

The Philippine Justice System



The Philippine Justice System

The Independence and Impartiality of the Judiciary and Human Rights from 1986 till 1997

Jan Willem Bakker

‘You shall appoint judges and officers in all your towns which the Lord your God gives you, according to your tribes. You shall not pervert justice; you shall not show partiality; you shall not take a bribe; for a bribe blinds the eyes of the wise and subverts the cause of the righteous. Justice, and only justice, you shall follow, that you may live and inherit the land which the Lord your God gives you’ (The Holy Bible, Deuteronomy 16: 18-20).

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c/o LISWO, Leiden University

Wassenaarseweg 52, 2333 AK Leiden, the Netherlands

Phone: +31-71-527 3861, fax: +31-71-527 3788/3619

© Centre for the Independence of Judges and Lawyers, 1997

P.O. Box 216, 81A, avenue de Châtelaine, CH-1219 Châtelaine/Geneva, Switzerland

Phone: +41-22-979 3800, fax: +41-22-979 3801

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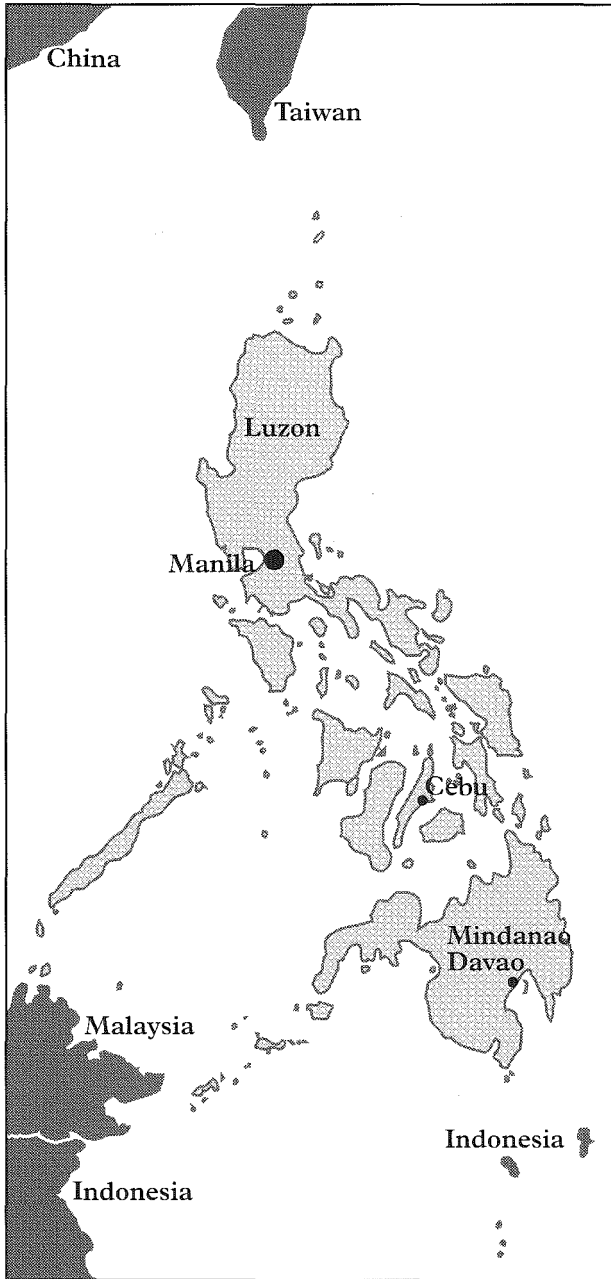
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Jan Willem A. Bakker
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Map of the Philippines



Preface

The relation of the judiciary to human rights is fundamental. The respect for the various human rights and fundamental freedoms that are specified in authoritative international texts depends to a significant degree on the quality of the judiciary and the judicial process. The *Universal Declaration of Human Rights* emphasizes that every human being has the right of 'equality before the law', 'presumption of innocence' and 'the right to a fair and public hearing by a competent, independent and impartial tribunal established by law'.¹ These rights and freedoms are also guaranteed and further specified by the *International Covenant on Civil and Political Rights*, in particular through the Covenant's important additional underlining of the right of everyone 'to be tried without undue delay'.² In other words, according to authoritative instruments from *United Nations* bodies, the protection of human rights is closely linked to the functioning of a fair, legitimate and effective justice system. A competent, independent and impartial judiciary forms a central aspect of such a fair and effective legal system.

The relevance of an independent, impartial and competent judiciary, however, is not restricted to the specific rights mentioned above. The role of the judiciary is important in relation to all human rights, since the judiciary is ultimately the instrument from which human rights victims can seek redress for the injustice they have suffered, particularly if other channels of seeking such redress have failed. This importance is indicated by Article 8 of the *Universal Declaration* and Article 2.3 of the *ICCPR*. Both of these imply that factors influencing the fairness and effectiveness of the justice system – and particularly the independence, impartiality and competence of judges – also significantly influence respect for and promotion of human rights in a country.

The importance of an independent, impartial and competent judiciary has been underlined by various authoritative texts from UN bodies. The most important of these are the *United Nations Basic Principles on the Independence of the Judiciary*, which were endorsed by the UN General Assembly in 1985, and the *Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary*, which were endorsed by the General Assembly in 1989.³

Though an independent and impartial functioning of the judiciary forms a central aspect of any fair and effective justice system, other actors are nevertheless also important in determining the quality of the system as a whole. The importance of lawyers has been explicitly recognized in the *United Nations Basic Principles on the Role of Lawyers*, which were 'welcomed' by the General Assembly in 1990.⁴ Another important text concerning the role of both judges and lawyers is the *Draft Universal Declaration on the Independence of Justice*, which is also referred to as the Singhvi Declaration.⁵

The objective of the present study is to analyze the factors that influenced the quality of the justice system in the Philippines and respect for human rights there between 1986 and 1997. This study on the Philippines has been written within the framework of the project *Determinants of the Independence and Impartiality of the Judiciary*, which also involved the conduct of similar research in India, Sri Lanka and Burkina Faso (West Africa). The overall objective of this wider project has been to generate sound scientific

knowledge concerning the factors that affect the functioning of judicial systems and to articulate recommendations for their improvement. The present study is particularly directed to policy makers in the legal system in the Philippines, and to academic institutions, legal scholars and practitioners of law in general. The project uses the authoritative international texts on human rights and on the independence of judges and lawyers mentioned earlier in this preface as the standard against which to measure situations in the countries being researched.⁶ The project *Determinants of the Independence and Impartiality of the Judiciary* is coordinated by the Interdisciplinary Research Program on Root Causes of Human Rights Violations (PIOOM, an independent organization that conducts and coordinates research into the root causes of human rights violations). PIOOM is presently connected to the Faculty of Social Science of the National University of Leiden, The Netherlands. The project is solely funded by the Directorate-General for Development Cooperation of the Dutch Foreign Ministry.

The case of the Philippines is particularly interesting for the focus and objective of this project. In 1986, the Philippines attempted to break with the legacy of a dictatorship that had been ousted through a popular revolt. This legacy consisted, amongst other things, of massive human rights violations which formed a deliberate aspect of an oppressive state policy and of judicial subordination to the dictatorship. The new democratic order attempted to change this legacy drastically through new legislation on human rights and the judiciary, as well as through a judicial reorganization and continuing reforms of the justice system. On the one hand, this resulted in creative and promising steps toward improvement of the judiciary and the overall human rights situation in the country. On the other hand, all of the steps undertaken have met with significant frustrations and involve both drawbacks and novel challenges.

The present study is based on eight months research conducted in the Philippines from April 21 to December 24, 1993, the results of which were updated through two working visits in 1995 and 1996 and through consultation with more recent documentation. It has not been the objective of this study to give an exhaustive account of all the events and developments that have influenced the legal system and human rights in the Philippines between 1986 and 1997. A series of important and – in the author's opinion – representative events and developments has been selected to substantiate and illustrate the analysis of the various factors that influenced the quality of the justice system and respect for human rights. Most of the study reflects developments through June 20, 1996, though events of particular importance between June 1996 and June 1997 have still been incorporated. These predominantly concern issues of judicial power and amendments to the 1987 Constitution.

The research in the Philippines has been conducted by Dr. Jan Willem Bakker of PIOOM, who also acted as the coordinator of the project. With the assistance of Mrs. Corazon Evasco-Bakker, a librarian and English editor and graduate of the University of the Philippines, he conducted interviews with key informants from the judiciary, government agencies, the bar, universities and the NGO sector. In order to maximize the reliability of the research findings, the sample of interviewees was restricted to informants who by the nature of their profession are knowledgeable about the judiciary and/or

human rights. The interviews were semi-structured: a short list of global topics was used, but ample opportunity was given to the interviewees to provide specific illustrations from their own experience and to bring up relevant topics that had not yet been anticipated by the interviewers. Mr. Bakker also studied documentation from legal organizations and government agencies, as well as secondary literature pertaining to the subject matter. He further analyzed the wide publicity the judiciary was subjected to in the Philippine press during the time of the pilot study, and personally observed individual court cases and court facilities. These various methods were used in mutual interaction: data acquired through one method was complemented and corrected by data acquired through others.

The study distinguishes four major types of factors: organizational, political, economic and socio-cultural.

Organizational factors are defined here as factors that formally structure and regulate the judicial system and that demarcate it as a distinctive subsystem within wider society. These factors include for example: the training of judges and lawyers; procedures for recruiting judges; the number of judges available; the case load of judges; and the jurisdiction of courts.

Political factors concern issues of government and power in a country. In relation to the judiciary important examples include: legal provisions guaranteeing the autonomy of the judiciary; the influence of politicians on the recruitment, promotion and supervision of judges; and the potential influence politicians may exercise on specific judicial verdicts.

Economic factors involve issues of production, consumption and distribution as well as organization of goods and services. Examples in the context of this study include: the influence of the general level of the economy in the country; the adequacy of the budget for the judiciary; salaries, retirement provisions and other fringe benefits.

Socio-cultural factors include historically developed ideas as well as normative and aesthetic values. Such ideas and values both inspire and regulate the thoughts, feelings and conduct of specific groups of people. Especially important in this context are religious and philosophical notions of what is fair and just in a particular country. Socio-cultural factors further concern the patterns and forms of social interaction. An important example of these are social classifications according to caste or tribal or regional background. Another example might involve important forms of personal networks and social obligations.⁷

The study also applies a distinction between inhibiting and facilitating factors. Inhibiting factors are factors that frustrate trends and measures toward establishment of a fair and effective justice system and respect for human rights, whereas facilitating factors are factors that encourage such trends and measures.

A final distinction applied in this study is between manipulable and non-manipulable factors. The former are factors which can be easily changed in a relatively short term through human intervention, whereas the latter are factors which are quite resistant to short-term change through such intervention. This distinction is particularly important to consider in the articulation of short-term recommendations toward the improvement of the judiciary.

The present study is divided into seven chapters. In chapter 1 some relevant general data on the Philippines is provided, including an outline of the structure of the judiciary.

Chapter 2 contains a discussion of socio-political developments in the Philippines from 1986 to 1996 which form the context for discussion of the remainder of the study.

Chapter 3 focuses on the main human rights concerns in the Philippines during the period from 1986 to 1996. Special attention is paid to politically-inspired human rights violations as well as the tension between measures to fight crime and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, i.e. due process.

Chapter 4 discusses the relation between the judiciary and politicians from both the executive and legislative branches. Judicial review, the procedures involved in recruitment of judges and lawyers and mechanisms of interference in specific judicial decisions are all important issues in this chapter. Chapter 5 addresses challenges from non-political actors to judicial independence, impartiality and credibility. Important issues in this regard include: misconduct on the part of judges, lawyers and prosecutors and allegations of such conduct; judicial supervision and discipline; and the influence of the press on the judicial process and on the public perception of the judiciary.

Chapter 6 discusses the problem of access to speedy justice for all Filipinos. Important issues in this chapter include: backlog and court delay; the influence of the costs of litigation to speedy justice; and access to justice for ethnic or religious minorities.

Chapter 7 summarizes the main conclusions of the study, as well as the impact of organizational, economic, political and socio-cultural factors on the various issues that have been discussed in the previous chapters. This chapter also provides practical recommendations and anticipates future developments in the Philippine justice system based on the extrapolation of current trends.

Notes

1. Articles 7, 10 and 11, of the *Universal Declaration of Human Rights* are particularly important in this respect.
2. Article 14 of the *International Covenant on Civil and Political Rights* is particularly relevant.
3. The *Basic Principles* were adopted by the Seventh UN Congress on the Prevention of Crime and Torture in Milan, Italy, held from 26 August to 6 September 1985, and endorsed by the General Assembly on 29 November 1985 (A/RES/40/32, 29 November 1985). Later these principles were specifically 'welcomed' by the General Assembly, which invited governments 'to respect them and to take them into account within the framework of their national legislation and practice' (A/RES/40/146, 13 December 1985). The *Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary* were adopted by the UN Economic and Social Council in Resolution 1989/60 and endorsed by the General Assembly in Resolution 44/162 of 15 December 1989.
4. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Havana, Cuba, from 27 August to 7 September 1990, adopted these principles by consensus. In its resolution 45/121 of 14 December 1990, the General Assembly 'welcomed' the instruments adopted by the Congress and invited 'Governments to be guided by them in the formulation of appropriate legislation and policy directives and

- to make efforts to implement the principles contained therein ... in accordance with the economic, social, legal, cultural and political circumstances of each country.' In resolution 45/166 of December 1990, the General Assembly welcomed the *Basic Principles* in particular, inviting Governments 'to respect them and to take them into account within the framework of their national legislation and practice'.
5. By its Decision 1980/124, the UN Economic and Social Council authorized the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities to entrust Dr. L.M. Singhvi (India) with the preparation of a report on the independence and impartiality of the judiciary, jurors, assessors, and the independence of lawyers. By Resolution 1989/32 the UN Commission on Human Rights, invited governments to take into account the principles set forth in Dr. Singhvi's final Draft Declaration in implementing the *UN Basic Principles on the Independence of the Judiciary*.
 6. In this context I have relied significantly the Center for the Independence of Judges and Lawyers of the International Commission of Jurists Bulletin No. 25-26, a special issue devoted to *The Independence of Judges and Lawyers: A Compilation of International Standards* (Geneva, April-October 1990).
 7. For the purpose of this study I have not found it relevant to distinguish between cultural and socio-structural factors, because of their substantial overlap. Both cultural and socio-structural factors are combined here in socio-cultural factors.

Foreword

On 19 August 1995, twenty Asian Chief Justices, including the Honorable Justice Andres R. Narvasa, the Chief Justice of the Philippines, adopted the *Beijing Statement of Principles of the Independence of the Judiciary*. This Statement affirmed that the objective and functions of the judiciary include ensuring that all persons are able to live securely under the Rule of Law, and the promotion of the observance and attainment of human rights. It further stressed that judges should administer the law 'impartially amongst persons and between persons and the State'.

The Beijing Statement was recently reaffirmed by the Asian Chief Justices who met in August this year in Manila, the Philippines, under the auspices of LAWASIA. It is now endorsed by twenty seven chief justices in addition to other senior judges. The fact that the Beijing Statement was drafted by the judges themselves, rather than governments, gives it additional meaning.

It is significant that the highest ranking judges in Asia recognize the link between judicial functions and human rights. Judges should not only pay attachment to laws on the books. They should focus on the laws in action. A textualist approach to law hinders the process of justice. In resolving conflicts, they should be forward looking. They keep in mind not only the case at hand but also the interest of entire society in advancing justice and preserving human rights.

It is in this context that safeguarding the independence of the judiciary is essential. This independence then serves as a useful value, even a conceptual tool, to enhance better checks and balances between State powers. The independence of the judiciary is hence, not only about questions of direct or indirect interference in the judicial process. It is eventually about the role of the judiciary in preserving justice and human rights.

This is the significant of this study on the independence and impartiality of the Philippines' judiciary. The study does not only deal with traditional questions concerning the independence of the judiciary that relate to the qualifications, selection, training, promotion, discipline, and removal of judges in the Philippines, it also considers concerns such as the efficiency and accessibility of the justice system. The study also looks into the relationship between the judiciary and the bar.

