Constitution, the JBC is in charge of the initial screening of nominees and making recommendations to the president for his or her final selection. Ideally, with the creation of the JBC, “the standards or appointments will be raised” and better-qualified judges and justices, “in accordance to the Constitution’s mandate, will be drawn” (Atienza and Baylon 2006, 357). One judge who participated in the FGD (FGD #1 2019) with Metro Manila judges said, “The rationale for having the JBC is to prevent the influence of politics and favoritism coming into play.”

While in the FGDs, there is general agreement that the JBC follows what is stated in the Constitution concerning the minimum

requirements of nominees—being a Filipino citizen (natural-born for Supreme Court justices) and a member of the Philippine Bar—the other requirement that the nominee is “a person of proven competence, integrity, probity, and independence” (1987 Constitution, Article VIII, Section 3) may be debatable or open to interpretation. The JBC is not completely immune from political influences since members are also humans, and some members are politicians and presidential appointees with their own agenda (FGD #1 and #3 2019). There are also additional and sometimes redundant requirements that may add financial and psychological burdens on applicants and nominees, e.g. certified birth certificates, Statement of Assets, Liabilities and Net Worth (SALN), neuropsychological exams, and sometimes questions that seem personally invasive during interviews (FGD #2 2019). If an applicant or nominee is from the provinces, he or she will also have to spend for transportation and accommodations for the interview and exam. In some cases, one needs a referral letter from politically influential people (FGD #1 2019) or one’s political affiliation is questioned (FGD #3 2019). It is also alleged “that certain nominees lobby particular personalities deemed to have a strong influence on the president” (Atienza and Baylon 2006, 375; FGD #4 2019). Thus, it cannot be avoided if there are sometimes questions about the fitness and competence of some of those who eventually make it to the shortlist submitted to the president and those who get chosen to be members of the Supreme Court and other courts, e.g., lack of litigation experience or expertise.

Once the JBC submits a shortlist of at least three nominees to the president, the latter chooses from the list. For lower courts, the president “shall issue appointments within ninety (90) days from submission of the list” (1987 Constitution, Article VIII, Section. 9). However, sometimes, appointments take longer than 90 days. In Eastern Visayas, FGD participants said it sometimes take about a year (FGD #3 2019). As such, there are courts where the judges’ positions are vacant for a long time, leading to delays in dealing with cases filed in those courts. The effectiveness of the courts is discussed in a later section.

## Reforms in the Constitution

*Have reforms in the Constitution been instituted? In terms of the general reforms introduced in the 1987 Constitution enumerated above, these are already formally instituted, though there are problems in enforcement. Thus, there is some substantial or thick compliance.*

The expanded roles of the Supreme Court, as well as the creation of the JBC in the selection of justices and judges, have already been discussed above. While there are still issues, the Supreme Court since 1987 has actually been performing many of its mandated roles—expanded power of judicial review, judge of electoral contests, and review of declaration of martial law and suspension of the writ of habeas corpus. Likewise, there is security of tenure, and judges can only be removed following certain processes; also, the JBC is now in charge of screening candidates to various courts. However, the judiciary seems to be underperforming in the area of fiscal autonomy.

The Constitution is only clear about Congress not being allowed to reduce appropriations below the amount budgeted in the previous year. The Constitution is not very clear about other aspects of fiscal autonomy. Actually, the Judicial Development Fund (JDF) was established in 1984 through Presidential Decree No. 1949.<sup>4</sup> The fund was created for the “benefit of the members and personnel of the judiciary to help ensure” its independence. Through the JDF, the judiciary was also given the authority to generate its own funds and resources through court fees and other funding sources to help “augment its budgetary requirements” and encourage the welfare of its members and personnel as well as improve infrastructures.

However, the JDF can be the subject of scrutiny by some members of Congress, who may try to clip the powers of the Supreme Court because of a previous decision that affected the latter or their allies. For instance, there was an unsuccessful impeachment complaint in 2003 mostly led by allies of former president Joseph Estrada against

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4 At least 80 percent of the JDF is used for the allowances of court employees and not more than 20 percent for the improvement of courts.

then-Supreme Court chief justice Hilario Davide based on the alleged misuse of the JDF. Similarly, in 2015, some members, allied with the then-administration party (Liberal Party), initiated a resolution to review the JDF after the Supreme Court declared as unconstitutional the Priority Development Assistance Fund (PDAF)—popularly known as pork barrel of members of Congress—and the Disbursement Acceleration Program (DAP), which pertains to the administration's economic stimulus package.

Moreover, in keeping with the principle of checks and balances, the judiciary still presents their proposed annual budget to the Department of Budget and Management (DBM) and Congress. The JDF and the annual budget given to the judiciary are actually insufficient for all expenses required by all the courts, judges (actual and vacant positions still waiting for appointees), personnel, and infrastructures nationwide (Atienza and Baylon 2006, 370–71; Bernal 2015; FGD #1 2019).

It is also the practice that judges and courts receive allowances and other support—vehicles for court use, buildings, office equipment or renovation, etc.—from some local governments where courts are located (Bernal 2015; FGD #1 2019). The form and amount of this supplemental support vary depending on the approved budget of the local governments. Some judges argue that this does not make courts and judges less independent since the support of local governments are mainly directed at making sure that the users or clientele of courts, i.e. the residents and communities of the localities, are served better. For instance, in Quezon City, the courts are housed in buildings donated and land owned by the local government (Bernal 2015; FGD #1 2019).

Thus, given the financial situation of the judiciary, it appears that it does not have full fiscal autonomy. It is still subject to the whims and decisions of the DBM and the two Houses of Congress.



## Assessment: External Criteria

### Democratization

#### *Independence of the judiciary*

Is the judiciary perceived as independent and competent? While there are reforms already instituted to address independence and competence, there is thin compliance in terms of the perceived independence and competence of the judiciary.

Ideally, the perception is that judges interpret the law in an independent and impartial manner. However, the judiciary is also a political institution where, even in so-called more democratic systems, it is subject to both external and internal biases that may lead observers to question whether it is actually independent. First, externally, the manner of appointment by the executive and legislative authorities may affect the way judges and justices make decisions, particularly in cases when the interests of the other branches are at stake. Second, internally, judges are, of course, humans who also come from certain social, political, and economic backgrounds and do have their own interests and biases (Heywood 2019, 309–11).