Most importantly, the study addresses how the judiciary deals with past and current human rights challenges in the country. This is particularly important in the context of a country, such as the Philippines, that went through a legacy of massive human rights violations, where individuals were killed, forced to disappear and tortured.

The study takes an inter-disciplinary approach to a topic that is traditionally handled by lawyers. Being an anthropologist, rather than a lawyer, the author of this study, Mr. Jan Willem A. Bakker, brings a new perspective to the question of judicial independence. Courts after all affect the life of all members of society. Their role should be examined from several perspectives, not only legal. An anthropological approach to courts and law, differs from a legal approach. A 'different' approach to this legal topic adds a dimension that could only enhance the comprehensive understanding of the role of key individuals and institutions, such as judges and lawyers, in determining not only current issues, but also the future direction of their entire society.

The Centre for the Independence of Judges and Lawyers (CIJL) was pleased to cooperate with PIOOM in this project. Established by the International Commission of Jurists in 1978, the CIJL is devoted to upholding the independence of the judiciary and the legal profession throughout the world. It also organizes support for judges and lawyers who are harassed or persecuted.

The CIJL served as consultant in this project. In such a capacity, the CIJL endeavored to bring to this work its own legal expertise on conceptual and operational questions related to the independence of the judiciary. It has been an educational exercise for CIJL to tackle the central question of its mandate from an approach which is not entirely legal. This inter-disciplinary perspective does not mean, however, that the study does not pay due regard to law. As is mentioned in the Preface, the study uses as a legal framework the *1985 UN Basic Principles on the Independence of the Judiciary* and the *1990 UN Basic Principles on the Role of Lawyers*. Through shedding light on problems related to the independence and impartiality of the judiciary in the Philippines, we hope that the study will help policy-makers, judges, lawyers, as well as members of civil society in the effort to enhance the role of the judiciary in preserving and advancing justice.

Mona Rishmawi
CIJL Director
September 1997

Chapter 1

Main Features of the Nation and People

Geography, People, and Economic Situation

The Philippines is a nation of approximately 71 million people, with a land area of some 300,000 square kilometers.¹ The climate is tropical, including a wet season, in which rain falls abundantly, and a dry season. The country is formed by an archipelago of 7,107 islands, with the eleven largest islands accounting for almost 95% of the land and population. The geographical fragmentation of the country is reinforced by the fact that many islands are subdivided by mountain ranges, woods and other natural factors. This geographical condition poses problems for effective transportation and communication throughout the country and facilitates social and political fragmentation. Most of the population is of Malay and Polynesian stock, with considerable Chinese and some Spanish influence.²

The Metro-Manila area constitutes the uncontested center of the country. The presidential palace, the buildings of the national government, the Houses of Congress, as well as the Supreme Court and the Court of Appeals are all located in this area. Offices of large companies are also concentrated there, as well as the major law firms. Metro-Manila consists of the capital Manila and several other cities and municipalities around it. Its population has rapidly increased during recent years and now totals more than 10 million people. Despite the fact that urbanization has been rapid, the vast majority of the Philippine population still lives in small towns and rural villages. The second largest urban conglomerate, Metro-Davao, numbers slightly more than 1 million people, while the population of other urban conglomerates is even smaller.

The economy reflects the still predominantly rural orientation of the country. Unlike in other parts of Asia, no mass industrialization has taken place in the Philippines in the recent past. Both agriculture – e.g. the cultivation of wet rice and fruits on plantations – and agro-industry – primarily the processing of fruits – have remained central backbones of the Philippine economy.

The economic performance of the country during the latter years of the Marcos regime was very poor. After initial improvement, the economic performance sharply declined again during the final years of the Aquino administration. For instance, the growth rate in 1992, the year the Ramos administration took office, has been estimated at merely 0.6% with a simultaneous population increase of 2.4% per year, one of the highest such rates in the world.³ The Gross National Product had been 727,1 billion pesos and the *per capita* income 11,184 pesos, with the value of the peso fluctuating between 27 and 27.5 pesos to a US dollar.⁴

The Philippines suffers from widespread poverty and a poor distribution of wealth. According to an authoritative source, 39.9% of Filipino families lived below the poverty threshold in 1991. In 1994 this figure was down to 35.7%. The poverty threshold was estimated at 8,969 *per capita* nationwide in 1994, and at 11,312 *per capita* in Metro-

Manila.⁵ Another source estimated that in 1993, the median poverty level was 4,000 pesos nationwide and 6,000 pesos in Metro-Manila monthly for a family of four.⁶ More than half of the country's total income flows to the richest 20% of the nation.⁷ Poverty and wealth inequity characterize both rural and urban areas. In the countryside, much of the land is owned by traditional landed elites, with sharecroppers and landless laborers concentrated at the bottom of the hierarchy. Land reform has been the subject of political debate for decades. Specific land reform plans were proposed by the Aquino administration, as well as by the Marcos Government prior to 1986. Yet both creation and implementation of these plans met with political backbiting and obstruction by vested interests.

During the last few decades, urban poverty has become increasingly dramatic. According to official statistics, 13.2% of the families in Metro-Manila lived below the poverty line in 1991. In 1994 the figure had decreased to 8.5%.⁸ However, it remains an open question how accurately official statistics reflect socio-economic realities in the Philippines. For instance, there has been a frequent complaint that the officially announced inflation rate is inconsistent with the experience of common Filipinos regarding the tremendous increase in prices.

In addition, according to unofficial estimates, in 1993, up to 40% of the population in Metro-Manila may have lived in shacks constructed of scrap iron and wood, which are built on unused – or not yet used – public and private lands. The slums lack basic services such as running water, sanitation and electricity, though in many cases illegal taps are conducted on the electrical and telephone systems. Such illegal taps, as well as many shacks themselves, are sold or rented out to urban poor by organized syndicates. The slums are fertile breeding grounds for crime and disease. On the other hand, the population living in the slums does not merely consist of people whose income is below the poverty line. A substantial number of people with modest jobs can only afford to live in slums while spending their money on matters other than housing. This is one way in which people cope with deteriorating standards of living.

A more popular way of coping with economic hardship in the Philippines has been to find a job abroad. Several million Filipinos have emigrated over recent decades, most of them to the United States. Among these, medically or paramedically trained professionals have been particularly successful. Other persons have sought temporary jobs abroad which often require them to leave their family behind. Several hundreds of thousands of Filipinos have worked in the construction business in the Middle-East. Numerous women have left the country to become nannies or domestic workers for affluent families elsewhere. Among these are well-educated women who nevertheless can earn considerably more as a domestic abroad than, for instance, as a teacher back home. The frequent exploitation of migrant workers have become a source of intense embarrassment in the Philippines. This embarrassment is further reinforced by the awareness that in the mid-sixties the Philippines was second only to Japan in Asia economically. At the moment it has been relegated to the lower levels of the region's economic hierarchy. An analysis of this economic stagnation or deterioration is beyond the scope of the present study, but clearly economic mismanagement under Marcos and political instability under Aquino have been significant contributing factors. The country

has also been severely affected by ecological degradation, particularly due to massive legal and illegal deforestation.

The Ramos Government has been implementing a plan for economic take-off, referred to under the slogan 'Philippines 2000'. Industrialization, major improvements in infrastructure, privatization, stimulation of exports, long-term fiscal stability and the creation of a level playing field – including the breaking of monopolies and encouragement of foreign investments – are important keywords in the advancement of this project. Amongst other things, the plan targets 10% economic growth in 1998.

After a poor start in which it had to struggle under a severe energy shortage, the Ramos administration's efforts are beginning to produce successes. In 1994, the economic growth of the country jumped to 5.1%. The growth rate was 5.5% in 1995 and 7.1% in 1996. Investment increased by over 16% in 1996 while the inflation rate stood at between 11 and 12%.⁹ The *per capita* income is estimated to have passed the 1,000 dollar per year level in early 1996 and subsequently increased to 1,184 dollars, with the exchange rate standing at 26.2 pesos to a dollar.¹⁰ However, after the depreciation of 11 July, 1997, the exchange rate changed to over 28 pesos to a dollar. Increasing political stability, active economic policies and the position of the Philippines as a country within a booming region account for the recent economic improvement. Moderate optimism about the country's economic future has begun to develop. Nevertheless, it will take quite some time and considerable effort before the economic situation of the majority of the Filipino people dramatically improves. Some authoritative sources have estimated, for example, that by the end of 1996, more than 40% of the population were still unable to meet basic nutritional and other needs, whereas the richest 10% of families continued to receive 36% of aggregate personal income.¹¹

The Philippines has a high rate of literacy. In 1990 this rate was estimated at 93.5%. Life expectancy between 1990 and 1995 was projected as 63.58 for males and 68.83 for females, while the official estimate for the Infant Mortality Rate in 1995 was 57.0 per 1,000 live births.

Socio-Cultural Features of the Country

In the Philippines, a great variety of local dialects and regional languages are spoken. The dominant language is Tagalog. A variant of Tagalog has been institutionalized as the national language and is called Filipino. Though its status is not beyond controversy, Filipino is spoken and understood to some extent by most people in the Philippines. Movies and television programs in Tagalog have disseminated knowledge of this language extensively. However, the language of the government, of most institutions of higher education and of the country's major newspapers is still English, which is also the official language of the courts.

The Filipino socio-cultural system is composed of a mixture of indigenously Asian traits and traits introduced by the Spanish and, to a lesser extent, by the Americans. A very important Spanish introduction has been Catholicism to which about 85% of the

population still claims adherence. However, Catholic beliefs in the Philippines are often mixed with animistic and magical beliefs and practices. On the other hand, both Protestantism and Catholic renewal tendencies such as the charismatic Catholic movement have been clearly on the rise during recent decades. Muslims form a distinctive minority, living mainly in the south but also forming substantial communities in Metro-Manila. Islam was originally introduced by Arab traders in the pre-Spanish period. Muslims now constitute about 5% of the population.

Apart from the Christian and Islamic Polynesian-Malay population, there are also a number of small ethnic groups who live in tribal settings in outlying areas such as mountain ranges and former jungles. Traditionally these groups have had a marginal place in Filipino society. They are generally animists, though some groups have been converted to Islam or to Christianity.

The variety of sources of Filipino culture and the trauma caused by recent and current crises and upheavals have stimulated the development of explicit concern about the issue of socio-cultural identity, particularly in fora such as the press and academia. A sense of national identity – what it means to be a Filipino – is still a matter of unfinished struggle in the Philippines. The sense of socio-cultural identity also plays an important role in the legal sector. During interviews with the author, prominent members of the judiciary would switch easily from discourse on judicial organization and other legal issues to the influence of socio-cultural factors on the conduct of lawyers, judges, litigants and witnesses.

An important example of this has been the reported tendency of many Filipino lawyers and litigants to strive to win court cases at all costs, and in every possible manner. This tendency has been cited time and again as a major inhibiting factor affecting the fair expedition of justice, and reportedly has three socio-cultural sources. The first of these is the Asian concern to avoid losing one's face. The second aspect involves a Spanish socio-cultural legacy: a strong sense of pride and self-esteem that does not easily accept offense. The combination of fear of losing face and strong self-esteem is referred to in the Philippines by the Spanish term *amor propio*. The third socio-cultural source is American and consists of a love for litigation.

All of this implies that in the Philippine experience, legal processes are quite explicitly linked to wider social-cultural factors. In the presentation of socio-cultural aspects the present study uses the introductory report of the so-called Moral Recovery Program as the most important and authoritative source.¹² This program itself, as well as some of the debate that it has provoked, is a good example of the ongoing struggle for socio-cultural identity in the Philippines.¹³ It is specifically discussed in chapter 5.

Socio-cultural classification in Filipino society is quite hierarchical. Though the country has never used status titles as in Indonesia or feudal Europe, nor had a caste system as in India, ascriptive hierarchical distinctions have been important in the country's history. Traditionally, the old landed elite, whose structure was strongly related to the Spanish, formed the top of the social hierarchy, with landless workers and manual laborers forming the bottom. This traditional hierarchical distinction still influences social relations. Another ascriptive hierarchical distinction is that between regions. High in

status are those regions that are close to the capital or have significant numbers of *mestizos*, or which constitute the home bases of powerful politicians. Also important is the family clan to which one belongs.

The ascriptive status indicators are intersected by several achievement-based status indicators. An important such indicator is education. At the top of the hierarchy are people with a Ph.D. from abroad, particularly from prestigious universities such as Harvard and Yale. Next come holders of degrees from prestigious Philippine universities, such as the University of the Philippines and Ateneo. Below them are graduates of the large universities in downtown Manila, and some private colleges. The bottom of the hierarchy is formed by students from minor colleges in small towns and in the countryside which are run by local government units. Other achievement-based hierarchical criteria include material prosperity and prestigious employment.¹⁴

The higher somebody is perceived to be in terms of status, the more respectfully he or she will be addressed. Nevertheless, humility, which is regarded as a good Catholic virtue in the Philippines, counterbalances this tendency. Thus one may also try to adjust one's conduct to the status of people one is interacting with, even if the status of these people is considered much lower than one's own. Still, Filipinos who perceive themselves to have a higher status than others are easily offended when not treated with such regard, even if this occurs by pure omission, though obviously more so when it is blatantly done. Such perceived slights injure their *amor proprio* deeply.

There exists a degree of ambivalence toward status and hierarchy. On the one hand Filipinos tend to display respect for people with higher status, as well as a desire to be connected to those people so that their standing may reflect on themselves. Apart from that, one who has climbed to success becomes a source of inspiration for others to do likewise. But hierarchical distinctions also generate jealousy and resentment, and one implication of this is the so-called *kanya-kanya* syndrome. Literally *kanya-kanya* means 'to each his own thing'. This 'thing' could refer to anything, such as practical and moral decisions, business affairs or views on various matters. *Kanya-kanya* connotes the exclusion of others. It may be evident in 'personal ambition and a drive for power and status that is completely insensitive to the common good'. It is also manifested in an 'attitude that generates a feeling of envy and competitiveness towards others, particularly one's peers who seem to have gained some status or prestige'.¹⁵ In the latter cases, levelling strategies usually follow against those social climbers to keep them down. Examples of such strategies include intrigues, malicious gossip, accusations of foul play and bad motives, emphasis on hierarchical criteria beyond the current rank of the climber, etc. Filipinos refer to this tendency to draw climbers down as the 'crab mentality'. This refers to the tendency of crabs caught in a basket to pull one another down when one attempts to climb out – as a consequence all the crabs secure each other's continuous imprisonment in the basket. The crab mentality is based on a zero sum perception of social life. The gain of one person – whether the gain is status, money, power or anything else – automatically implies somebody else's loss. And in order to prevent loss, one necessarily has to restrain the gain of the other.

Political Structure of the Country

According to the Constitution of 1987, the country is headed by a President who is elected by the nation-at-large. He or she rules for one term of six years only, and cannot be re-elected. Unlike the American system, the elected president in the Philippines does not automatically choose his or her own candidate for vice-president. Instead the vice-president explicitly has to be elected by the country-at-large, also for a period of six years. Because of this arrangement, the vice-president in the Philippines may come from a different party than the president, which is actually the case at present. The current vice-president, Joseph Estrada, a former movie actor with enormous populist appeal, ran on a different ticket than the president, Fidel Ramos. The Philippine vice-president hardly exercises any powers constitutionally, and can only perform substantial duties at the president's discretion. The president selects a cabinet, the members of which must be approved by the Committee of Appointment of the legislature.

The legislature in the Philippines, or Congress, is composed of two houses: a Senate, consisting of 24 members elected by the nation at large, and the House of Representatives, which has a maximum of 250 members elected by specific regional districts. A term in the Senate normally lasts six years. Every three years, elections are held for twelve seats in the Senate. Each senator is allowed to serve only two consecutive terms, up to a maximum of twelve years. The House is elected for a term of three years. Each representative can be elected for three consecutive terms only, accounting for a maximum of nine consecutive years. The provisions that limit the number of terms politicians are allowed to run, and particularly the one term to which the incumbent president is restricted, are to a large extent a reaction to the old political culture in which politicians could use their office to perpetuate their power indefinitely, and which culminated in the Marcos dictatorship.¹⁶

Apart from these provisions limiting the period in which members of Congress may serve, the executive and legislative system is modeled on the structure that existed before Marcos declared martial law in 1972. The powers of both houses of Congress are rather similar, though the House of Representatives has the initiative in drafting bills regarding fiscal matters. Some of the main powers of Congress include:

- a) the prerogative to create and pass laws and to engage in investigations as an aid to legislation. The president is entitled to veto laws of Congress, though Congress can overrule this veto by a two-thirds majority in each house;
- b) the power to accept or reject Presidential nominees to the executive department through the Commission of Appointments. This commission consists of twelve senators and twelve members of the lower house, and is presided over by the president of the Senate who acts as an *ex officio* member;
- c) the power to pass an appropriation bill based on the government budget; and
- d) the sole power to declare war and the prerogative to grant the president some special powers for a limited period in cases of war or other national emergencies.

The political structure however is still subject to controversy, the specifics of which will be discussed in Chapter 2.

The country is divided into 22 provinces, each headed by an elected governor. However, the administrative powers available to the provinces are rather limited. The Philippines have always had a unitary form of government rather than a federal one. Major urban areas, such as those constituting Metro-Manila, Davao City, and Cebu City, do not fall under provincial jurisdiction.

At the local level, each city or municipality is headed by an elected mayor and a small elected city council. At the lowest level, that of the village or neighborhood, exists the *barangay*, headed by an elective 'captain' and several elected councillors.

Following the EDSA revolt in 1986 the Philippines developed a multiparty system which nevertheless is still unstable and in a state of flux. Parties, which often split over very personal issues, are created at the snap of a finger by aspiring politicians and may perish instantly when an important candidate loses an election or leaves the party. In the 1992 presidential elections, six candidates ran representing six different parties. Coalitions constantly shift as well. In the House of Representatives for instance, the vast majority of members have rallied behind or joined the party of President Ramos, even though the members of his party originally elected to the House formed a small minority. In the elections of 1995, in which 12 new Senators and a whole new House of Representatives had to be elected, the pro-Ramos coalition, or 'Rainbow Coalition' as it called itself, greatly tightened its grip over the legislature. However, in 1996, this coalition began to crumble again in anticipation of the 1998 elections, when a new President will be elected along with 12 Senators and a new House of Representatives.

The present party system deviates from past practice. Between independence and the state of martial law in 1972, two parties dominated the political scene, whereas during the American period and under the Marcos dictatorship one party controlled the process.

The Structure and Hierarchy of the Legal Sector

The Judiciary

According to the Constitution, judges and justices have security of tenure and the judiciary enjoys fiscal autonomy. The budget for the judiciary fluctuates somewhat but at the moment amounts to less than 1% of the annual government budget.

The lowest-level courts in the Philippines are called the Metropolitan Trial Courts or Metropolitan Trial Courts in Cities, or Municipal Trial Courts or Municipal Circuit Trial Courts (MTCs), depending on whether they are located in a rural, urban or semi-urban environment. As from March 1994, the main elements of their original jurisdiction include: violations of local government ordinances; civil cases that involve the title to, or possession of real property, or any interest therein involving an amount of up to 20,000 pesos, or up to 50,000 pesos in Metro-Manila; criminal offenses that are punishable with a maximum sentence of six years imprisonment irrespective of the amount of the fine; other civil actions involving demands that do not exceed 100,000 pesos, or 200,000 pesos in Metro-Manila, excluding interest and costs of litigation and the value

of the property in controversy; and cases involving damage to property as a result of criminal negligence. There are 1,124 judicial positions in the MTCs.

The second judicial level is formed by the Regional Trial Courts (RTC) which are distributed over 13 judicial regions. There are 950 judicial positions in the RTCs. As from March 1994, the main elements of the exclusive original jurisdiction of the RTCs include: civil cases that involve title to or possession of real estate, or an interest therein, involving an amount of more than 20,000 pesos, or more than 50,000 pesos in Metro-Manila; other civil cases in which the demand exceeds 100,000 pesos, or 200,000 pesos in Metro-Manila; actions involving the contract of marriage and marital relations; cases involving forcible entry into and unlawful detainment of land or buildings; and criminal cases involving crimes punishable with more than six years imprisonment. The RTCs also serve as the first level of appeal for cases decided by the MTCs.

The third level is formed by the Court of Appeals located in Metro-Manila. This court deals with appeals of decisions reached by the RTCs. The Court of Appeals justices review the decisions of the RTCs but do not themselves retry cases. The Court consists of one presiding justice and 50 associate justices who are subdivided into 17 divisions of three.

The Supreme Court forms the fourth and highest level of the Philippine judiciary. It consists of one Chief Justice and 14 associate justices subdivided into three divisions of five members each, though the 1987 Constitution also allows the Supreme Court to decide cases in divisions of three or seven members.¹⁷ However these divisions are not necessarily distinguished according to specific fields of law: each division may decide similar cases. The Supreme Court is supported by the Office of the Court Administrator, headed by a court administrator and two deputy court administrators.

The role of the Supreme Court is very crucial in the Philippines. The Supreme Court does not merely deal with jurisprudence. It also supervises the courts, both in terms of disciplining errant judges and in handling administrative matters such as those governing new buildings, working materials, etc. The Supreme Court also supervises the bar. Furthermore, cases of a few quasi-judicial bodies, notably the National Labor Relations Commission, the Commission on Audit and the Commission on Elections, can be directly appealed to the Supreme Court. Until February 1995, this included cases from the Civil Service Commission and the Central Board of Assessment Appeals. Criminal sentences involving life imprisonment or *reclusion perpetua* can also be directly appealed to the Supreme Court, which automatically reviews all death sentences, even in the absence of an explicit appeal.

The Supreme Court may decide cases both *en banc* and in the specific divisions. According to the Constitution of 1987, the Supreme Court is required to decide at least the following issues in *en banc* sessions:

- a) disciplinary cases against judges;
- b) the constitutionality of a treaty, international or executive agreement, or law;
- c) cases on which a majority of a division cannot reach a majority decision;
- d) all cases that are required to be heard *en banc* under the Rules of Court, as existing at a particular moment; or

- e) the reversal or modification of any doctrine or principle of law laid down by an earlier decision either from the Court as a whole or from a specific division of the Supreme Court.¹⁸

The Supreme Court also has extensive powers of judicial review. It interprets the constitutionality of treaties, presidential decrees and other executive ordinances. Furthermore, the courts have an important role to play in protecting and redressing violations of human rights and redressing abuse of executive power. The extent of judicial review has made the Supreme Court a formidable actor in the field of economic life and development. The issue of judicial review and the role of the courts in the protection of human rights and redressing violations, will be elaborated in chapters 2, 3 and 4 of this study.

There are several specialized courts in the Philippines. One of these is the Court of Tax Appeals, which is a collegiate court composed of three judges who have jurisdiction to review decisions of the Commissioner of Customs and the Commissioner of Internal Revenue. Also in a special category are the *Shari'a* courts which deal with specific issues of Islamic law, mainly family-related questions. These courts are subdivided into five *Shari'a* District Courts and 51 *Shari'a* Circuit Courts.

A third specialized court is the *Sandiganbayan*, dealing with graft, corruption and other forms of malpractice among government employees. The *Sandiganbayan* is a collegiate court of first instance whose decisions can be appealed directly to the Supreme Court. Formally, the justices of the *Sandiganbayan* enjoy the same salary and status as justices of the Court of Appeals, but this equality of status has been subject to dispute. Some members of the judiciary and the legislature have suggested giving the Court of Appeals the power to review decisions of the *Sandiganbayan* as part of a wider effort to decrease the work load of the Supreme Court. Currently cases from lower courts can always be directly appealed to the Supreme Court if these imply a question of law, and indeed individual cases can be directly filed with the Supreme Court, thereby bypassing lower courts, if the case in question concerns an issue of constitutional rights.

The Philippine courts have experienced a significant number of vacancies, as indicated in the following table:¹⁹

	15 July, 1993	30 April, 1996
Court of Appeals	5 vacancies	1 vacancy
Regional Trial Courts	127 vacancies	202 vacancies
MTCs	176 vacancies	314 vacancies
<i>Shari'a</i> District Courts	3 vacancies	2 vacancies
<i>Shari'a</i> Circuit Courts	41 vacancies	30 vacancies

Apart from these courts, there are also a number of quasi-judicial bodies in the Philippines which, strictly speaking, belong to the executive branch, but whose decisions can be appealed to the Court of Appeals and/or the Supreme Court. Several of the most

important of these, such as the National Labor Relations Commission, have already been cited in the previous paragraph.²⁰

Also worth mentioning in this context is the Office of the Ombudsman, an independent body created by the 1987 Constitution to protect people against abuse from – or neglect of duty by – government agencies, including government-owned or controlled cooperations, and their representatives. The Ombudsman is assisted by at least four deputies. The Office of the Ombudsman, which enjoys fiscal autonomy, has a range of powers to investigate complaints and to compel government entities to redress cases of abuse or neglect. The Ombudsman and his deputies are appointed for seven years, without reappointment.²¹

Judges in the Philippines have formed various professional organizations, the most important of which is the Philippine Judges Association (PJA). Every Regional Trial Court judge is a PJA member. Apart from this organization, there exist several smaller associations of RTC judges. The Metropolitan Trial Court judges are organized in the Metropolitan Judges Association, and Municipal Trial Court judges in both the City Trial Court Judges and the Municipal Trial Court League of the Philippines.

The status of government prosecutors, who are called *fiscals* in the Philippines, is similar to RTC or MTC judge, depending on their seniority. The lowest rung of the ladder is formed by the court clerks, sheriffs and legal researchers.

Lawyers

Each lawyer who passes the bar becomes by obligation a member of the Integrated Bar of the Philippines (IBP). This bar association is answerable to the Supreme Court and subsidized by it. The Court has the power to reject its budget, declare IBP elections null and void, impeach or suspend officers, etc. The IBP can impose minor disciplinary measures on its members, such as removal from office or disqualification in an election within the IBP, or removal from the IBP voters list. But in cases that may involve fines, suspension or disbarment, sanctioning of the accused lawyers must be specifically recommended to the Supreme Court by the IBP. The Court can however impose certain disciplinary measures on members of the bar without a specific recommendation from the IBP. Apart from the Integrated Bar of the Philippines there are 23 voluntary bar organizations in the country, not including the legal NGOs.

The law profession enjoys high status in the Philippines. A law degree opens the door to many jobs in the public and private sector and is in high demand. Traditionally, politicians have predominantly been lawyers. In the Philippines, law is a post-graduate subject. After four years of study one still has to pass the bar exam before one qualifies as a practicing lawyer. The passing of the bar exam may take a further one or two years of study. Therefore the educational requirements for becoming a lawyer are higher than those in other professions, aside from medicine. Due to the status of a legal degree, lawyers often exhibit a very strong degree of professional pride.

Numerous colleges of law exist in the Philippines, varying greatly in quality and status. An important criterion for assessing rankings among law schools is the number of graduates that pass the bar exam each year. A further criterion is the number of former graduates that rise to national prominence. The three institutions enjoying the highest

status and prestige in this regard are the University of the Philippines and the Ateneo and San Beda law schools.²² The University of Santo Tomas law school runs a close fourth behind these, with the law school of the University of the East next in line, followed by a number of other schools. A law graduate from any law school in the Philippines can enhance his status by obtaining a degree from a prestigious foreign law school, such as Harvard or Yale. Among graduates from the same law school there exist slight differentiations in status based on membership in different fraternities and sororities. Elaborate hierarchies also exist in the bench and the bar.

Among practicing lawyers, hierarchy is further determined by clientele and financial success. The top of the ladder is formed by the senior partners of major law firms having large national and international corporations as their clientele. The directors of the special legal divisions maintained by certain corporations also fall in this category. The next level below is formed by lawyers representing rich individuals and by the less senior staff of large companies. Toward the bottom of the hierarchy stand public legal staff members and public attorneys employed by the government to represent poor litigants. Lower still are 'ambulance chasers'. This term refers to lawyers who aggressively impose their services on potential clients rather than attracting them by means of their reputation. Ambulance chasing is forbidden in the Philippines. The client is always supposed to take the initiative in his or her search for a lawyer and not the lawyer.²³

A strong relationship exists between type of clientele and the degree of financial success. Large companies generally represent the richest clientele and consequently earn the most money, whereas public attorneys receive a fixed and comparatively low salary. Nevertheless, the relationship between clientele and financial success is not rigid. Some lawyers have become quite wealthy in the defense of people of limited resources, as well as through 'ambulance chasing' practices. Furthermore, lawyers and judges based in Metro-Manila enjoy a higher status than their colleagues in smaller towns and cities, who in their turn enjoy a higher status than their colleagues in the rural areas. A lawyer's status is very important for his success in litigation. Apart from the fact that lawyers with more elevated status tend to have comparatively greater resources and staff, better facilities and a better education, their reputation in itself already affords them an edge over lawyers with a lower status, given the hierarchical nature of the legal system.

Other Legal Professions

At the absolute bottom of the hierarchy of lawyers and judges are found those who cannot support themselves through litigation or through regular jobs. These persons focus on legal advice and minor services, acting for instance as notary publics, which is not a protected position in the Philippines. Every government office has numerous shacks in its immediate vicinity where 'notary publics' officially seal affidavits for small fees. Some of these notary publics and legal advisers operate in the reception halls of government offices themselves.²⁴

Law professors may fit into any of the above-mentioned hierarchical levels, depending on their law school, their reputation as a teacher and/or writer and a variety other factors.

One category of lawyers – referred to loosely as ‘alternative lawyers’ – has attempted to some extent to keep itself outside this hierarchy. It consists of lawyers and legal groups specializing in the defense of human rights victims, and/or non-governmental organizations (NGOs) lawyering for the poor or for the cause of special underprivileged groups, such as ethnic minorities.

Notes

1. According to the monthly statistics update of the National Statistical Coordination Board and National Statistical Information Center of 3 May, 1996, the updated projection of the Philippine population in 1996 is 71,899,136 (medium assumption).
2. Cariño, ‘Philippines, Land and People.’ In: de Guzman, R.P., and Reforma, M.A. (Eds.), *Government and Politics of the Philippines*. Singapore (Oxford University Press) 1988: 5.
3. Economic growth showed some recovery during the early years of the Aquino administration, but dropped again at the end of her term. In 1988, the growth figure was 6.8% and in 1989 5.7%. In 1990, the growth rate had dropped to 3.1% whereas 1991 showed a negative growth of 1.4%. Political instability and natural disasters were amongst the factors that facilitated this drop in growth. (1989 Development Report of the National Economic and Development Authority as mentioned in Castro, S.R.B. and Pison, M.I.L., ‘The Economic Policy Determining Function of the Supreme Court in Times of National Crisis.’ *Philippine Law Journal*, Vol 67, March 1993, Third Quarter: 358).
4. Canlas, D.B. ‘Prospects for 1993 and the MTPDP.’ *The Philippine Economic Outlook for 1993-1994*. Metro-Manila: Philippine Institute for Development Studies, 1993: 3.
5. National Statistical Coordination Board, 1996.
6. *Social Weather Bulletin*, October 1993: 1.
7. Medium-Term Philippine Development Plan 1993-1998 of the National Economic Development Agency.
8. Statistics from the National Statistical Coordination Board, 1996. .
9. According to provisional statistics from Neda, published in June 1996. Some government sources, however, claim a sustainable inflation rate of 8% which is expected to level off at 6 to 6.5% in 1997 (Secretary of Trade and Industry Cesar B. Bautista, as quoted in *Munting Nayon* 96, 17 April, 1997). However, in this forecast, the effects of the depreciation of 11 July, 1997, have not been anticipated.
10. Provisional NEDA statistics as quoted in *Manila Bulletin*, 6 June, 1996. See further, Philippines Report on Human Rights Practices for 1996, U.S. Department of State. Released by the Bureau of Democracy, Human Rights and Labor on 30 January, 1997.
11. Philippines Report on Human Rights Practices for 1996. *Supra*, at note 10.
12. Kabisig, *Filipino Values and National Developments, Readings on the Moral Recovery*. Metro-Manila, Kabisig People’s Movement 1993: 12. In the discussion of socio-cultural aspects I have also made use of other secondary literature. I have supplemented these secondary sources with personal research findings in only a few instances.
13. One of the critiques of the Moral Recovery Program has been that it fails to present an adequate framework for analyzing the dynamics and the factors that condition the Philippines socio-cultural system (see for instance Maggay, *Pagbabalik-loob. Moral Recovery and Cultural Reaffirmation*. Metro-Manila: AKSP & ISACC, 1993: 3). The present report, however, merely focuses on how and which socio-cultural factors have a substantial impact

on conduct and perceptions in the legal system. A discussion of the dynamics and conditioning factors of Filipino socio-cultural factors go beyond the scope of this report.