In the Philippines, because of the experience under the 1935 and 1973 Constitutions, the framers of the 1987 Constitution sought to establish provisions protecting the independence of the judiciary. However, in practice, this is not always absolute. In relation to the executive branch, observers normally assume that judges, especially justices, will be “indebted” to the president (FGD #2 2019) who appointed them and will comply to declare as constitutional the actions of the president or the executive branch. Presidents will normally appoint allies and associates to the Supreme Court. Some public legal practitioners also mentioned that there are judges in both lower and higher courts who decide on what seems to be favorable to the executive branch because they also hope to be appointed to higher courts (FGD #2 and #4 2019).

While it can be assumed that there is respect for the independence of the judiciary, there is also the principle of checks and balances

enshrined in the 1987 Constitution. All three branches will have to work with each other and will not be totally independent in practice (FGD #1 2019). For instance, as mentioned earlier, the judiciary has fiscal autonomy, but it still has to defend its budget in Congress every year and must actually request for an adequate budget. It also has to navigate relations with the police since the latter will be the ones to enforce the warrants issued by judges. Local government executives may sometimes think that because they do give allowances to judges and courts in their jurisdiction, they can ask certain favors when necessary. In the end, judicial independence boils down partly on how individual judges and justices balance different interests—including their own—and expectations with what is required by law (FGD #1 2019).

In recent years, the threat of removal of two chief justices can be seen as a blow to judicial independence. The impeachment process is constitutionally prescribed and can be perceived as a possible way of removing erring justices, but it can also be abused by both the executive and legislative branches, and can pressure members of the Supreme Court not to antagonize the two other branches (FGD #2 and #4 2019). In 2012, the removal of Chief Justice Renato Corona—appointed by President Macapagal-Arroyo in what was claimed to be a midnight appointment—through an impeachment process was facilitated in a Congress where both Houses were filled by allies of Macapagal-Arroyo's successor, President Benigno Aquino III. It is the only impeachment proceeding completed so far under the 1987 Constitution (Go and Encinas-Franco 2019, 47). Corona was convicted by the Senate for his failure to meet the strict Constitutional standards for a member of the judiciary. While others hailed this as an indication of the triumph of checks and balances, the unintended outcome was that members of Congress now found it easier to defy the Supreme Court, making it somewhat "subordinate to other branches of government" and losing its "moral ascendancy" (Gatmaytan and Magno 2017, 205). Former Chief Justice Reynato Puno said that "the judiciary is now in disarray" with members either "disappointed," "confused," or "appear[ing] to be in a spiritual slump for they perceive a severely wounded judiciary" (Romero 2012).

President Aquino III would later appoint a very junior member of the Supreme Court, Maria Lourdes Sereno, as Chief Justice. This

led to infighting among the justices, perhaps due to the violation of the seniority principle, which deprived more senior justices of the opportunity to be appointed as Chief Justice. This infighting was covered extensively by the media (Gatmaytan 2017, 206). However, Sereno earned the ire of President Rodrigo Duterte when she criticized the policies of the president, especially after the president publicly named several judges as coddlers or protectors of drug personalities without providing evidence. The president started attacking her in public and soon, an impeachment complaint was filed against her in the House of Representatives. Surprisingly, some members of the Supreme Court agreed to appear in the impeachment hearings of the House Justice Committee to testify against Sereno, discussing professional and personal rivalries within the highest court of the land. However, even before the process in the House of Representatives was concluded, Sereno was removed by her own colleagues in the Supreme Court when the Solicitor General filed a *quo warranto* petition that argued that her appointment was void *ab initio* because of her failure to submit her SALNs and “disclose her wealth when she applied for the post in 2012” (Atienza 2019, 187). This decision of the Supreme Court rendered moot what was supposed to be another impeachment process in Congress.

However, it can also be argued that there are instances when the Supreme Court acted on the basis of the justices’ appreciation of the law despite the position of the executive branch and the president who appointed members of the Court. Historically, the Philippine Supreme Court is replete with examples of justices who acted independently of the appointing power. Of course, in *Javellana v. Executive Secretary*, the Supreme Court provided Marcos with the legal basis for martial law by declaring the 1973 Constitution legal—this is seen as a demonstration of Marcos’ control of a faction of the Supreme Court. However, the Court’s decision in *Lambino v. Commission on Elections*—where majority of the members ruled in 2006 that the “Lambino group failed to comply with the basic requirements of the Constitution for conducting a people’s initiative” to change the Constitution with a proposed shift to a parliamentary system and a unicameral legislature initiated by President Macapagal-Arroyo and supported by the House leadership—showed that “the resolution of issues” within the high court “is not always determined by the number of the President’s appointees” (Gatmaytan 2017, 102). Administration lawmakers then

reacted by preparing to “file an impeachment case against justices who voted against the initiative,” but this was dropped. Instead, the House planned to initially convert the two Houses into a constituent assembly and to later call for elections for a constitutional convention, but the Senate rejected these plans, and public opinion and various groups protested these moves.

Under Sereno, the Supreme Court ruled in *Belgica v. Ochoa* (2013) and *Araullo v. Aquino* (2014) that the PDAF and four acts in the DAP—both forms of pork barrel—were unconstitutional. These decisions went against the position and interests of both the executive and legislative branches. As mentioned earlier, this triggered a countermove from the administration party in the two Houses of Congress to review and possibly to scrap the JDF. Chief Justice Sereno “turned down invitations from House Speaker Feliciano Belmonte to appear in the hearings and asked Congress to spare the judiciary as it reviews its rulings on DAP” (Bernal 2015). President Aquino threatened to amend the constitution to clip the powers of judicial review of the Supreme Court, saying that it is “judicial overreach” on the part of the Supreme Court to strike down the DAP, his administration’s economic stimulus project (Gatmaytan 2017, 270). However, the Chief Justice replied that the Supreme Court cannot refuse to hear cases just because they may lead to complications with the other branches and that it is not her duty to mend ties with the chief executive (Gatmaytan 2017, 269–70).

In 2019, the highest court issued a writ of *kalikasan*,<sup>5</sup> a legal “remedy” under Philippine law that safeguards one’s “constitutional right” to a healthy environment, in response to a petition filed by the IBP and from Palawan and Zambales. The writ aims to “protect the marine environment in the disputed West Philippine Sea... and compel[s] the government to protect.... the Philippines’ exclusive economic zone (EEZ) in the contested South China Sea” (Navallo 2019a). This was issued while the Philippine government, under President Duterte,

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5 See Rule 7 of the Rules of Procedure for Environmental Cases as a Special Civil Action, with the Supreme Court arguing that Article II, Section 16 of the Constitution—right to a healthy environment—was not self-executory. [https://philja.judiciary.gov.ph/files/learning\\_materials/A.m.No.09-6-8-SC\\_Rules\\_of\\_Procedure\\_for\\_Envi\\_Cases.pdf](https://philja.judiciary.gov.ph/files/learning_materials/A.m.No.09-6-8-SC_Rules_of_Procedure_for_Envi_Cases.pdf)

sought friendlier relations with China, with very mild attempts to raise the issue of Chinese boats and soldiers harassing Philippine fisherfolks in the disputed territories. Earlier in 2019, the Supreme Court also “ordered the Office of the Solicitor General (OSG) to furnish petitioners copies of thousands of police documents in relation to the government’s war on drugs” (Navallo 2019b). The OSG initially refused to release the documents to the petitioners, citing national security concerns.

There are currently two petitions “pending in the high court, questioning the constitutionality of the war on drugs” (Navallo 2019b). Finally, in May 2019, the Supreme Court issued a *writ of amparo*, “a legal remedy seeking a protection order,” and a *writ of habeas data*, which asks the Court to “compel the respondent” (i.e., various officials and agencies of the Philippine government, including the President) “to delete or destroy damaging information,” in favor of three groups—a human rights group, a religious group, and a women’s group. These organizations were “tagged by the government as alleged fronts of the Communist Party of the Philippines,” and the Supreme Court directed the Court of Appeals to hear the petition of the three groups. A similar decision was granted by the Supreme Court earlier to the National Union of Peoples’ Lawyers (Rappler 2019).

However, as pointed out in the section on fiscal autonomy and in this section, the independence of the judiciary is not solely dependent on the actions of its members. Judicial independence must also be respected by the two other branches who may judiciously observe checks and balances. This is not always the situation in the Philippines. The other two branches can also exercise their powers to check the judiciary to balance or prevent a truly independent and outspoken Supreme Court. They can do this, based on actual past actions, through the following: performing oversight functions on judicial finances; depriving the judiciary of the appropriate budget annually; threatening impeachment and removal of members of the judiciary, particularly the Supreme Court, through a *quo warranto* petition; making threats of changing the provisions in the Constitution to limit the power of judicial review, and so on. To a certain extent, a Supreme Court’s 2015 decision dismissing a petition of a private citizen to stop attempts in the House of Representatives to either overhaul or abolish the JDF may

have also acknowledged some of the limitation of the judiciary vis-à-vis the two other branches of government when it said: “Courts are not constitutionally built to do political lobbying [nor] trained to produce a political statement or a media release” (quoted in Bernas 2015).

Judicial independence is also respected if individual members of the court and the whole justice system feel safe and secure. However, in the Philippines, this is not the case, particularly in recent years as individual members of the justice system have been individually threatened to an unprecedented degree. As of March 2021, “61 lawyers, judges and prosecutors were killed in the first five years of the Duterte administration, more than the combined number of those killed (49) over the 44 years spanning Ferdinand Marcos’ to Benigno Aquino III’s administrations” (Atienza 2021 referencing Buan 2021b). “In an unprecedented move and giving in to demands for decisive action from lawyers’ groups, the Supreme Court *en banc* issued a statement on 23 March 2021 condemning the killing of lawyers, judges and prosecutors, and vowed to look into institutional changes to protect them” (Atienza 2021 referencing Buan 2021a and Supreme Court of the Philippines 2021).

With the election of Ferdinand Marcos Jr. as President in May 2022, it is interesting how the judiciary and the current administration will interact with each other, given his father’s documented historical disrespect of judicial independence. The new administration seems to continue, in varying degrees, the anti-terrorism and drug war policies of the previous administration, which have implications for human rights and democratic space (Atienza 2022). Recently, various lawyers and judges groups, as well as the Supreme Court itself, issued strongly worded statements against the red-tagging and threats to the lives of a judge and her husband by a former government official and pro-administration bloggers (Torres-Tupas 2022a). The Supreme Court has also asked the former government official to explain why she should not be charged with indirect contempt for her words against the judge and her husband (Torres-Tupas 2022b).

## *Arbiter role*

*Does the judiciary act as an independent arbiter in intra-government conflicts? Generally, there is thin compliance when it comes to the court acting as arbiter.*

If there are cases filed in the Supreme Court when there are conflicts among the other branches and agencies, the court acts on them and interprets the applicable Constitutional provision or law. For instance, President Macapagal-Arroyo issued Executive Order (EO) 464 in 2005, preventing senior executive and military officials from appearing before Congress during legislative investigations without the consent of the President. The EO was questioned in the Supreme Court, and some provisions were voided even if the majority of the justices were Macapagal-Arroyo appointees. As the Philippine Center for Investigative Journalism (PCIJ 2006) put it, "...Congress can compel the appearance of these officials so long as investigations are done in aid of legislation." The Congress also has a right to know why the executive considers the requested information privileged. In the case of the Enhanced Cooperation Development Agreement (EDCA) between the Philippines and the United States, the Supreme Court ruled that it is an executive agreement, not a treaty, which thus does not need the Senate's approval.

## *Judiciary corps vis-à-vis the population*

*Does the judiciary corps fairly reflect the population? Given the requirements to be appointed to the Philippine judiciary particularly at the top levels, it is difficult to have compliance in ways that justices and judges fairly reflect the population.*

Reflecting the population may be difficult, especially at the level of judges and justices since education and years of experience are required to be appointed (FGD #1 2019). Many of them do not fairly represent the characteristics of the Filipino population in terms of socio-economic background, education, and age requirements. There are also observations that the law schools where one graduates from determine the appointment of judges—especially justices (FGDs #2 and #3 2019). Graduates of the University of the Philippines, Ateneo



de Manila University, and San Beda University dominate the top posts in the judiciary. Under President Duterte, there were more San Beda (his alma mater for his law degree) graduates appointed to the Supreme Court. Some PAO lawyers, meanwhile, said that law school representation in courts may change in the future because in recent bar exams, law schools from other regions are beginning to produce top placers (FGD #3 2019).

Many of the FGD observations are also supported by exploratory data on all appointments to the Supreme Court from 1988 to 2008 (Gatmaytan and Magno 2017). The study found out that over two decades, Supreme Court appointees were “made up mostly of men in their early 60s—drawn almost exclusively from Luzon and Metropolitan Manila-based law schools” (Gatmaytan and Magno 2017, 18). Women appointees usually share the same regional and legal education backgrounds. Thus, the Supreme Court’s composition does not reflect the diversity of society.