14. Questions about one another's background also serve to establish rapport. Local and regional loyalties are quite strong. The discovery of a common regional origin will boost their interaction considerably.
15. Kabisig, *supra* at note 12: 16.
16. Article XVIII, section 2 states some transitory provisions regarding the elections for Congress. The first election for Congress was held the second Monday of May, 1987. The term of the members of both Houses of Congress terminated until the second elections, on 30 June, 1992. The twelve Senators with the highest number of votes were elected for six years, whereas numbers 13 to 24 were elected for only three years. This implies that Senators elected in 1987 and re-elected in 1992, could serve for a maximum of 11 years, whereas the Senators elected in 1987 and re-elected in 1992 ranking between 13 and 24, could serve only a maximum term of 8 consecutive years. Senators elected in 1992 for the first time, and ranked between number 13 and 24 could only serve a maximum of 9 years. Senators elected for the first time in 1992 and ranked between 1 and 12, and all Senators elected for the first time from 1995 onward, can serve a maximum term of 12 years in the Senate.
As far as the transitory provisions regarding the House of Representatives are concerned, the first term of the Representatives elected in 1987 was five years. This implies that the Representatives elected in 1987 could, in principle, serve a maximum term of 5 plus 3 plus 3, or in other words, 11 years. From 1992 onward, all Representatives elected for the first time are restricted to a maximum of 9 years term.
17. Section 4(1) of Article XIII of the 1987 Constitution.
18. Section 4(2 and 3) and section 11 of Article XIII of the 1987 Constitution.
19. The 1992-1993 *Annual Report of the Supreme Court*: 82; and Statistics from the Office of the Court Administrator, dated 20 May, 1996.
20. Other quasi-courts include: the Securities and Exchange Commission; Land Registration Authority; Social Security Commission; Office of the President; Civil Aeronautics Board; Central Board of Assessment Appeals; Bureau of Patents; Trademark and Technology Transfer; National Electrification Administration; Energy Regulatory Board; National Telecommunications Commission; Department of Agrarian Reforms under RA 6657; Government Service Insurance System; Employees Compensation Commission; Agricultural Inventions Board; Insurance Commission; Philippine Atomic Energy Commission; Board of Investments; Construction Industry Arbitration Commission.
21. Sections 5 to 14 of Article XI of the 1987 Constitution.
22. Traditionally the law school of the University of the Philippines has been considered the most prestigious. But during the last decades it has lost ground (though UP graduates may vigorously deny this, of course).
23. Rule 2.03 of the Code of Professional Responsibility says: 'A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.' Some lawyers, including reputable ones, have complained, however, that the rule on ambulance chasing is too strict. It is even very risky for a lawyer to offer his services for free to a litigant who clearly has difficulty finding a good lawyer for himself, lest the lawyer be accused of ambulance chasing.
24. One such notary public whom I met was also authorized to solemnize marriages for a small fee, being a Bishop of a quasi-religious group as well. Another one operates his private business in the hall of a government office. Every morning he brings an old typewriter and a small folding table to seal documents for visitors of this office who need a notary public's seal on their papers.

Chapter 2

Political History of the Country

The Period until Independence in 1946 and its Lasting Legacy¹

At the time of the Spanish conquest in the 16th century, the Philippines consisted of small and independent social-political units, sometimes linked in loose confederations. This social/political dispersion inhibited well-organized resistance against the intruders, which made it rather easy for the Spanish conquistadores to colonize the Philippines. The Spaniards imposed a centralized direct rule in the Philippines. For at least four centuries the impact of the Filipinos on the administration of their own country was marginal.

In the course of the Spanish era, an indigenous agrarian elite developed that was closely linked to the Spanish. At the time of writing a substantial portion of the rich – and very rich – were still descendants of the old Spanish/Filipino *mestizo* families. A social and economic hierarchy developed between major landowners and peasants. This hierarchy between the haves and the have nots – and the ‘ares’ and the ‘are nots’ – has left a fundamental and permanent imprint on Filipino society, despite the modifying historical forces of urbanization, economic diversification or mass schooling, etc. Though by the end of their rule the Spaniards had carefully begun to introduce some improvements for the local population, such as schools and universities, they left a controversial heritage in terms of political/administrative conduct. The Spaniards who had come to the Philippines – including government officials – frequently concentrated on enriching themselves.²

At the end of the nineteenth century, resistance grew against Spanish rule, finally resulting in revolution. This resistance coincided with the war that erupted between Spain and a rising new world power, the United States, over Cuba. The United States agreed to assist the Filipinos in their revolt against Spain, but – to the resentment of many Filipino nationalists up to this day – merely replaced the Spanish as colonial ruler of the Philippines. These events highlighted serious internal divisions among Filipinos. Many of the elite, the *ilustrados*, decided to side with the Americans, as did the strongest faction of the anti-Spanish guerrilla army.

During the period of American colonization, the foundations of Filipino politics were established. The Americans retained a centralized, unitary form of government in the Philippines, with the city of Manila as the center. But unlike the Spaniards, the Americans introduced a system of indirect rule. They created a Congress and an indigenous government, which gradually received increasing power in preparation for independence. Politicians in the government originally came from among the Manila-based *ilustrados*, who were comparatively well-educated and who had predominantly chosen to side with the Americans during the struggle against Spain.

After some years, the Americans facilitated the rise to national prominence of regionally-based politicians. Since there were no indigenous political structures left in the

Philippines, new politicians had to build their power bases from scratch. They did so by mobilizing and building personal networks, starting at the local level and proceeding by stages to the regional and national levels. Aspiring politicians acquired a political following through the use of patronage, family and friendship ties. Support was secured by raising expectations that such support would be reciprocated by the politician, for instance through the granting of special economic favors. Support for a candidate was also strongly influenced by the expectations of what could be achieved for the candidate's locality of origin once he or she rose to national prominence. An aspiring candidate obtained a following on a wider scale through political patronage and coalitions with local factions and power brokers. This would involve for instance, promising support in local elections in return for support of his own bid in the national poll. The degree of success at the national level depended on the strength of his own local and regional power base, the ability to gain support from national power brokers and fellow politicians at the national level, and on his capacity to undercut the power base of rivals. This is the way the first wave of Filipino national leaders, such as Sergio Osmeña and Manuel Quezon, rose to national prominence.

Filipino politics has been quite personalistic from the beginning. Personal interaction and networks have been of prime importance, rather than institutional mechanisms or ideologies. Furthermore, success in the political arena has depended on skillful strategic action, particularly in the exploitation of personal ties. At the same time, this dependency on personal factors has meant that political power frameworks have been intrinsically feeble and fragmented. Particularistic loyalties toward specific localities, regions and persons have been marked and tenacious throughout the history of Philippine politics, and strong factionalism has exercised an influence at every level, from the local to the national.

Another important aspect of personalized politics is that power is only partially transferable. On the one hand, aspiring politicians could use the network of their mentors or of their families, thus facilitating the persistence of political dynasties. On the other hand, the loyalty of these inherited networks would never be as strong towards them as it was towards the mentor or family members that had originally developed these networks. Moreover, each political dynasty or clique could have several contenders for the political loyalty of potential followers. Therefore, political dynasties were also subject to internal factionalism. A good present day example concerns the Cojuangcos of Tarlac. Danding Cojuangco was an influential Marcos crony and a former presidential candidate, who still exercises considerable influence. His cousin Cory (formally Corazon) is the widow of the main opposition leader under Marcos, Benigno Aquino. She became president after Marcos was toppled in the famous EDSA revolt. The Danding line and the Corazon line of the Cojuangcos remain on bad terms with one another.

The strength of a political office is further related to the strength of the power base of the one in charge. The administrative machinery of any political unit does not automatically serve its elected leader smoothly and with dedication. The machinery itself is subject to dispersed personal and/or political loyalties. The degree to which a leader of a government unit can control its administrative machinery depends on the degree of loyalty of this machinery towards him, and on the strength of his power base in general.

A President, or head of a local or regional unit, does not exercise supreme effective power merely by virtue of his office. He or she has to seize this power personally. Nor is the power seized automatically transferable to his or her successor. The successor himself must seize the effective power again.

This personalistic basis of political power did not facilitate the development of a clear demarcation between a public realm of government and politics on the one hand and a private realm on the other. For example, there has been no strict correlation between formal power and effective power. In many instances, exceedingly powerful people have not actually served in official positions in politics or government, but rather exercised their influence through connections, money or intimidation. A good and rather recent example of this is the already mentioned Danding Cojuango, who for some time under Marcos was one of the most powerful persons in the country, despite the fact that he did not have any official political or administrative position. In a number of cases, the public realm has even been subordinated to the private one. Political offices as well as government positions have been frequently used and regarded as instruments for the realization of private interests rather than the general welfare. Through a political office one could enrich oneself, protect the business interests of one's family, favor one's town of origin, etc. This tendency to treat the public sector as primarily an extension of personal interest was taken to the extreme in the Marcos period.

From 1942 to 1945, the Philippines suffered under Japanese occupation. The long period of foreign dominion under three different powers and the marginal involvement of Filipinos in running their own country during most of this period, appears to have facilitated the fact that the realm of public affairs and the common good of the whole nation has remained alien to the experience of most Filipinos. Consequently – as authoritative Filipino sources have indicated – the evolution of the people's loyalty to public values and the common good has been inhibited.³

Philippine Democracy after Independence

The apparent weaknesses of the Philippine political system had not yet crystallized during the American period. The American presence, amongst other factors, prevented the extreme excesses of factionalism. Moreover, by the end of the American era, the hold of Manuel Quezon's faction on the country's politics had become so strong that it substantially restrained the conduct of opposition forces. For instance, Quezon could force oppositionists into line with the threat that he would actively support their rivals in the next elections. On various occasions, Quezon proved himself capable of materializing this threat.

The Philippines became formally independent in 1946. Quezon had died during the Second World War. Though the Americans withdrew, they continued to exercise considerable influence on their former colony, particularly through the presence of two large army bases that remained in the Philippines. The country adopted a system with executive power in the hands of a President to be elected directly by the entire nation, and two houses of Congress. The most important of these was the Senate, whose members were

elected by the nation at large. The second chamber was the House of Representatives, whose members were elected on a district-by-district basis.

With the departure of the Americans and the death of Quezon, restraints on political factionalism diminished significantly. Though the intensity of political factionalism varied from period to period, its problems became quite apparent. Elections were accompanied by frequent bloodshed, cheating and accusations of fraud. Politically-motivated assassinations and intimidation became common phenomena, with politicians employing private armies to protect themselves against rivals. Abuse of government funds became a serious problem, and various politicians grew rich overnight by using the prerogatives of their office or exercising political power. These politicians by and large still came from among the ranks of the old elite, or ran for office with the support of its powerful members.

The party system provided some degree of continuity and order to political life in the country. The dominant parties in the period between independence and the declaration of martial law by Marcos in 1972 were the Liberal Party and the Nationalista Party. Both of these parties revolved around personal networks rather than ideologies or political programs. Yet the parties afforded mechanisms for recruitment and screening of political talent, as well as logistical and other forms of support for candidates. Although opportunistic changes of allegiance to one political party did occur, such conduct was somewhat looked down upon and was derogatorily called 'turncoatism'. The best known turncoat was Ferdinand Marcos. When he became president of the Senate, which was an acknowledged springboard to candidacy for the presidency, Marcos was prevented by the political leadership of his Liberal Party from running for president as Macapagal's successor. Consequently Marcos switched to the Nationalista Party, which then chose him as its presidential candidate. In the next presidential elections Marcos was able to defeat Macapagal who had decided after all to run for re-election.

During the independence era, there have been two occasions in which a political network almost managed to monopolize political power. The first of these was in the early 1950s under Magsaysay, who had achieved great popularity because of his success as Defense Minister in curtailing the *Huk Balahap* movement. This was a peasant rebellion that posed a great threat to the existing political order of the young republic. Magsaysay quelled this rebellion through a combination of military action, negotiations and a populist approach that won the hearts of the common people. Because of this success, he was also strongly supported by the Americans who regarded him as a firm supporter of their containment and roll-back policies during the early years of the Cold War. However, Magsaysay died in a plane crash in 1957. Since the unifying strength of his political faction depended mainly on the personality of his leadership – in the normal fashion of Filipino politics – this strength eroded quickly after Magsaysay's death.

The second time a faction almost monopolized political power was under Ferdinand Marcos. Marcos had been a fast-rising and extremely ambitious star in Filipino politics. He was widely acclaimed for his brilliance and feared for his cunning. Marcos had carefully built himself an image as a war hero, though he grossly exaggerated his actual performance during the Second World War. His regional power base was Ilocos Norte, the most northern province in the Philippines. Marcos actively used the prerogatives of the presidency to prepare for the realization of his main objective: to acquire absolute

and permanent power over the Philippines. He built up his power base and placed loyalists in strategic positions in society, most notably in the army. With the prerogatives of the presidency, including the increased possibility to commit fraud, Marcos managed to get re-elected.

During the official second term of the Marcos presidency, his popular support diminished. The country faced difficult times economically and was plagued by a crime wave, including many murders and armed robberies. As in many other developing countries, Marxist protest movements became popular. Two Philippine communist parties were created, the more popular of which was a Maoist faction, which generated an armed guerrilla movement. Most of the members of Marxist protest movements were students. The Americans had introduced mass schooling in the Philippines, which amongst other things resulted in the proliferation of numerous colleges and universities of greatly varying quality. Many of these colleges and universities were in the Greater Manila area and drew hundreds of thousands of students from the countryside. These students often lived in very cramped conditions in boarding houses in the city and were keenly familiar with the huge gap existing between rich and poor in their home provinces. They were thus receptive to communist ideas. Violent mass demonstrations became quite common in the streets of Manila, many of which ended in bloodshed.

The violence perpetrated within the framework of 'official politics' was also considerable. The best known example of this was the bombing at the Plaza Miranda in downtown Manila during a rally of the Liberal Party, which killed several persons and left a number of Liberal Party leaders seriously and permanently injured. Marcos blamed the attack on communists, though various opposition sources suspected Marcos of the bombing, since it both rid him of various powerful rivals and created a pretext for the establishment of martial law. In 1972, several other bombings occurred, including at the Ministry of Defense. But as these attacks caused neither casualties nor significant damage, the opposition again accused Marcos of staging these bombings himself in order to create a further pretext for instituting widespread repression.

In September 1972, Marcos declared martial law. He suspended the Bill of Rights, the Senate, the House of Representatives and all political parties, and began to rule by decree. His government closed down newspapers, introduced press censorship and jailed many opposition members, including student activists of various political convictions. Marcos used the deplorable situation in the country as the main justification of martial law, pointing to the crime wave and the threat of a communist take-over.

Opposition members regarded the declaration of martial law as a manoeuvre by Marcos to remain in power indefinitely. According to the 1935 Constitution, which formed the constitutional basis of the independent Philippine Republic, Marcos was allowed to serve only two four-year terms as president. At the time he declared martial law his second term was nearly over. Marcos had actively lobbied with other politicians to change this constitutional requirement in order to allow him to run for a third term. Yet it remained uncertain whether he would prevail in modifying the provision. Moreover, even if he was allowed to run for a third time, it was far from certain that he would actually be re-elected, despite the fact that he had been able to strengthen his political machine substantially during his seven years as president. The social and economic conditions of the

country were problematic, which of course reflected on his performance as the incumbent president.