In terms of gender representation, women justices in the Supreme Court are definitely still fewer than male justices. The first woman justice, Cecilia Muñoz-Palma, was appointed in 1973. Since then, the Supreme Court has had two women Chief Justices—Serenio who was removed by a *quo warranto* petition and Teresita Leonardo-de Castro who replaced her, making the latter the *de jure* 24th chief justice and “first” female chief justice, but served only for less than two months as she reached the mandatory age of retirement. Today, there are two female justices out of 15 members of the Court.

In the Court of Appeals (n.d.), there are 19 justices who are women out of 48 justices, as of August 2022. Gender representation becomes more representative of the total Philippine population in the lower courts.<sup>6</sup> Based on the Supreme Court website’s gender-disaggregated data, there are 1,054 (54 percent) female judges compared with 895 (46 percent) male judges out of 1,949 incumbent judges in lower courts

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6 These include Regional Trial Courts, Family Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari’a District Courts, and Shari’a Circuit Courts.



by the end of 2021. Women are also overwhelmingly represented in terms of personnel in the lower courts by the end of 2021, with 10,068 (53 percent) women personnel compared to men who comprise 938 (47 percent).

However, there are no clear data to know if regional, ethnic, economic, and other groupings are represented in the judiciary corps or in the court personnel. Of course, in the Shari'ah courts, Muslim lawyers who pass the Shari'ah bar exams are appointed. It may also be very difficult to ascertain if there are LGBTQ judges since until now the courts are conservative in these matters (FGD #1 2019).

### *Competence and Effectiveness*

*Are courts effective and competent? While the Supreme Court has been introducing reforms to address effectiveness and competence, there is thin compliance because of the difficult conditions that courts are facing.*

The competence and effectiveness of courts are affected by the sheer number of cases filed before them. A judge needs to be substantive in writing his or her decisions on cases, but judges also suffer from handling so many cases that they also want to finish quickly to avoid backlogs. Some judges handle cases in several courts because there are no judges appointed in the other courts. Still, the results usually are delays in court proceedings and decisions. The causes of delay are not just within the judiciary, but in the overall justice system, as well as the changing conditions of Philippine society.

Some of the causes of delay enumerated by Atienza and Baylon (2006, 369–71) still exist and were mentioned in the four FGDs conducted for this paper. They are as follows:

1. *The societal complexion of delay.* Delays can be caused by changes in the political and social environment. “The increase in the number of cases filed over the years is due to the....[following]: increase in the national population; improvements in socioeconomic development; increased awareness of people of their rights and privileges; a perceived prevalence of the

litigious propensity” of Filipinos (Atienza and Baylon 2006, 369–70); the enactment of new laws and rules; and increased actions of government affecting individuals. For example, due to the war-on-drugs policy of the Duterte administration, there was an increase in the number of drug-related cases. A judge in a drugs court receives about 50 cases a week or 200 cases a month; drug courts are required to finish these cases within 60 days, which may be impossible due to the number of cases (FGD #1 2019).

2. *Court system delay.* First, the judiciary “lacks courts, court facilities, judges, and court personnel,” especially in rural areas. Additional courts have to be created by the two Houses of Congress, which takes time. There is also “slowness... in filling up vacancies” in courts. Specifically, the JBC faces a problem in the “selection of nominees for the lower courts, especially in the MTCs, and MCTCs in far-flung municipalities. In most cases, there are not enough applicants and nominees to fulfill the constitutional requirement that there must be at least three names to be submitted to the president for each vacancy” (Atienza and Baylon 2006, 370 citing Aquino 1994, 51). In contrast, there are many applicants and nominees to the vacancies in Metro Manila and the higher courts. As of the end of 2021, the Supreme Court website indicated that there were 681 judge vacancies (25.89 percent) out of 2,630 positions in lower courts nationwide. Second, while the Constitution states that the judiciary has fiscal independence, the judiciary also relies on the appropriations to be approved by Congress, and these appropriations are not enough to sustain all needs of the courts, including the creation of courtrooms and other infrastructures. This is where the JDF and the support of the local governments, as well as foreign grants, become crucial in some areas.
3. *Delays caused by court-related agencies.* Some causes may be sourced from agencies that are part of the larger justice system. These include the lack of prosecutors from the Department of Justice (DOJ) that can also lead to inefficiency; the non-

appearance of police witnesses; the failure of the police to serve the courts' arrest orders; the heavy work burden of and unavailability of transport services for sheriffs; and the inefficiency of the postal service in delivering court- and litigation-related materials.

4. *Judge-caused delays.* Despite the strict qualifications enumerated in the Constitution for justices and judges, some judges still make mistakes in the application of procedural rules, judicial decision-making, and case-flow management. Some of them may not be too familiar with specific laws to be used.
5. *Lawyer-caused delays.* Causes include lawyers' unavailability at the appointed date of trial; unwillingness to proceed because he or she is not prepared; inexperience, ignorance, and inefficiency; use of delaying tactics to gain time, hoping to improve his or her client's position; and some attitude that lawyering is a business.

Since 1986, after People Power, reforms were already instituted in the judiciary to try to address the delays and inefficiency in the administration and delivery of justice. Some of these are as follows (Atienza and Baylon 2006, 376–81):

1. The creation of the Office of the Court Administrator;
2. Continuous trial system;
3. The use of the pretrial system;
4. Establishing the *Katarungang Pambarangay* (community justice system) as a mode of alternative dispute resolution;
5. The refinement and simplification of court procedures;
6. The computerization in aid of administration and delivery of justice; and
7. Relying on mediation as an alternative dispute-resolution program.

To address improving the competence of courts, personnel, and all lawyers, the judiciary has also instituted the following: (1) the Code of Judicial Conduct and other codes to improve the competence and integrity of the judiciary; (2) continuing judicial education; and (3) periodic monitoring of judicial projects, programs, and performance of trial courts. A comprehensive Action Program for Judicial Reform (APJR) was instituted by the Supreme Court under then Chief Justice Davide to address all the major problems facing the judiciary.

However, delays and inefficiency still occur, meaning there is a need to have a more coordinated and comprehensive response to the causes of inefficiencies and delays, especially the lack of courts, judges, and other personnel. Not all of these needed responses and reforms are in the hands of the judiciary, as both executive and legislative branches also have a role to play in better and faster procedures to appoint judges and justices, increasing the budget for the judiciary, and creating more courts and positions for judges. For instance, Congress passed the Judges At-Large Act of 2019, which “create[d] 150 new positions for judges who will be assigned to various courts and unclogged case dockets” (Rosario 2019). However, while this law obviously aims to “address the worsening docket load of the judiciary” and to “build trust and confidence in the judicial system” (Rosario 2019), it still does not create new courts, corresponding infrastructures, and personnel positions needed for judges to operate in relation to a growing population. In the FGDs among judges in Metro Manila, they cite situations where three judges share one courtroom and one set of court personnel (FGD #1 2019).

The COVID-19 pandemic further challenged the operations of the courts since lockdowns began in the country in March 2020. However, the judiciary has actually stepped up its innovations, particularly with the use of e-technology, as a result of the pandemic. In order to decongest jails and limit the spread of the virus, the Supreme Court revised procedures and instituted videoconferencing hearings to qualified inmates, particularly low-level offenders and sick and elderly prisoners, or those detained but qualified to be released based on Supreme Court guidelines (Aben 2020; Atienza et al. 2020b; Murcia 2020). Courts restarted full operations in June 2020, but only with essential staff for many courts around the country, depending on the

lockdown status of the locality. Videoconferencing hearings continued for cases involving accused who were detained and certain other cases. The Supreme Court also allowed the e-filing of complaints, petition for bail, and submission of requirements for bail to minimize physical contact in judicial proceedings during the strict lockdown period. These significant developments allowed the courts to continue operating in order not to further delay the delivery of justice, even during a pandemic.

More recently, the Supreme Court under Chief Justice Alexander G. Gesmundo launched the Strategic Plan for Judicial Innovations 2022-2027 (SPJI), which “aims to establish new frameworks and adopt new approaches, but at the same time, build on and re-purpose existing ones, to achieve the long-term aspiration of delivering responsive and real-time justice” (Supreme Court 2022). The comprehensive plan seeks to address the challenges to achieve competence, efficiency, and efficacy anchored on four guiding principles, namely (1) timely and fair justice, (2) transparent and accountable justice, (3) equal and inclusive justice, and (4) technologically adaptive management.

### *Accessibility*

Are courts accessible for all? While courts are supposed to be accessible for all and there are efforts to make them more accessible, there is still thin compliance.

Poor people are naturally disadvantaged because of the following:

1. Lack of funds to pay for filing fees, hiring high-caliber lawyers, and following through their complaints or cases, e.g., transportation and communication fees (Atienza and Baylon 2006, 371; FGDs #1-4 2019);
2. Their submissive attitude and inability to communicate with their lawyers because of *hiya* (shyness or shame), lack of education and knowledge of the law, and lack of family support (Lopez 1999);
3. Challenges for lawyers from the Public Attorney’s Office (PAO) tasked to represent indigents for free, such as overwhelming

workload compared to private lawyers, lack of facilities and libraries to support their cases, and lack of investigators who will help them gather evidence and legal researchers who will assist them in building their cases (Lopez 1999);

4. The language of the law and courts, which is English (Aquino 1994, 27–28);
5. The location of courts and lack of judges as some courts are either too far from the disadvantaged communities or there are no judges or prosecutors in courts located in far-away places (FGD #2 and #4 2019); and
6. Strict administrative rules, such as a dress code, that may prevent or discourage indigents from entering courts as litigants and/or witnesses (FGD #2 2019).

Since 1986, in order to facilitate access of poor people to the courts, the Supreme Court has allowed limited law student practice to represent indigent clients. The judiciary is also the recipient of the Justice on Wheels Project—mobile courts funded by loans from the World Bank. Legal or lawyer-based civil society organizations have also started not just providing legal aid to disadvantaged populations but also empowering disadvantaged communities and advocating for legal and judicial reforms (Golub 1998, 259). The salaries and benefits of PAO lawyers have also increased, but they are still overburdened by cases. Some prosecutors who attended the FGDs said that there are cases when lawyers themselves give money to clients for transportation and communication expenses, and even help them rent acceptable clothes and shoes for court appearances (FGD #2 2019).

Persons with disabilities (PWDs) have a harder time in most courts. For instance, there are no in-house facilities and translators in courts to assist PWDs. Translators for deaf witnesses have to be outsourced when needed (FGD #2 2019).

As mentioned earlier, the judiciary's response to COVID-19 was to introduce additional reforms, e-transactions, and videoconferencing to continue operations. However, access to the justice system has also been affected (Pago 2020). Furthermore, access to justice will remain

unequal amidst these reforms as long as access to electricity and reliable and affordable internet facilities remains a challenge for many rural areas in the country.

### *Accountability Mechanisms*

*Are there accountability mechanisms in place? There are already accountability mechanisms and ongoing reforms but there is still thin compliance.*

As mentioned in earlier parts of this paper, there are monitoring mechanisms in place, and periodic reports are required to be submitted to the Supreme Court. When complaints are found or anomalies are seen in the reports, the courts are audited. Various codes of conduct, as well as requirements for continuing education, are also in place. An e-court system is also in place for easier monitoring of cases and other reform programs of the judiciary. The Supreme Court has also opened a more complete web repository of all its decisions, making it easier for researchers to access major decisions. In 2019, the Supreme Court has unveiled a more comprehensive e-library of all its documents in an effort to make its history and current decisions, actions, and projects more transparent and accessible to the public.

Cases of corruption will be discussed in the section on economic development as well as reforms introduced to address corruption. Meanwhile, to “honor[ing] those who have rendered exemplary service,” the Supreme Court introduced the annual search for outstanding judges and clerks of court under the Judicial Excellence Awards Program, as well as the Chief Justice Awards for deserving court personnel below court clerks (Atienza and Baylon 2006, 383).

In the area of public perceptions and opinion of the judiciary, because of the more specialized requirements to be appointed to positions in the judiciary and the absence of popular elections in the selection of the judges and justices in courts all over the country, the judiciary appears to be the most distant branch from the public. Likewise, it appears to be the least familiar to the public in terms of responsibilities and actual operations. There are also very few instances when there are regular surveys that specifically look into the public’s

satisfaction with various aspects of the judiciary, and not only general satisfaction with the Supreme Court. There is also not much data on how much the general public knows about the judiciary—its powers, structure, and processes.