But a major threat to Marcos was the fact that he was facing a formidable opponent: Benigno Aquino jr. Benigno, or Ninoy, Aquino was a fast rising star. He had broken a number of political records: for instance by becoming the youngest mayor – and then the youngest senator – ever elected in the Philippines. He was also a famous journalist, who had exposed many scandals in the country. At the age of seventeen he had already acted as a war correspondent in Korea. His fame was then reinforced by his role in the quelling of the *Huk Balahap* movement under President Magsaysay. Aquino was one of the two-member team that succeeded in persuading the leader of the *Huk Balahap*, Luis Taruc, to surrender to the government. Aquino and his colleague had to virtually smuggle Taruc into Manila from his hiding place in the mountains. Various army officers who did not agree with the government's peace initiatives were on the look-out for Taruc with a view to assassinating him. Aquino was also a much wittier speaker and more charming personality than Marcos, which represented significant advantages in the personalized political culture of the Philippines. So Marcos declared martial law, and jailed Aquino on a charge of involvement in the murder of a local politician.

The Marcos Dictatorship

The reaction of the general public to the declaration of martial law was moderately positive, apart from criticism by outspoken Marcos opponents. Though Marcos's popularity had been decreasing during the last years of his constitutionally allowed terms of presidency, people felt relieved by the restoration of law and order that followed the declaration of martial law. Crime declined, particularly armed robberies, as many criminals grew frightened by the government's show of force, particularly after one major criminal was publicly executed. Student demonstrations also stopped. This reaction was reinforced by an economic recovery during the first years of martial law.

Marcos had also taken steps to legitimize his new dictatorship. The vast majority of the Supreme Court had ratified the declaration of martial law, believing that the condition of the nation indeed justified its establishment. Also, prior to martial law, a Constitutional Convention had been created to devise a new Constitution. Marcos persuaded the majority of the commissioners to continue the drafting of the new Constitution following the introduction of martial law. In 1973 a Constitution was unveiled that further legitimized Marcos's one man rule. At the same time, Marcos introduced an ideology aimed at legitimizing his dictatorship and serving as a tool in the struggle against communism. He termed this ideology The New Society, and described it as 'real democracy', Filipino style.

A crucial concept in the Marcos ideology was the 'revolution from the center'. This concept was based on the idea that Filipino society was controlled by a clique of traditional oligarchs. This clique controlled Congress, journalism, business, and many other sectors of society, and its influence had obstructed the policies of the central government. Because of this obstruction, the good intentions of the Marcos Government

in favor of the Philippines could not be materialized. Consequently the country continued to deteriorate. The solution proposed by Marcos was to break the destructive power of the oligarchs. The 'revolution from the center' signified that the necessary revolution to curb the influence of the oligarchs would not come from the bottom of society, the masses, nor from the top, the oligarchs themselves, but from the center: the central government run by Marcos, acting on behalf of the masses.

Marcos also periodically organized plebiscites, to prove that he enjoyed massive public support for his dictatorship. Since Marcos exercised a monopoly over the bodies that organized and supervised these plebiscites, and had perfected the art of electoral fraud, the outcome of these plebiscites always involved results of more than 90% in his favor.

The grip that Marcos had developed over the army, police and local governments during his presidency ensured that he could effectively enforce martial law. Potential dissidents soon discovered that resistance was of little avail, and as a result many discontinued their activities. Marcos also mastered the tactic of cooptation. Various opposition members were given a position somewhere in his machinery in exchange for abandoning resistance to his rule. The old social/economic elite was divided. Those who were closely linked to Marcos had nothing to fear, but his outspoken opponents saw their economic interests severely affected. Others were granted an economic niche provided they would not act counter to the interests of Marcos and his friends.

In the meantime, the communist movement gained ground rapidly. A central element of this movement was the rural guerrilla, the New People's Army (NPA). The guerrilla movement had received a strong impetus from student activists who had fled to the hills after the declaration of martial law. Moreover, communist student groups also went underground, operating in an elaborate cell group structure which was difficult for the intelligence services of Marcos to unravel.

The 'New Society' ideology notwithstanding, Marcos replied with extensive repression, militarizing various parts of the country. The government practiced a policy of 'total war' aimed at defeating the guerrillas militarily, and simultaneously preventing the development of mass support bases. In effect, the policy involved intimidating the people into cooperation with the army, and resulted in numerous gross human rights violations. People were killed for real or imagined communist sympathies; villages were searched violently, their people harassed and their belongings destroyed; entire villages were forcibly relocated to areas in which they could be closely supervised by the military.

The abuses of the Marcos regime were reinforced by the military's frustration over the elusiveness of the enemy, and over the considerable loss of life in their own ranks. The abusiveness of the army only increased the popularity of the insurgents. By the early 1980s, many Filipinos considered Marcos himself to be the most efficient recruiter for the NPA. Despite their attempts to win the hearts of the people, and their reputation of being more disciplined than the army, the guerrillas were also known to act ruthlessly against civilians. In the battle between the army and the NPA, it became increasingly difficult for local people to stay neutral. This resulted in a flow of refugees from the war zones into the cities, mostly the Greater-Manila area.

The Marcos regime tried to exercise a firm hold in the cities as well. Marcos had developed an elaborate network of spies and informers exposing possible dissidents. Critical journalists were intimidated. The secret abduction, killing – often after torture – and consequent dumping of the bodies of targeted opponents became a common practice, which the Filipinos referred to as ‘salvaging’.

At the same time it became increasingly obvious that Marcos aimed not only at retaining permanent control over the state machinery, but also controlling all important sectors of society, particularly the economy. Marcos’ economic policies have been generally characterized as ‘crony capitalism’. Companies of friends, relatives and supporters, or national companies linked to Marcos’ network were actively favored through government intervention. For instance, regulations were so devised and tailor-made for crony companies that rival enterprises were ousted from the economic arena. Crony companies were exempted from taxation and strict regulations applied to rival businesses. Big government projects were allocated on the basis of connection to the regime or the volume of bribes paid to it. Government funds were used to help bail out crony companies in need, or to implement status projects of the regime. Cronies were expected to pay commissions to the Marcos family in return for these favors.

Marcos also subjected the judiciary to his rule. Aside from one or two exceptions, the Supreme Court consisted of Marcos supporters. In 1972, Marcos reorganized the judiciary. All judges were dismissed and selectively reappointed. In the bar, the influence of the Marcos regime was also very strong. New law firms whose major assets consisted of good connections with Marcos officials or cronies grew prominent. Such connections greatly facilitated the winning of cases. Some of these firms changed their political loyalties in the course of time and have maintained their leading position following the EDSA revolt.

In spite of its doctrine of ‘revolution from the center’, the Marcos regime did not put an end to the old oligarchic structure, but merely changed the balance of power between different groups within the established order. A part of the oligarchy who were in favor of Marcos gained additional power. Other persons were incorporated into the oligarchy because of their loyalty to Marcos. Factions of the old oligarchy who were not among the cronies still were able to secure a part of the economic pie, provided they had previously not been too antagonistic toward Marcos, and provided also that the pie remained large enough to accommodate them. Nevertheless, they were always losing ground to the dedicated Marcus cronies, and could never be sure how much further loss was still to come.⁴ In this sense, the Marcos regime carried to the extreme one underlying current of the political and administrative culture that had begun under Spanish rule: i.e. the subordination of public interests to private ones. Despite its ‘New Society’ rhetoric, the Marcos dictatorship primarily served the President’s personal political ambitions, as well as the financial and other interests of Marcos and his cronies.

The example set by the regime was widely followed in society. From the top of the social structure to the bottom, in the public sector and the private, corruption and nepotism became extremely pervasive. The influence of corruption and powerful connections also developed in the bench and bar. In this context, the army and the police served as Marcos’ huge private army, whose main task was to maintain him and his cronies in

power. Under Marcos, the army grew from 60,000 members to 300,000, including paramilitary units, despite the absence of an external enemy.

In line with the subordination of public interests, the army was actively used to directly promote or protect the economic interests of cronies. Soldiers guarded plantations that were the subject of land disputes and removed people from land that cronies had allocated for themselves. To keep the army loyal to him, Marcos allowed it to engage in business on the side, and provided financial rewards to army officers in return for their services. As a result, army officers also had their own private interests to protect, and many became involved in using their army units against anyone who opposed them. A popular business activity of soldiers was the logging of forests, which resulted in ecological devastation throughout the Philippines. The line between counter-insurgency activities and protection of private economic interests became blurred.

By the early 1980s, the control of the Marcos regime over Philippine society had grown very tight. The only resistance scoring a degree of success was that of the communist guerrilla movement. Cynicism had become the dominant attitude among the citizenry. Throughout this period, dissenting voices calling for freedom and respect of human dignity remained weak but alive. An example of this were the human rights lawyers who – often at great personal risk – defended the cause of human rights victims, suspected communists and other dissidents. A number of these lawyers were united in groups, the best known of which was the Free Legal Assistance Group founded by the godfather of the Philippine human rights movement, the late Senator and Minister of Justice, Jose (Pepe) Diokno.

The Changing of the Tide and the EDSA Revolt

In order to provide his regime with a democratic facade, Marcos organized elections for a new unicameral legislature in 1978, based on representation by district. Though he did not provide the chamber with sufficient powers to oppose him effectively, he did allow some opposition figures to participate in the elections. Benigno Aquino ran for a seat in the legislature from his jail cell, where a television crew interviewed him during the campaign. The interview made a strong impression on the public and boosted Aquino's popularity. Nevertheless, according to the official election results published by the Marcos regime, Aquino was defeated by a little-known Marcos supporter by a landslide. Only a few token opposition members were allowed in the new legislature. Following the elections, a court sentenced Aquino to death on a standing charge of murder of a local politician, but under the pressure of international publicity, the regime allowed him to go into exile in the United States. Marcos subsequently became seriously ill with what turned out to be a terminal disease. It regularly prevented him from functioning normally, and over time he began to lose control over key cronies and supporters.

Believing that Marcos might die soon, and eager to play a key role in a new era of Filipino politics, Aquino decided to return to the country, fully aware of the danger of assassination. Upon his arrival in Manila in August 1983, Aquino was murdered on the tarmac of the airport in the presence of international journalists. The assassination met

with massive indignation in the country. Millions turned out for the funeral despite heavy monsoon rains. The murder severely damaged the regime's national and international reputation, which already had been declining steadily. Initially after the imposition of martial law, the regime had enjoyed a significant amount of international credit. Key donors like the World Bank and the IMF, as well as governments and private banks, poured money into the Philippines. Yet the internationally funded projects proved unsuccessful due to corruption, indifference and the influence of crony economics. The country accumulated a huge foreign debt while failing to share in the economic development affecting other states in the region.

The assassination of Aquino generated widespread sympathy for a new non-communist opposition, though the active core of this opposition remained small. New, independent papers proliferated and were distributed through informal channels. Despite this opposition, the hold of the Marcos machinery over the country remained strong. Marcos attempted to regain public sympathy by officially lifting martial law and by organizing new elections for the legislature in 1984. The new legislature included a significant minority of opposition members elected despite massive cheating, physical harassment and assassinations. Growing economic hardship, problems arising from the insurgency and counter-insurgency campaigns and increasing evidence of rampant abuse of government funds and economic privileges by Marcos' cronies contributed to growing discontent with the Marcos regime.⁵

At the end of 1985 Marcos announced snap presidential elections to regain his national and international credibility. Initially these 'snap elections' were viewed as a master political stroke by Marcos. A victory in the election might boost his national and international prestige. The opposition was divided and might not be capable of fielding a generally acceptable candidate. The time available for the opposition to campaign was furthermore very short. Marcos on the other hand controlled most of the local government structures and the army and had already perfected the tricks of manipulating elections.

Cory Aquino, the late Benigno Aquino's widow, consented to run in the presidential election on the condition that one million signatures supporting her candidacy be collected. Following the gathering of these signatures, an election campaign ensued in which she, as the representative of her murdered husband and *nemesis* of the Marcos regime, drew huge crowds and intense enthusiasm. Her campaign was forced to overcome various types of harassment by Marcos loyalists such as power cuts during rallies in the evening, and even the assassination of political allies.

The opposition to Marcos had anticipated massive electoral fraud by the government. An organization of volunteers was created to closely monitor the elections nationwide. Known as NAMFREL, these volunteer poll watchers monitored the levels of election turnouts in different precincts so that the numbers could be checked against the figures that the Marcos regime would provide. They witnessed the polling and accompanied ballot boxes to prevent them from being stolen, and reported irregularities and acts of intimidation. In some cases the volunteers even had to dive into rivers to recover ballot boxes dumped there by Marcos supporters. The final assessment of the turnouts in Manila was also closely monitored. Though the efforts of NAMFREL reduced election cheating, it nevertheless became patently obvious that electoral fraud had occurred on a wide scale.

The official election results published indicated a small victory for Marcos. This result was confirmed by the Marcos-dominated legislature.

Shortly after the Marcos regime announced re-election victory for the President, a rebellion by a small group of younger army officers known as RAM – who wanted to reform the army and who were motivated by strong anti-communist sentiments – became the spark for the famous EDSA revolt. Their political patron was Juan Ponce Enrile, who had been Minister of Defense under Marcos but had been pressured to resign. Fidel Ramos, a cousin of Marcos and officially the second highest military man, joined the rebels. He had played an important role in the implementation of martial law yet had been increasingly marginalized and distrusted by Marcos loyalists.⁶ Due to support for the revolt by Mrs. Aquino and the Catholic church, millions of people moved to protect the rebel soldiers who were holed up in Camp Aguinaldo, an army camp located along Epifaño de los Santos Avenue (or simply EDSA).

Realizing that the tide was rapidly turning against him, Marcos was persuaded to flee the country to Hawaii through the mediation of the American Government. Mrs. Aquino was then recognized as the new president. Apart from some fighting that occurred around key television stations, and the launching of several missiles at the Presidential Palace, the entire turnover of power had been non-violent and had resulted in few casualties. The EDSA revolt became an inspiration for many other countries and spelled the Filipino's supreme moment of international glory. This glory, unfortunately, turned out to be rather short-lived.

The EDSA Aftermath and the Marcos Legacy

Aquino Opposition Forces

The aftermath of the EDSA revolt showed how feeble the rebel coalition was. The RAM soldiers who initiated the rebellion were by no means pro-Aquino. They resented the corruption and favoritism in Marcos' army but distrusted many leading Aquino followers, whom they accused of communist sympathies. Their political loyalty was towards Ponce Enrile. They even disliked and disrespected Ramos, so their loyalty toward Aquino did not increase when Ramos was appointed as the new Chief-of-Staff. For his part, Ramos withheld from appointing the RAM soldiers to important positions in the army, which only increased the sense among these men that they had not received enough credit for their role in the EDSA revolt. Though the RAM faction had merely provided the incidental rallying point for pro-Aquino forces to take over the government, they viewed their role differently, believing that they should receive the main credit for toppling Marcos because their rebellion had served to trigger the wider action. Indeed they believed they had as much right as President Aquino to be in power, and consequently felt free to topple Aquino if the country's affairs did not develop in the way they wanted.

Another complication for President Aquino was that both Ponce Enrile and President Aquino's vice-president, Laurel, had presidential ambitions. It was to be expected that they would question President Aquino's presidential capacities, especially as she had had no previous experience in political office. Moreover, the EDSA revolt was concentrated

in Metro-Manila. Though President Aquino had many followers nationwide, most political and administrative bodies were dominated by Marcos cronies. This was even a problem in Metro-Manila itself, where local government units, big business and public services were controlled by Marcos cronies, who were not ready to give up their political and economic power without a fierce fight.

The biggest problem for President Aquino, however, was the military, which had become an abusive machinery serving as a huge private army on behalf of Marcos. Many army units were programmed to abduct, torture and/or kill civilians who might pose a threat to Marcos' power or the privileges of his cronies. Though the army itself had some dissident factions, and in the end refused to fire on the crowds at the EDSA, it still constituted a mammoth military monster when President Aquino assumed power. In addition, behind the scenes, the Marcos family was still using their extensive network to stage a come-back on the Filipino political scene.