Before the 1986 People Power, a Bishops-Businessmen's Conference for Human Development conducted a survey in coordination with the Philippine Bar Association. Then, in 1993, the Social Weather Stations (SWS) conducted a national survey on justice issues and satisfaction with the courts. When the results of the two surveys are compared, "a plurality of respondents perceived the judiciary to be impartial in relation to the social status of those who [have] cases in court. But in both surveys, a big percentage believed" that the courts are partial (26 and 39 respectively). "Also, there was a decline in the number of those who... [perceive] an impartial judiciary." This seems to suggest that there is an increase in the number of respondents "believing that the courts [are] partial to the rich and powerful" (La Viña and Arroyo 1994, 4).

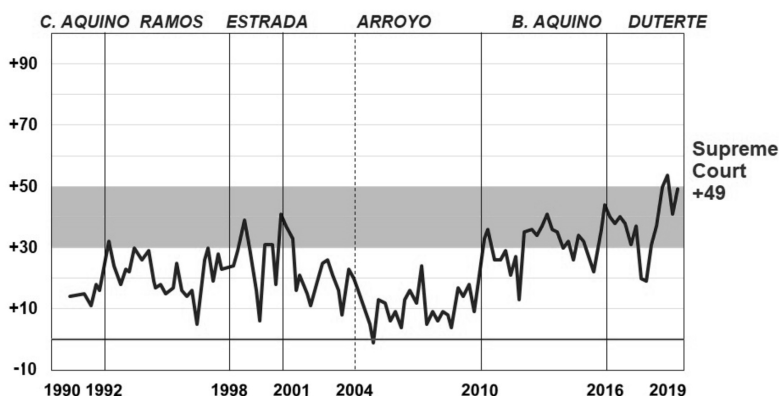
Over the course of research for this current paper, the author found one national survey focused on "users' experience and perception on the judiciary" (Bersales, Carmona and Berja 2006). The survey was commissioned by the Supreme Court to serve as a benchmark for the Judicial Reform Support Project, which aims to support the reform program APJR, introduced during the term of Chief Justice Davide. Perhaps because the participants in the survey were people who had direct experience and participation in different aspects and procedures within the judiciary, their ratings of the different performance indicators were relatively higher than those usually found in public opinion surveys. However, they did point out areas for improvement as well. Unfortunately, this kind of users' survey, especially on a national scale, has not been repeated more recently.

However, if we check the general public satisfaction ratings of the Supreme Court based on surveys of SWS, which has regular data since the first Aquino administration, we will note that general public satisfaction ratings are really not that high compared with other branches and institutions of government (Figure 3). Satisfaction ratings are also affected by general political events. For instance, the



satisfaction ratings of the Supreme Court rose (+30 and above) during the period from 2000 to July 2001, possibly due to the public's general satisfaction with Chief Justice Davide's professional handling of the Senate impeachment trial, and the Supreme Court's decision to uphold the constitutionality of the presidency of Macapagal-Arroyo using the succession principle. However, afterwards, there was decline in public satisfaction ratings as media and Congress once again focused on news about possible judicial corruption and incompetence. As mentioned earlier, Davide himself was the subject of an unsuccessful impeachment attempt in 2003 by Estrada allies in the House of Representatives. There were also periods of decline in satisfaction ratings around the time of the impeachment proceedings against Chief Justice Corona and the appointment of Sereno as his replacement in 2012, as well as the impeachment attempts on, and finally the removal of, Chief Justice Sereno in 2018 by the Supreme Court through a quo warranto petition. Currently, the Supreme Court from December 2018 has a record-high satisfaction rating of +50 (very good), but down to +49 (good) in the last quarter of 2019 (SWS 2020).

**Figure 3. Net Satisfaction Ratings of the Supreme Court:**  
Philippines Nov 1990 to Dec 2019



\* Net ratings = % Satisfied minus % Dissatisfied. Survey Data: Social Weather Stations surveys.

[NWS-RATE.PRS]

**SOCIAL WEATHER STATIONS** Founded 1985  
Statistics for Advocacy

**Fourth Quarter 2019 Social Weather Report**  
December 13-16, 2019 National Survey

Source: Social Weather Stations 2020

While members of the court and lawyers do not owe their positions to the electorate, they consider public perceptions of the judiciary important because it is an indicator of faith and trust in the judiciary and the justice system, which can lead to respect for the rule of law (FGD #1, #2, and #4 2019). FGD participants noted that negative public perceptions about the judiciary are usually due to (1) some sectors' negative experiences when dealing with the courts; (2) the media's reporting and sometimes very generalizing presentation of the judiciary, judges, lawyers, and personnel as corrupt, inefficient, and easily manipulated; (3) delays and other inadequacies of the courts and personnel; and (4) isolated cases of corruption in the courts that are sensationalized both by media and politicians.

## Decentralization

*Do court decisions and procedures support decentralization and autonomy, particularly in interpreting local autonomy issues? There appears to be more substantive or close to thick compliance in this criterion.*

In most cases involving local governments and autonomy, decisions are usually based on how the Supreme Court interprets the Constitution and existing laws. However, it seems that like the members of the Supreme Court who served under the 1935 Constitution (Atienza and Baylon 2006), justices since 1987 appear to have a liberal interpretation of the Constitution and other laws. They tend to favor autonomy and local governments, which the 1987 Constitution has also articulated.

For instance, the two Houses of Congress passed a law elevating 16 municipalities to cities. However, the League of Cities disagreed, saying that these local government units (LGUs) do not meet the income requirements under the Local Government Code of 1991 to be considered cities. But the Supreme Court decided on the *League of Cities of the Philippines v. the Commission on Elections* in 2011 that these new cities are exempted from the income requirements. The Court actually changed its decision several times—in 2008 and 2010, it declared the cityhood laws unconstitutional.

One recent favorable decision for local governments and greater autonomy is the interpretation of the Local Government Code of 1991's provision that LGUs receive 40 percent share of national taxes (Atienza et al. 2020a). Since 1991, this has been interpreted to mean that LGUs will receive a share of revenues collected by the Bureau of Internal Revenue (BIR), leading to problems about the insufficiency of funds and the unfair formula disadvantaging provinces and municipalities, who bear the brunt of the devolved services. However, in a July 2018 decision (G.R. No. 199802 and G.R. No. 208488) which was affirmed in April 2019—known as the Mandanas-Garcia ruling—the Supreme Court now defines “the just share” of LGUs not just based on national internal revenue taxes but “national taxes.” This covers revenues collected by BIR; tariff and duties collected by the Bureau of Customs; 50 percent of value-added tax; 30 percent of national taxes collected in the Autonomous Region in Muslim Mindanao, now the Bangsamoro Autonomous Region of Muslim Mindanao; 60 percent of national taxes collected from the exploitation and development of national wealth; 85 percent of excise tax from tobacco products; and a portion of franchise tax under Republic Acts 6631 and 6632 (Horse Racing Laws, and so on). This takes effect starting in 2022, though to benefit all LGUs equitably, there should be accompanying changes in the 1991 Local Government Code as well.