Pro-Aquino forces

The pro-Aquino forces were rather heterogeneous themselves. Some of Aquino's followers were, like herself, members of the old oligarchy and resented the decline of their wealth and power during the reign of Marcos. Their main objective was to restore the earlier political and economic order – with its in-built social and economic inequality – that existed prior to Marcos' monopolization of power.

Another pro-Aquino faction consisted of various Catholic groups who pleaded for moderate social reforms and for a close affinity between Church and state. The concern of the Catholic Church for social reform was partly inspired by the fact that many priests and nuns had joined the communist movement out of discontent over poverty and oppression during the Marcos period.

Another important pro-Aquino group consisted of former political activists who had rallied behind President Aquino as a strategic move to get rid of Marcos. This group itself was somewhat heterogeneous, encompassing nationalists with Marxist sympathies, liberal democrats in the American East-Coast tradition, social-democrats of the Scandinavian type, etc. Among these groups were a substantial number of human rights advocates, including lawyers who had pleaded the cause of political prisoners during the Marcos period. These human rights advocates favored a more drastic change in the Philippine social and economic structure than did the other main groups supporting President Aquino. A group of human rights lawyers with particularly strong links to Aquino were the members of MABINI, named after a famous late nineteenth-century Filipino nationalist.⁷ When President Aquino took over the presidency, a number of MABINI members became part of her government.

A last component of the pro-Aquino forces included a large number of citizens without an explicit political program who had simply grown discontented with the Marcos regime and who were inspired by President Aquino's mystique as the widow of a murdered opposition figure and by her image of personal integrity and resilience.

Other Forces

The members of the anti-Marcos opposition favoring greater structural changes – which included human rights advocates – had been divided over the ‘snap elections’ in early 1986. Some of them, such as the MABINI members, rallied to Aquino while others boycotted the presidential elections altogether. The foremost group involved in the boycott was the National Democratic Front, an alliance of organizations linked to the Maoist Communist Party of the Philippines and its armed guerrilla wing, the NPA. But other groups and individuals also expressed reservations, such as the leftist-oriented nationalist camp dominated by scholars from the University of the Philippines. One reason for this reservation was the suspicion that President Aquino, once in power, would protect the interests of the old oligarchy of which she has been a member. Many of the boycott advocates also believed that in any case Marcos would use fraud to engineer victory for himself in the elections. In this view, participation in the elections could be interpreted as a recognition of their legitimacy, thereby helping Marcos to regain public legitimacy as an autocrat. Several prestigious senior members of the opposition to Marcos shared these reservations.

The groups that boycotted the elections played little or no role in the EDSA revolt and therefore did not share in the ‘glory’ of the uprising. This created a serious problem of legitimacy and ideological confusion. These groups were excluded from the spoils of the EDSA rebellion and thus lost public credibility. Moreover, the fact that a non-violent urban uprising could depose a dictator proved a serious anomaly for the historical materialist explanatory framework. This anomaly was reinforced by the very explicit religious component of the EDSA revolt. The mass action that occurred during the course of the rebellion included frequent public prayer, use of giant images of the Holy Mary, descriptions of the revolt as a cosmic battle between good and evil, etc. One way of resolving the anomaly was to interpret the EDSA revolt as a restoration rather than as a revolution. This was the reaction of the extreme left. In their perspective, President Aquino was just another representative of the dominant classes and of American imperialist interests. They saw evidence for this in the continuing presence of two major American military bases in the Philippines, and in President Aquino’s own descent from the landed elite.

Obstacles Facing the Aquino Administration

In this very heterogeneous power structure and atmosphere of mutual distrust, the Aquino administration pursued several important objectives. It was faced with the need to dismantle the remnants of the Marcos power structures, to promote social justice and fight poverty, and to stop the war between the army and the communist insurgents as well as its concomitant human rights abuses. Toward this latter end, the government announced a cease fire and negotiations for lasting peace with the rebels.

This peace process was obstructed from the very beginning. The army was suspicious of the communist guerrillas and was afraid the Aquino government would grant them too many concessions. An additional problem was that the army units outside of Manila had never been involved in EDSA, and had never chosen to move against the military leadership of Marcos. The loyalty of the army to Ramos was also far from certain.

Additionally, there was much distrust in the army toward various Aquino cabinet members, such as the MABINI lawyers, who were accused of being communist infiltrators. The RAM soldiers were particularly displeased with the peace process.

The government found itself provoked in a series of ways. Assassinations, such as the abduction, torture and murder of a major leftist labor union leader, discredited and embarrassed the reputation of the government. Moreover, several members of the Aquino government – including President Aquino herself – received death threats, as for instance the mock or failed assassination attempt perpetrated during a visit by the President to the Philippine Military Academy in Baguio City.

Already in June 1986, only several months after the EDSA uprising, RAM soldiers staged their first attempt at a coup d'état, in collaboration with several Marcos cronies, including Marcos' candidate for vice-president in the 1986 snap elections. Although this action failed dismally, it nevertheless marked the start of a long series of coup attempts and aborted coup attempts which seriously eroded the country's stability.

The recurrence of coup attempts as well as the continued perpetuation of human rights violations by the military was reinforced by the 'old boys' mentality, or *tayo-tayo* spirit as it is called in the Philippines. Though the army included a number of contending factions, who actually fired upon and sometimes killed one another during the various coup attempts, in general, the soldiers also protected one another due to this mentality. Sanctions against coup plotters or other perpetrators were not appreciated by their peers. Because of the unstable power balance and coup threats, the Aquino regime found itself virtually powerless to discipline rebellious soldiers. Although individual perpetrators were punished on several occasions, in general such plotters were treated quite leniently. The soldiers involved in the first coup attempts, for instance, were punished with simple 'push-ups'.

The leniency toward rebel soldiers resulted in a contemptuous and arrogant attitude amongst the plotters. When the last coup attempt in December 1989 – which was the longest, most threatening and bloodiest of them all – finally came to an end, the surrendering rebels told the public that they were not giving themselves up but merely 'returning to barracks'.⁸ The main net effect of these coup attempts was that the army increasingly raised its price for supporting the Aquino regime during these actions. The influence of the army leadership on the Aquino Government therefore steadily increased. Widespread dissatisfaction existed within the military about the Aquino regime, a situation which provided the RAM soldiers and their allies an opportunity to actively recruit sympathizers in the army.

Meanwhile, the communist rebels did not display much eagerness to negotiate either. By the end of 1986 they, as well as various radical leftist groups, had become increasingly opposed to the Aquino Government. This culminated in, amongst other things, mass demonstrations. The peace talks finally collapsed completely in January 1987 after the infamous Mendiola Bridge massacre. This massacre took place at a time when the control of the Aquino Government over the country and particularly over the military, was very ineffective. Rumors of a new coup attempt were in the air, and there was much uncertainty as to who in the army would remain loyal to the government in the event of such an

attempt. Certain cabinet members could never be sure they would still be alive the next day.

The peace talks with the communist rebels had become increasingly useless. Even if the government agreed to sign an accord, it was very questionable whether the military would actually respect the agreement in practice. Segments of the army had become very impatient with the government's alleged laxity with communists and suspected communists. President Aquino had been forced to remove or to reduce the influence of several members of her administration who were suspected by the military of being communist infiltrators. These factors resulted in further growing distrust in the Aquino Government by the radical left, and facilitated the decision of the communist left to resume the armed struggle in full intensity.

In this unstable political climate, and in a context of mass public protests organized against the government, a militant leftist peasant organization, the KMP, led a series of demonstrations in favor of radical land reform which was being blocked by the landed elite, who continued to exercise strong political influence. During one such protest, the demonstrators unexpectedly stormed toward the presidential palace. Soldiers who were present opened fire on the storming crowd, leaving 19 demonstrators dead. Though the Aquino Government claimed to be greatly shocked by this event and denied having ordered the shooting, members of the opposition, as well as various human rights advocates, have held the Aquino Government responsible for the massacre.

In the aftermath of this event, President Aquino became increasingly incapable of withstanding pressure from the military. Members of her administration who were accused of communist sympathies resigned or were relegated to the margins of the cabinet. A few of those who left as the result of different cabinet reorganizations later joined the ticket of President Aquino's new party for the senate elections in 1987.⁹

During this time, the war intensified between the army and the insurgents, who now diversified their strategy to adapt to the new conditions. Initially, the efforts of the insurgents in urban areas had been threefold: to obtain logistic support and new recruits for the armed struggle in the countryside, increase political sympathy among city dwellers and destabilise the existing political and economic order, thus enhancing the revolutionary climate. The National Democratic Front (NDF), consisting of non-governmental organizations and popular structures such as labor unions, was an important component of this overall strategy. The insurgents also moved to infiltrate other organizations in order to bring their positions in line with those of the NDF.

Gradually, the NPA diversified its strategy, in some parts of the country assertively targeting urban areas. By 1986, large segments of Davao City, the second largest urban conglomeration of the country, were controlled by the NPA. The question of strategy was one of the main sources of internal division within the Communist Party of the Philippines/New People's Army, and led to frequent bloody purges.¹⁰ After the Mendiola Bridge Incident, a unit within the NPA, called the Alex Boncayao Brigade, strongly intensified a campaign to assassinate soldiers, policemen and other enemies. The assassinations were mostly conducted by squads of two young men operating on a motorcycle in broad daylight. These squads, which were capable of disappearing completely within moments of the assassination attempts, were called 'sparrows'. The sparrow units also

turned against American servicemen. Spectacular examples of their activity included the killing in 1988 of Colonel James Rowe, a Vietnam veteran explicitly 'lent' to the Philippine Government to assist in the counterinsurgency effort, and the killing of four American air force servicemen in Angeles City in late 1987.

In the meantime, the Aquino Government had taken some controversial steps to fight the communist insurgency. In 1987 the President revived Republic Act 1700, also known as the Anti-Subversion Act, which was originally introduced in 1957, but had been expanded by Marcos. Following the EDSA revolt the act was abolished, but after the collapse of the peace talks with the insurgents it was reintroduced, albeit with several amendments.¹¹

Other controversial steps¹² included the 'total approach' strategy to counteracting the communist insurgency and the introduction of CAFGUS (Citizen Armed Force Geographical Units). The 'total approach' was aimed at the destruction of the insurgents' mass base. On the one hand, the strategy foresaw engaging the guerrillas militarily wherever they resisted or were expected to resist. On the other hand, the army attempted to win the sympathy of the local population in insurgent-infected areas by assisting in infrastructure and livelihood projects and through support of other useful activities. These efforts formed part of a broader attempt to counter the political, economic and cultural root causes of the insurgency and to provide means to help former rebels return to normal life. Critics however consider this policy as a mere continuation of the 'total war' strategy pursued during the Marcos period, which allegedly aimed at destroying the insurgents' mass base not by winning the people's sympathy but merely by harassing and intimidating the local population.

The CAFGUS consist of citizens who are selected, trained, armed and supervised by army units to act against insurgents and to protect villages or neighborhoods not easily accessible to the military. These units were created after the spectacular success of the *Alsa Masa* movement in Davao City. With the help of a local army officer there, a few NPA defectors created an anti-communist armed group – the *Alsa Masa* movement – which drove the NPA out of Davao City in a very short time. Apparently the NPA had lost a great deal of credibility in the area because the action of this group received considerable public approval in Davao. This success and public approval greatly enhanced acceptance of the CAFGUS by President Aquino. Critics however regarded the CAFGUS – which were not officially assigned to highly urbanized areas – as a continuation of the notorious Citizen's Home Defense Units, which had earned a reputation for gross human rights violations. Apart from CAFGUS, a number of other anti-communist groups operated which were not formally sanctioned by the army. These groups are called *vigilantes* and have perpetrated their own share of human rights violations.

During the early years of the Aquino administration, the human rights situation in the Philippines did not dramatically improve over that of the Marcos period. Some have argued that the situation actually worsened, and that there was a continuity of human rights violations from the Marcos era through the Aquino years.

Internal Struggles

Despite huge public support for President Aquino during and just after the EDSA revolt, her administration nevertheless experienced a legitimacy problem. Though she was recognized as President, and it was widely believed that she would have won the earlier presidential elections if there had been no cheating, no incontestable proof existed that she actually had won these elections. Nor was there any constitutional basis for her presidency. The Marcos-dominated legislature had declared Marcos the winner, so the right of President Aquino to rule could still be – and actually was – contested. For a constitutionalist like President Aquino, this posed a problem. At the same time the need existed to dismantle the power structures of the former Marcos regime swiftly and rigorously.

The Aquino camp was divided over the appropriate course of action. One group favored an indefinite period of ‘revolutionary government’, in which the Marcos legislature and Constitution would be abolished and in which President Aquino would rule by decree. This revolutionary government could in their opinion serve to destroy all the vestiges of Marcos power and introduce drastic social and economic reforms. This group was betting on the massive existing support for President Aquino. If the military or Marcos loyalists tried to topple her rule the masses would rally to her as they did during the EDSA revolt.

A second group favored maintaining as much continuity with the direct past as possible. The members of this group believed that a revolutionary government would make President Aquino look like a new dictator. They preferred that she work with the existing Marcos legislature and Constitution for a period, and change things gradually. Although the legislature had earlier declared Marcos the winner, it turned out to be willing to cooperate with President Aquino, as the parliamentarians began to fathom the changes of the times. Various former pro-Marcos legislators wrote letters expressing their support for the new order. One of them even wrote his message in his own blood. The group favoring maximal continuity believed that President Aquino’s regime would not have been subject to so many coup attempts had she chosen this option.

The 1987 Constitution

In the end, President Aquino elected to pursue a path between these options of indefinite revolutionary government and maximal continuity with the Marcos era. She abolished the Marcos Constitution and legislature and declared revolutionary government, yet promised the establishment of a new Constitution quickly. A provisional constitutional framework was issued in the meantime, reapplying the old Bill of Rights of the 1935 Constitution and the articles on the judiciary included in the Constitution passed by Marcos in 1973. A Constitutional Commission was chosen to draft the new document. President Aquino promised that the new Constitution would be subject to a plebiscite, and that elections for a new Congress, consisting of two houses, would follow soon. She also decreed the dismissal of all of the nation’s judges and justices, and formed a committee to reappoint these selectively after screening. The Supreme Court was charged with restructuring the judiciary and the bar in order to recreate a judicial system that would be independent, effective, efficient, and fair to everyone.

In an attempt to foster national reconciliation, representatives from a broad political spectrum were appointed as members of the Constitutional Commission. The selection ranged from leftist representatives, such as KMP leader Jimmy Tadeo, to Blas Ople, a Marcos cabinet member and very loyal follower of the former dictator. Even during the EDSA revolt, Ople actively and unapologetically lobbied in the United States for support for Marcos. The heterogeneity of the commission membership occasionally led to chaos. There were frequent quarrels, staged 'walk outs', televised 'walk backs', etc.

Despite these differences in early 1987, a Constitution indeed emerged. A dominant aspect of this Constitution concerned provisions aimed at preventing another figure like Marcos from monopolizing power. The Constitution also expressed the concern of the Aquino administration for human rights, explicitly referring to these rights in the body of the text. Important in this context is also that the judiciary received a special role in relation to human rights. Article VIII, section 1 specifies: 'Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.'¹³ This implies that Filipino citizens can seek redress in the courts when their constitutional rights are violated. The same section of the Constitution also assigns to the courts the role of arbiter over the conduct of government agencies, thus adding an extra check on potential government abuse: '... and (judicial power includes the duty of the courts of justice) 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 the government'. So the courts have the authority and even the duty to make binding decisions regarding possible abuse of power or negligence on the part of government agencies.

Another important aspect of the Constitution was the creation of a new government body, the Commission on Human Rights, which would be independent from the executive branch: the main function of this body was to provide a forum where victims of human rights violations could address their complaints. The Commission was charged with investigating these claims, offering help to victims and witnesses and informing government prosecution officers of its findings.

The Constitution was overwhelmingly ratified in a plebiscite, yet it has remained controversial. On the one hand, criticism has been levelled based on legal and practical considerations. According to this line of argument, the Constitution was clearly written in great haste and therefore was not subjected to sufficiently thorough reflection. For instance, critics consider the Constitution to be too long-winded and containing too many duplications as well as vague and unrealistic paragraphs.

Criticism has also been voiced based on political considerations. Segments of the leftist and nationalist camps were strongly opposed to the Constitution, alleging that it favored the rich and powerful. Jimmy Tadeo was one of two commissioners who withheld his signature. Instead of signing, he wrote that he intended to vote no in the coming plebiscite. On the other side of the spectrum, various Marcos loyalists expressed strong opposition, even though Blas Ople agreed to sign the Constitution. One former Marcos cabinet member, who later became a senator, tore up a copy of the Constitution in a public demonstration. Marcos's running mate in the 1986 snap elections, who also later became a senator, compared the Constitution to a 'beautiful woman with aids'.¹⁴ Whereas

many leftists and nationalists found the Constitution insufficiently nationalist and radical, the military and politicians linked to the military, such as Ponce Enrile, as well as some conservative former Marcos supporters, considered the Constitution derogatorily as an 'effeminate document from leftist street parliamentarians'.¹⁵ The various reactions to the Constitution reflected the serious political opposition to the Aquino Government during that time, even from within the former EDSA coalition.

Interpretation of the Aquino Government's Course of Action

It might be tempting to conclude that the problems besetting the Aquino Government were enhanced by its ambivalence in choosing between the two different options: that of maximizing legitimacy by leaving the Marcos Constitution and legislature intact while introducing change only gradually; and that of introducing drastic reforms without worrying about formal legitimacy. But the Philippine situation was a very complex one. It was true that the former Marcos legislature had expressed their support for President Aquino, in view of her enormous popularity. But this was merely an expression of extreme opportunism at that time. During the early days of Aquino's rule, Marcos loyalists actively worked to destabilise her regime and to prepare a political comeback for the Marcoses. Leaving an important former power base of the Marcoses intact was altogether risky in that context.

Nevertheless, a prolonged period of revolutionary government would have been quite risky as well, increasing the likelihood of a military take-over. Segments of the army were very displeased about the government's revolutionary status. The promise of new elections and a new Constitution were therefore not merely matters of ideological persuasion but were measures necessary to ensure the government's survival. The insurgents had declared war on the government and were contributing to the instability of the country and the administration. Furthermore, a refusal to fight on the part of the government increased the likelihood of a successful army coup and the consequent destruction of democratic space. This could have foreclosed on the improvement of the human rights situation for a long time. To rely on people's power as displayed during the EDSA revolt was also risky. The EDSA rebellion had remained largely non-violent. Yet there was no guarantee that possible future confrontations between the army and pro-Aquino demonstrators would not result in major bloodshed.

Another danger posed by the scenario of prolonged revolutionary government was that it might have enhanced the credibility of the far left. The extreme left had boycotted the 'snap elections' as well as the EDSA revolt, thereby losing a large measure of its credibility. Future repetitions of the EDSA revolt might give the extreme left a second chance, providing it an opportunity to increase its influence. This in turn would increase the likelihood of new coup attempts.

A final argument against prolonged revolutionary government was that no guarantee existed that the crowds would support the regime massively in the streets again, due to *ningas cogon*. This term expresses a cultural-psychological inclination often referred to by Filipinos themselves.¹⁶ Literally, the term refers to a type of weed that easily multiplies but quickly perishes when exposed to fire and heat. The inclination expressed by the term relates to the fact that Filipinos often start activities with intense enthusiasm,

but abandon them quickly without having finished them. In this context, *ningas cogon* implied that the intensity of the EDSA spirit was no guarantee that the crowds would act similarly in the future. The same people who stopped tanks with their bare hands might decide to stay home when the Aquino regime needed them again.

The growing influence of the army resulted in declining support for the Aquino Government from moderate leftists, nationalists and radical liberals. This in turn increased such influence even more. As one former associate of Aquino puts it: 'they (referring to moderate leftists, nationalists and radical liberals) were our natural allies. But all they did was to criticize us. They didn't support us, so we didn't have enough political backing to counter the pressure from the army'.

The Transition from Aquino to Ramos

The Final Years of the Aquino Administration

The last and most devastating coup attempt against the Aquino Government resulted in substantial bloodshed. It involved the seizure of a luxury hotel with many foreign hostages, and was only defeated with the help of the United States Air Force. This coup attempt which occurred in December 1989 had a further paralyzing effect on the government. The paralysis was then reinforced by a sequence of natural calamities, of which the eruption of the Mt. Pinatubo volcano in 1991 was the most dramatic.

The government's grip on the country had been strongly eroded. President Aquino not only demonstrated little control over the army, but in the end scarcely exercised control over her own administration, relatives and friends. Corruption and nepotism, which had manifested to one degree or another since the beginning of her rule, intensified. Though President Aquino had shown exceptional personal courage in the campaign leading up to the 'snap elections' as well as during the various coup attempts, as a widow she was considered weak by her opponents. The Aquino regime continued the 'politics of bare survival'.

The increasing influence of the army on the Aquino administration was demonstrated in December 1989, when President Aquino made use of the presidential veto to block a congressional bill transferring jurisdiction over crimes committed by soldiers against civilians from military to civilian courts. The jurisdiction of military courts over acts committed by soldiers against civilians was based on an old Marcos directive, Presidential Decree 1850, which had not yet been repealed. Only several weeks after the most devastating of the coup attempts, President Aquino found it inopportune to repeal this old decree. It was finally repealed however in June 1991, thereby transferring jurisdiction over military acts against civilians to specifically civilian courts.

Within the narrow limits allowed for by the practice of survival politics, the Aquino administration, as well as the Philippine Congress, made a number of efforts towards the promotion of human rights. In addition to the bill that finally repealed PD 1850, the Congress approved a Witness Protection, Security and Benefit Program, which offers protection, material support and, if necessary, a completely new public identity to testifying witnesses of heinous crimes and gross human rights violations. President

Aquino also issued an order that required military personnel, as a requirement for promotion, to obtain a clearance from the Commission on Human Rights (CHR) certifying that no human rights case was pending against them. Memoranda, orders and guidelines on the conduct of soldiers in armed conflict were issued continuously by the President, the CHR, the armed forces and the police.¹⁷ These measures were not very effective, though politically-inspired human rights violations declined somewhat during the Aquino administration.

The Election of President Ramos

In 1992, Fidel Ramos was elected to succeed Aquino as President. He obtained about 23% of the vote, but due to the large number of contestants participating in the presidential elections, this percentage proved sufficient for him to triumph over his rivals. Despite the relatively small number of votes cast in favor of Ramos, and the fact that various sectors of Filipino society – including segments of the military – neither trusted nor respected him, his administration proved to be more stable than that of the Aquino Government. The units responsible for most of the coup attempts were marginalized or themselves abandoned their resistance against the top army leadership. The main military rebel leader, Honasan, even ran for – and was elected to – the position of senator in 1995. The same year saw an amnesty for all soldiers who had been involved in coup attempts. Many of these were even reinstated in the army, provided that they had not been guilty of committing any common crime apart from their rebellion.

The Ramos Administration and the Communist Rebels

In 1992, President Ramos instituted new peace talks with the communist rebels. Since Ramos has a reputation as an anti-communist soldier, the army awaited the results of these talks, believing that unlike former President Aquino, President Ramos would not jeopardize the national interests in pursuing an agreement. An illustration of the changing political climate was the repeal of the Anti-Subversion Act by the Philippine Congress in September 1992.¹⁸ The counterinsurgency campaign grew less intense, and the number of human rights violations committed in this context declined. The far left had clearly lost the momentum it enjoyed during the Marcos period. Its power base, already affected by the EDSA revolt, further decreased as a result of the collapse of Communism in Eastern Europe and of Marxist views and communist economic policies in many other parts of the world. The economic success and rising living standards of neighboring Asian countries who had applied non-communist policies also challenged the socio-economic model of society promoted by the far left. Many sympathizers dropped out of the leftist ranks and the movement as a whole was further drastically weakened by continuing internal divisions. In particular the CPP/NPA's classically Maoist leaders, who are in exile in the Netherlands, split from various local branches operating within the Philippines. This internal split was replicated in various other leftist organizations, such as the peasant body KMP, the labor organizations Bayan and KMU and various human rights NGOs. These dissensions gave credibility to the classic charges that such organizations were infiltrated, or even dominated, by communists.¹⁹

The attitude of the leadership of the far left in the peace talks with the Ramos administration increased doubts about whether this faction was really interested in concluding a peace agreement at all. Negotiators for the NPA/CPP raised numerous procedural objections about secondary issues such as the venue for the talks themselves, but also opposed a major proposal to grant amnesty to political rebels. This proposal was put forward by the National Unification Committee, a body appointed by president Ramos to study the terms of national reconciliation. The NPA/CPP leadership feared that such an amnesty might split its ranks, and was furthermore suspicious of the motives behind the proposal.

By July 1995, both the NPA/CPP leadership and the Ramos Government finally agreed to hold peace negotiations in Brussels, but as of a year later, the negotiations had not yet begun in earnest. In 1997, substantial talks resumed in the Netherlands. The Ramos administration enjoys by far the better bargaining position, and as a result is not encouraged to grant very many concessions. If the negotiations fail, public opinion will undoubtedly blame the communist leaders because of past experience. In the event that the negotiations are successful, on the other hand, this will spell the end of the armed insurrection. In this context it seems doubtful that the NPA/CPP would be able to transform itself into an effective peaceful opposition. Whether or not the peace talks succeed, the further marginalization of the communist movement seems certain.

Nevertheless, the Ramos Government continues to face serious law and order challenges. One such problem was the resurgence of assassination activity by the Alex Boncayao Brigade in late 1995, which was primarily directed at wealthy businessmen. Though this strategy underlines the despair felt by some communist factions over the erosion of their power, it nevertheless presents a challenge to the efforts of the Ramos government to guarantee a stable environment for business investments. Other problems have included a broader national crime wave and abusive conduct by policemen and soldiers. Both of these phenomena will be discussed in the next chapter.

The Ramos Administration and Muslim Segregationists

A final major problem for the Ramos government was an escalation of the struggle by Muslim segregationists in parts of the South. This problem stems from the fact that traditionally Muslims have never been well-integrated into the Filipino nation at large, and had already managed earlier to elude control by the Spanish colonizers. Though extensive peaceful coexistence has existed between Muslims and Catholic Filipinos, there has also been serious animosity, leading in some cases to violent clashes. Several Muslim factions initiated an armed secessionist rebellion, though other parts of the Muslim community are content with achieving limited autonomy. Still others simply seek a fair share of, and access to, the nation's power structure and resources.

Between 1975 and the early 1990s the problems posed by Muslim rebels were subordinate to the communist rebellion and the anti-communist military insurgency. Both Marcos and later the Aquino and Ramos governments attempted to obtain a peace settlement with the Muslims through concessions and negotiations. Nevertheless, some factions have refused to negotiate and have resorted to kidnappings and hit-and-run tactics. The bloodiest incident in this regard was the attack perpetrated by an armed band on 4 April,

1995 against a commercial center in Ipil in Southern Mindanao in which 35 civilians and peace keepers were killed at random. Suspecting Muslim secessionists of responsibility for this and other massacres, the Ramos government mobilized a large-scale military campaign against the dissident Muslim factions in Mindanao. Additionally, in 1995 an alleged plot was detected allegedly exposing a link between these Muslim factions and foreign Muslim fundamentalists who had been preparing an international urban terrorist campaign. This raised suspicions in the Ramos administration that these dissident Muslim factions were planning to launch major terrorist attacks in Metro-Manila. In September 1996 a peace agreement was finally reached between the government and important factions of the Muslim population. However, the agreement did not lay a sufficient basis for lasting peace. Apart from the fact that some non-Muslims had misgivings about the agreement, the most radical Muslim factions were not involved in the accord, and these were the very elements that had been generally identified with international terrorist threats. Fighting between the army and radical Muslim factions therefore continued, as did attacks against civilians. A dramatic example was the killing of ten school children and their teacher on 16 March, 1997 in Buldon, an incident which the army and one of the Muslim groups have blamed on one another. Peace talks between the government and these radical Muslim factions are still taking place.

The fear of Muslim terrorism, as well as the resurgence of communist urban terrorist activity, led the Department of Justice and pro-Ramos legislators to urge the adoption of an anti-terrorism law. Four versions of the law have been proposed. Extensive police powers in surveillance and investigation – including of bank accounts – and the possibility of arresting suspected terrorists or members of a terrorist organization without a warrant have been important elements in these various proposals. Nevertheless, all four versions of the draft law have been shelved for the time being due to serious opposition both in Congress and in civil society. This opposition has been facilitated by a fear that the threat of terrorism will be used to legitimize new restrictions on civil liberties, just when the anti-subversion law has finally been repealed. Moreover, a fear exists that the anti-terrorism law will be abused, and that as a consequence innocent people will be harassed. Since measures against terrorism are high on the international political agenda, and since a fear of terrorist attacks in the Philippines does not appear to be entirely without foundation, discussion of new anti-terrorist legislation may re-emerge in the near future.

The Ramos Administration and Current Political Debate

Apart from reducing the risk of armed rebellion, the Ramos administration was also able to significantly reduce political opposition from within Congress. Already in 1992, the Speaker of the House of Representatives, who is a loyal follower of President Ramos, managed to obtain the support of the majority of representatives, including those elected from outside his party. Following the elections in 1995, Ramos' political faction also was able to obtain dominance in the Senate.

In 1996 however, the unity of the Ramos Government in both Houses of Congress began to show serious cracks. An important reason for this was the stipulation in the Constitution preventing President Ramos from standing for a new term. The person most

often cited by opinion polls in recent years as the most likely candidate to win the presidential elections in 1998 is the incumbent Vice-President, who represents an opposition party. Given these conditions it is no longer so attractive for politicians to be identified with the party of Ramos.

The organization of the political system has been the subject of much debate during the Ramos administration, particularly in Congress. The political requirements for sustained economic development have been frequently invoked as the main argument in support of proposals to introduce major changes in the political and administrative structure of the country.

One issue of debate has concerned whether the Philippines should abolish the Senate and continue with a unicameral House, the members of which would be elected on a district basis. An argument advanced in favor of abolishing the Senate is that the Senate often simply repeats the same discussions debated in the House of Representatives. This serves to delay and frustrate the work of the House at a time when economic revival requires swift and speedy legislation. Another argument is that 24 Senators chosen by the nation at large cannot satisfactorily represent the interest of the many regions and subregions in the country.²⁰ The proponents of this change also point out that the Constitution leaves open the question of introduction of a unicameral House, and that the introduction of a bicameral House was accepted by the Constitutional Commission of 1987 by a margin of only one vote.²¹

A more radical proposal has been to replace the existing presidential system – involving a strong executive head elected by the nation at large – by a parliamentary system. Under the parliamentary framework, executive power would lie in the hands of a cabinet headed by a prime-minister elected from the ranks of parliament by the parliamentarians themselves. An important argument in favor of such a change is that the parliamentary system supposedly brings more continuity to policy than the presidential system, in which each new elected president may entirely break with the policies of his predecessor. The defenders of a parliamentary system argue that such a system is particularly suited for countries pursuing quick economic growth, since such growth requires stability and continuity of economic policies. Moreover, in the presidential system the separation of powers between the various branches of government is often driven too far, resulting in a deadlock between the president and the legislature. In the parliamentary system on the other hand, a closer cooperation is said to exist between the executive and the legislature, which allegedly facilitates the speedy introduction of plans to promote economic growth. A major proponent of this proposal was the present Speaker of the House of Representatives. Adoption of such a change, however, would require a major amendment of the Constitution. As it happened, this proposal proved to be too radical for rapid adoption and in 1996 disappeared from the agenda, at least temporarily.