## Social justice, human rights, and gender equality

### *Representation*

*Are women, minorities and other sectors represented in the judiciary?*  
There is still thin compliance in this area.

Based on the discussion above on the composition of the justices, judges, and court personnel, there is no clear policy about affirmative action or representation in hiring court personnel. However, there is increasing awareness in the judiciary in terms of women's representation based on its compliance with many gender laws and policies. Of course, qualifications and other considerations are important, especially in the selection of judges and justices. However, there are yet to be studies linking this non-representation of the diversity of the Philippine population to court decisions' treatment of

minorities and other sectors. With the creation of PAO, there are more instances where indigents can be represented in courts as they do not have to pay for the lawyer, but as mentioned earlier, PAO lawyers are also overburdened with cases and clients.

### *Court decisions*

*Do court decisions, policies, and programs promote social justice, human rights, and gender equality? There is thin compliance in this area.*

Court decisions are based on evidence, even if courts are guided by the Constitution and other laws promoting social justice, human rights, and gender equality. However, the Supreme Court has made decisions since 1987 that favored marginalized sectors, labor (see section on sectoral biases when making economic decisions), civil society, indigenous peoples (Torres-Tupas 2019), and even future citizens' right to a clean environment. In September 2019, the Supreme Court rejected the petition demanding the legal recognition of same-sex marriages, but the Court did not disagree with the substance of the argument. The Court stated that that LGBTQ+ people should not be denied rights on the basis of their sexual orientation or gender identity. However, the petition should not be pursued at the Supreme Court but at the legislature, particularly in addressing issues related to the Family Code.

The Supreme Court's policies and programs are trying to address more access to the court and justice system, especially for indigents, so that they can be more ably represented in courts that will affect court decisions. However, as discussed above, there is still much to be done to make the courts accessible for all regardless of status in society.

With the COVID-19 pandemic, as mentioned earlier, the Supreme Court has made it possible to release qualified inmates at the earliest possible time. However, human rights groups stated that more inmates, especially political detainees, needed to be released (Aben 2020, Murcia 2020). Atienza (2021) notes that "lower courts have ruled on issues related to alleged violations committed by executive agencies in the enforcement of the national health emergency powers." In several instances, some courts pointed out that the police and local "enforcers committed errors in their application of policies related

not only to the *Bayanihan* Acts [1 and 2, Republic Act Nos. 11469 and 11494, respectively] but also to quarantine laws and related local ordinances, particularly in arresting supposed violators, who [were] mostly community organizers and people living precariously on low incomes trying to continue working despite the difficulties caused by the pandemic” (Atienza 2021 citing Buan 2020). Amidst the pandemic, there were also numerous cases of activists arrested for possible rebellion, but several courts have ruled that the search warrants of the police issued by other courts have weak bases; thus, the accused who have spent months in jail should be released.

Many groups trusted in the Supreme Court’s wisdom on ruling on the constitutionality of the controversial Anti-Terror Act, which was passed in the midst of the pandemic and has several questionable provisions that threaten basic rights, the role of courts, and the Commission on Human Rights. The controversial law was subjected to 37 petitions filed by several groups and personalities; oral arguments were finished in 2021. However, the Supreme Court in 2022 upheld with finality most of the law, but struck down the provision that dissent can be interpreted as an act of terrorism.

## Peace and conflict resolution

*Do court practices and decisions support peace and conflict resolution?*  
There are practices that support mediation and conflict resolution; thus, there could be thin compliance, but decisions related to peace and conflict resolution are only based on the type of cases courts receive.

The judiciary promotes mediation, alternative dispute mechanisms, and pre-trial—practices that do not require formal court proceedings. This is to avoid the clogging of cases and promote mediation and alternative means of conflict resolution. In areas where there is insurgency, cases may be filed against rebels for ambushes and skirmishes, but because complainants and the accused do not attend hearings, these cases are often dismissed (FGD #4 2019). Some prosecutors said that insurgents do not threaten them even in cases involving insurgents; politicians and their allies are sometimes the ones threatening lawyers (FGD #4 2019).

## Economic development

### *Sectoral biases*

*Do courts favor certain sectors in decisions affecting the economy?* Courts usually decide on the basis of evidence, and it cannot be considered biased for only one sector. Usually, courts decide on available evidence, though there is a perception that courts favor the rich and the powerful. However, based on a “dataset of 3,601 Supreme Court decisions on labor issues from 1987 to 2016,” Panao and De Leon (2018, 24) found that “individuals and unions are likely to emerge victorious, whether as petitioners or respondents, but only when issues involve compensation-related claims, illegal dismissal, or unfair labor practices. The authors did not find evidence of a similar predilection toward workers when issues involve the exercise of management prerogatives and discipline of employees, suggesting prudence by the high court to balance social justice with rational fairness.”

### *Economic development*

*Do courts facilitate/hinder economic development and equity?* There is no definite answer to this.

Under the 1987 Constitution, the Supreme Court began to enter areas like the economy. It did not normally do so before. For instance, in the *Garcia vs. BOI* and the *Manila Prince Hotel* cases, the Supreme Court decided upon and ruled against vital executive policies pertaining to the economy. There are those who argue that the Supreme Court has no business deciding on cases of an economic nature (Atienza and Baylon 2006, 364), but if petitioners ask the Court to interpret the constitutional provisions and other laws in relation with certain economic activities, it has to respond and make a decision.

### *Corruption*

*What about cases of corruption in the judiciary?* There are reforms being instituted to address corruption in the judiciary, though perceptions of corruption continue.

There are of course instances of corruption committed by judges and court personnel. There is actually a widespread perception of graft and corruption in the judiciary. Some were subjected to investigations, dismissed from service, even disbarred or removed from the roll of the IBP. There may also be a demand-side in terms of corruption—some litigants think that judges, court personnel, and prosecutors can be bribed easily, and bring food and other gifts to courts, expecting a favorable decision which they do not get all the time (FGD #1 2019). Sometimes, there is a temptation to accept bribes at the level of court personnel, especially in lower courts, to provide information or fast-track papers for certain parties because of the comparatively low pay of court secretaries and stenographers (FGD #1 2019).

It is actually difficult to come up with a comprehensive picture of the extent of corruption in the judiciary; data on the issue is difficult to obtain, save for administrative cases filed against erring judges and court employees (Atienza and Baylon 2006, 374). However, various media have reported anecdotal evidence and investigative reports on bribery, networks of intermediaries, behind-the-scenes deal-making and lobbying, questionable assignment of cases, and conflicting business and family interests of judges and justices. But the judiciary, through the Supreme Court, has been the recipient of institutional development funds from various bilateral foreign and international agencies that aim to address graft and corruption, among other issues. This is a testament to the need for the Philippine judiciary to address graft and corruption among its ranks.

In accordance with the Action Program for Judicial Reform that the Supreme Court instituted under then Chief Justice Davide, the high court has started an aggressive campaign to deal with corruption in the judiciary. This occurs through cases filed against justices, judges, and employees and appropriate penalties given (Atienza and Baylon 2006, 383). The new SPJI under Chief Justice Gesmundo strengthens and continues the anti-corruption drive.

## Conclusions and Policy Recommendations

### Conclusions

Based on the internal and external criteria, the Philippine judiciary under the 1987 Constitution has been given more powers. However, the exercise of these powers and the implementation of reforms introduced in the charter are sometimes hampered by institutional and political constraints, socioeconomic realities, and some administrative issues.

Internally, there is thin compliance in the formation and operation of courts since they are created in accordance with the Constitution and other laws. However, there is a need to create more courts and to ensure that courts have sufficient judges, staff, and resources to deal with demands. There is a general process of selecting justices and judges, but there are issues related to the role of partisan interests in the process. Most of the reforms in the Constitution have been instituted, but there is no substantial judicial fiscal autonomy. Based on the goals and reforms in the Constitution, the judiciary appears to be overperforming in terms of the expanded power of judicial review, even if the results are perceived differently by different sectors.

In terms of the external criteria, the following are the assessment per criteria:

1. *Democratization:* There is thin compliance as the independence of the judiciary is not absolute and constantly threatened. The Court generally performs its arbiter role based on Supreme Court decisions. Due to stricter requirements to be appointed as a justice or judge, the judiciary corps does not fairly reflect the Philippine population. There are clear reforms aimed at making courts more competent and effective, but there are challenging factors that affect these—courts are not yet accessible for all, especially indigents, and while there are accountability mechanisms in place, enforcement can still be improved.
2. *Decentralization:* Courts have a tendency to support decentralization and autonomy; thus, there seems to be thick compliance here.



3. *Social justice, human rights, and gender equality:* There is thin compliance here as women, minorities, and other sectors are not equitably represented in the judiciary, though women judges and personnel are increasingly represented in lower courts. However, there are court decisions that favor women, the rights of different sectors, and other marginalized groups.
4. *Peace and conflict resolution:* There is thin compliance because of the court's promotion of peace and conflict resolution.
5. *Economic development:* Courts usually decide on evidence, though in certain cases, it is proven to have favored the labor sector on specific cases. The Supreme Court has increasingly been playing a role in economic issues, though there is no clear link that it facilitates or hinders economic development and equity.

The judiciary under the Supreme Court introduced a number of reforms to address challenges to the courts' performance of their functions in a more independent manner. But as mentioned earlier, the other two branches, as well as other sectors, must respect the Supreme Court's and lower courts' decisions. They must act to support and protect the constitutional role and independence of the judiciary to make it actually work based on the 1987 Constitution.

## Policy Recommendations

It seems that the underperformance of the judiciary in certain areas, with the exception of the provision for fiscal autonomy, does not require major changes in the provisions of the 1987 Constitution. The stumbling blocks may be in legislation and administration. These are crucial given the challenges mentioned in this policy review. From a comparative or international perspective, the judiciary's more effective performance in aid of justice, democracy, and human rights is also urgent given the international interest—particularly from the International Criminal Court—in how the justice system deals with suspected drug offenders, the opposition, and suspected rebels (Atienza 2022).

## *Constitutional Amendments*

Most of the participants in the FGDs think that there is not much to be changed in the wording of the 1987 Constitution, particularly in the provisions related to the judiciary. Some of them even think that it is too ridiculous to have four Supreme Courts, as advocated by the draft *Bayanihan* Constitution prepared by then President Duterte's Consultative Committee.

Perhaps it may be possible to evaluate the following as proposed amendments:

1. Increase the number of Supreme Court justices, as the number may need to reflect the growing number of Filipinos as well as the growing number of cases;
2. Strengthen the provision on and ensure genuine fiscal autonomy for the judiciary; and
3. Ensure more involvement on the part of the Supreme Court justices and other judges in the process of selection and appointment of justices and judges—including the chief justice, and conversely, lessen involvement of politicians in the JBC, subject to checks and balances from other branches and sectors.

This assessment, aided by previous assessments of the judiciary, as well as the participants in the FGDs, suggests reforms outside the Constitution. These usually occur in the form of ordinary legislation and administrative reforms—not just within the judiciary but also in the other branches that affect the performance and independence of the judiciary.

## *Legislation*

In the area of legislation, the following are suggested:

1. Increase budget appropriations for the judiciary;

2. The creation of more courts, especially in rural areas, with sufficient budget, infrastructures, and items for judges and court personnel proportional to the population;
3. Increase financial help for those wrongfully convicted; and
4. Increase protection for individual members of the judiciary and the whole justice system in their performance of their duties.

### *Implementation and Administrative Policies*

1. Appointment process
  - Greater transparency in the selection process of judges and justices, e.g., release of the psychological examination to the applicant;
  - Swifter processing of applications and filling up vacancies in courts;
  - Strict observance of time required for the President to appoint justices and judges;
  - More decentralized filing of application; and
  - Removal or limit of the role of politicians and other interest groups exerting influence on the process.
2. Within the judiciary
  - Simplification of the rules of procedure;
  - Stricter monitoring and reprimanding mechanisms for erring justices, judges, and personnel;
  - Improvement of coordination with other government agencies involved in the overall justice system, e.g., Philippine National Police, Post Office, Bureau of Jail Management and Penology;

- Provisions to make courts and proceedings more accessible and with assistance to indigents, PWDs, and other marginalized sectors;
- Working with other institutions to improve protection of individual members of the judiciary and other members of the justice system in the performance of their duties; and
- More popular and localized information campaigns on rules of court and rules of procedure, aside from the website, to make more citizens familiar with the judiciary, the courts, processes, and procedures.

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