A final proposal involved retaining the presidential system but allowing President Ramos to run for a second term. The stability and continuity supposedly necessary for sustained economic growth is also a main rationale for this proposal. Moreover, supporters of President Ramos think that he is performing very well in office and that the Filipino people should have the right to choose whether he should continue as President. This proposal has been combined with another related proposal to eliminate the maximum

terms of office that the Constitution allows for Senators – 12 years – and for Representatives – 9 years. The main argument in favor of this latter proposal is that the present maximum terms for Senators and Representatives involve a loss of valuable accumulated legislative experience. Furthermore, these maximum term limits produce frequent changes in the composition of the two houses of Congress, which in turn generate fluctuations in the legislature's work. Stability of legislation however is seen as a key to sustained economic growth. A final argument asserts that many of the legislators whose maximum allowable term of office will expire in 1998, have been active and successful in drafting legislation that promoted economic growth. It would therefore be wrong to deny them a longer term without first consulting their electorate in the subsequent elections.

The example of various neighboring countries who have achieved considerably more economic growth than the Philippines, but who have much less democracy, has even raised the question of whether the Philippines may actually require a more authoritarian political system in order to facilitate economic growth. Consequently, the debate on proposals for changes in the political system in the Philippines has been extremely politicized. Proponents of major changes are easily suspected of favoring authoritarianism, and of using economic growth as an excuse to keep a specific clique of politicians and administrators in power indefinitely.

The proposal to abolish the Senate was a key subject of discussion in Congress between 1992 and 1995. In this period the pro-Ramos coalition dominated the House of Representatives, but had a minority in the Senate. As a result, the legislative plans of the House faced considerable opposition in the Senate, and the pro-Ramos faction was accused of proposing the abolishment of the Senate for selfish political motives.

The proposed shift to a parliamentary system having no maximum term limits for members has been criticized because, as has just been said, it would allegedly facilitate the ability of a political clique to maintain itself in power indefinitely. Moreover, the people would no longer have a direct voice in choosing the most powerful person in the country, who would now be the prime-minister. In fact, it is argued, under such a parliamentary framework, a politician without any appeal to the majority of the Filipinos could still be appointed to exercise the most powerful government function, simply by being elected by the majority of fellow parliamentarians. Given the traumas of past dictatorship and the reputation of politicians for craving power, it would be very risky to reduce the system of checks and balances, according to critics of this approach.

The proposal to abolish maximum term limits for the President, Senators and Representatives has met with pervasive criticism, as it obviously serves the self-interest of incumbent elected politicians. Some critics even suggest that the maximum term for elected politicians is by far the best element of the 1987 Constitution. According to these persons, the term limit provisions are the only way the country can actually rid itself of unreliable politicians.²²

There have been several serious attempts to amend the Constitution to allow an extension of the term of office of President Ramos and other elective officials. One such attempt was via a people's initiative. According to the 1987 Constitution, a people's initiative can directly propose constitutional amendments (though no more than once every five years) provided it is supported by the determined number of signatures.

Subsequently, the proposed amendments need to be ratified in a plebiscite.²³ An association called PIRMA organized a people's initiative on the term limit issue, but the effort did not prosper, as it was declared invalid by the Supreme Court in March 1997. This decision by the Supreme Court will be further discussed in section on 'The Economic and Political Power of the Judiciary' in chapter 4.

Proponents of an extension of the terms of elective officials have also actively lobbied for a constitutional change within Congress. According to the 1987 Constitution, Congress can propose amendments to – as well as more extensive or drastic revisions of – the Constitution in two ways: either by a vote of three-fourths of the members of Congress, or through the organization of a Constitutional Convention in which selected delegates study and propose amendments or revisions. In order to call a Constitutional Convention, a two-thirds majority of all members of Congress is required. In the event that a smaller majority of Congress is in favor of such a convention, the convention can be established following approval in a national referendum. Furthermore, all amendments or revisions proposed by Congress or by a Constitutional Convention also need to be ratified in a national plebiscite. As of June 1997, neither of the initiatives to prepare constitutional amendments or revisions via Congress had prospered.

Since 1996, the proposal to extend the terms of elective officials has become an increasingly hot and divisive issue in the Philippines, both in Congress and in civil society. One of the most vocal opponents of such an extension has been the Catholic church. Proponents and opponents of such an extension have been very vigilant and suspicious of one another's activities and motives. Though President Ramos has always publicly denied that he is seeking an extension of his term, opponents have accused his trustees not merely of supporting but directly orchestrating the people's initiative. Furthermore, two senators who filed petitions with the Supreme Court to block this people's initiative have been accused of being motivated by their own presidential ambitions. Similarly, when President Ramos threatened to push for a constitutional amendment to reduce the scope of judicial review in February 1997, some opponents accused him of using this issue as a pretext to also press for a constitutional change allowing an extension of his term of office. In February 1997, the *Sandiganbayan* ordered a ninety days suspension of the Chairperson of the Senate Committee on Constitutional Amendments and Revision of Codes and Laws. This Senator is not only an opponent of the term limit extensions, but also an archenemy of President Ramos. The Senator immediately filed a protest with the Supreme Court and accused the Ramos Government of orchestrating the suspension in order to facilitate quick moves toward constitutional amendments in the legislature. Proposals toward any constitutional amendments have become politicized in this political climate. For instance, proposals from President Ramos, or his supporters, to regionalize the election of senators and to speed up the legislative process, are considered by Ramos' opponents to be pretexts for constitutional changes of the terms of elective officials. This mistrust is facilitated by the active support President Ramos has given to the Marcos dictatorship for many years. Therefore, various sections of Filipino society still suspect him, as well as some of his key advisers, of strong authoritarian sympathies, in spite of the role President Ramos played in the EDSA revolt which terminated the Marcos dictatorship.

Notes

1. This section is inspired by the articles by Cullinane on the rise of Sergio Osmeña, and by McCoy on Quezon's Commonwealth in: Paredes, R.R. (Ed.): *Philippine Colonial Democracy*. 1989, Quezon City: Ateneo de Manila Press.
2. Agoncillo and Guerrero. *History of the Filipino People*. Fifth Edition 1977, Metro-Manila: R.P. Garcia: 84.
3. See for instance, Kabisig *Filipino Values and National Developments*: 13,14. In interviews authoritative informants have frequently emphasized this fact as well.
4. Not all the cronies belonged to the traditional elite, yet they were incorporated into one oligarchic faction. The old oligarchic order of course has not been static. It has incorporated some new groups and lost old ones. Yet many of its constituting dynasties have shown considerable continuity.
5. Because of this rampant abuse of funds and privileges the Marcos regime was often characterized as a 'cleptocracy'.
6. According to one rumor in the mid-1980s, an American scenario favored Ramos to replace Marcos.
7. The name was also an abbreviation of 'Movement of Attorneys for Brotherhood, Integrity and Nationalism'.
8. The Aquino Government may have allowed the rebels the opportunity to engage in this kind of bragging in order to help them save face somewhat, and thus facilitate the ending of the coup attempt. Given the enormous importance of *amor propio* in Filipino culture, this face-saving device might be understandable to some degree. However it reinforced the notion, both among the public and among present and future rebels, that rebellion against the government hardly resulted in punishment. Various Filipino informers expressed great dismay over the government's leniency toward the rebel soldiers and over the opportunity given to them to play down their surrender publicly.
9. One of these candidates, Augusto Sanchez, the former Minister of Labor who was also a Mabini member, was subjected to a remarkable election trick, which resulted in his defeat. In the Philippines, voters have to write the full name of candidates of their choice on the ballot. A completely unknown person with the name of Gil Sanchez filed with the Comelec just before the deadline for new candidates to register expired. Many people who voted for Augusto Sanchez but who were not aware of the candidacy of Gil Sanchez just wrote Sanchez on their ballots without the name Augusto. Because it could not be proven that the ballots with merely Sanchez came from voters who supported Augusto, these votes were declared invalid. Consequently, Augusto Sanchez lost, in spite of the fact that even the Supreme Court acknowledged that Gil Sanchez was merely a nuisance candidate.
10. The fear of military infiltration into the ranks of the rebels was another cause for bloody purges.
11. The act was revived through Executive Order No. 167, and subsequently amended by Executive Order No. 276.
12. A few other controversial steps included:
 - Executive Order No. 272 which increases the length of time allowed to detain an accused without trial.
 - Executive Order No. 276 which broadens the anti-subversion law and reduces restrictions on the filing of complaints of subversion.
 - Republic Act No. 6968 which creates a new crime, *coup d'état*, discriminates between leaders and participants of a rebellion, and increases the penalty for leaders of a rebellion to

- life imprisonment, and participation in a rebellion to *reclusion temporal* (Source: Dioknom M.S.I. and Sanidad A.V., *Justice and the Rule of Law in the Philippines*. Metro-Manila 1990: 11).
13. Nollado, J.N., *The Constitution of the Philippines Explained*. Rev. Edition. Metro-Manila: National Bookstore 1992: 170.
 14. Nollado, J.N. *Supra* at note 13: VII.
 15. *Ibid*.
 16. Kabisig *Supra*, at note 3: 15.
 17. See for instance, the memorandum of the minority of CHR commissioners regarding the report of Amnesty International *The Killing Goes On*, March 1992.
 18. Republic Act No. 7637.
 19. About the split in the leftist ranks, see for instance Cristobal, M., 'The Split in the National Democratic Movement and its Effects on Human Rights.' *Human Rights Forum*, Vol. IV, No. 1, 1994: 67-86. Metro-Manila, Philippines.
 20. In this context one recent proposal has been to retain the Senate, but to elect its members on a regional basis. This proposal has been inspired by the fact that the candidates from the south, notably from Mindanao, have not been able to match the resources – and the skills of election manipulation – of rich candidates from the north.
 21. See Nollado 1992, *Supra* at note 13: 113.
 22. In this context the term 'trapo', which is an abbreviation for 'traditional politicians' is often used. The term refers to a very negative perception of the dominant style of politics in the country's history. A 'trapo' is a politician who is considered to be corrupt, hypocritical, intriguing, cheating, and only interested in power and money at whatever cost and at whomever's expense.
 23. Section 2 of Article XVII.

Human Rights and Due Process in the Philippines

Human Rights Concerns after EDSA

Human Rights under Marcos

Marcos began monopolizing political and economic power in the country after he was first elected president in 1965 and extended this power further after declaring martial law in 1972. Until February 1986, he controlled the country through an oppressive machinery of soldiers, security agents, spies, local henchmen and paramilitary units. Both armed and peaceful political dissent was dismantled.

The political context that Marcos created facilitated the development of a tacit consensus amongst human rights advocates – whatever their conceptual and philosophical differences – concerning what constituted human rights violations and who the perpetrators and victims of such actions were. Human rights violations were clearly identified as those acts of repression committed against political dissidents, suspected political dissidents and anyone challenging the economic interests of Marcos' political clique. The perpetrators were the representatives of a monolithic oppressive machinery, led by a tyrant. The context of human rights violations, which included warrantless arrests, torture, extrajudicial killings, destruction of homes and possessions, etc., was clearly political. These violations were furthermore the consequence of an explicit and systematic government policy to perpetuate its tyrannical power. Human rights advocacy was a form of political dissent in itself, and even branded as communist agitation by the Marcos regime.

So the Philippine experience under the Marcos dictatorship strongly promoted a close identification of human rights violations with tyranny and the crushing of political dissent, and between human rights violators and abusive state agents.

Human Rights under Aquino

Following the EDSA revolt, the human rights situation became much more complex. During the Aquino administration a paradoxical situation occurred in which the central government explicitly renounced human rights violations and introduced constitutional provisions to combat such violations, but in which many human rights violations by the military, a main state agent, continued to occur.

This paradox was caused by the very little effective control that the central government was able to exercise over the various military units. Its ability to effectively discipline erring soldiers was further strongly undermined by the fact that it needed the loyalty of the military leaders for its bare survival. Since the military itself was factionalized and divided, despite its 'old boys' mentality, the effective control of the army leadership over certain units was also limited. The army leadership also had to engage in diplomatic balancing acts to keep the army together. Strong action against abusive military or paramilitary units would have undermined this balancing act. This meant that the intention of the government to fight human rights abuses was often simply ignored by

army units, many of whom had been programmed to behave abusively under the rule of Marcos.

Another serious problem that the Aquino Government encountered was a communist movement dedicated to its overthrow through armed struggle. The government faced a grave dilemma and was forced to make a choice between two evils: either fight the insurgency using a military machinery that was inclined toward committing abuses, or not respond militarily and see its control gradually stripped away. It decided to fight back. Consequently it was not able to achieve its aim of eradicating human rights violations.

As a result of the restoration by the Aquino Government of freedom of the press, assembly and speech, politically-inspired human rights violations by state agents, notably the army, were increasingly restricted to acts committed against communist insurgents and those correctly or – in a substantial number of instances, incorrectly – branded as their supporters.¹ But the steady loss of legitimacy by the communist left facilitated a further waning of public interest in human rights violations committed in the context of the counterinsurgency.

Other social and political concerns began to compete with politically-inspired human rights violations for the attention of the public. The enormous influence of private armies and crime syndicates in the country became a main focus of public concern, as well as the involvement of the police, military, and local politicians in these syndicates. In the context of this activity, state agents were identified as both perpetrators and victims of violence.

Human Rights under Ramos

This latter trend continued after Ramos succeeded President Aquino. Lawyers involved in the Presidential Anti-Crime Commission, which was created specifically to fight large crime syndicates, received death treats. Further, a former state prosecutor who had been involved in directing cases against major criminals, barely survived an assassination attempt in late 1993. Other government agents who were very vulnerable to such violence were employees of the Department of the Environment and Natural Resources involved in campaigns against illegal logging syndicates. A spectacular example in which members of the legal system were victims of criminal attacks occurred in Ilagan City in the island of Mindanao in early 1996. Both a defense lawyer and a Regional Trial Court judge involved in a lawsuit against a lumber company were gunned down and killed within two days of each other.²

Concern over crime was reinforced by widespread dissatisfaction concerning the performance of the various pillars of the criminal justice system, including the courts. Special attention in this regard was focused on the fact that soldiers and policemen frequently act as protectors and hit squads for crime syndicates. In 1993, one Philippine NGO, Citizen's Crime Watch, even estimated that half of the crimes committed in the country involved policemen. This enormous police involvement, as well as the great difficulties the Ramos administration faced in dealing with these armies, syndicates and criminal state employees, underline the fragmentation of effective power in the Philippines.

Social and Political Considerations

The social and political changes ensuing after the EDSA revolt affected interpretations and priorities concerning human rights issues. For members of the radical left, nothing had really changed: to them, both President Aquino and Ramos were pawns in the hands of monolithic capitalism and American neo-colonialism, and they viewed human rights violations exclusively acts committed by state agents as a result of systematic political repression.

For human rights advocates sympathetic to the EDSA revolution, the situation was more problematic. They advanced a number of arguments concerning why they should continue to give priority to human rights violations committed by state agents in the context of systematic state policies.

First, although authoritative instruments on human rights – including the *International Convention on Civil and Political Rights* – do not restrict the definition of human rights violators to state agents, nevertheless they attribute a central responsibility to states and their agents for ensuring respect for, protection and promotion of human rights.

Second, it became clear soon after the EDSA revolt that the oppressive machinery of Marcos was still largely intact. The counterinsurgency effort, which the Aquino Government continued to support, remained a major context for human rights violations. The break with the Marcos period was significant in many ways but unfortunately, was by no means complete and therefore did not justify the adoption of an entirely new focus in the use of the concept of human rights and human rights violations.

Third, renewed tyranny in the Philippines remained a strong possibility. People therefore needed to stay very alert in monitoring tendencies toward the development of a new tyrannical structure. Systematic campaigns against political dissent of any nature are particularly suspect since these can easily deteriorate into patterns of abuse. The call for the adoption of emergency measures in 1995, to give the government extensive powers to fight the resurgence of urban terrorism by the Alex Boncayao Brigade as well as the feared further escalation of terrorist activity by Muslim secessionists, illustrated this need for alertness.

Interpretation of Human Rights Violations

On the basis of the above considerations, some segments of the Philippine human rights movement chose to stick to the dominant interpretation of what constitutes human rights violations developed under Marcos.³ In this interpretation, there is a clear conceptual demarcation between human rights violations and common crimes, though this does not imply that common crimes are necessarily morally less repugnant than human rights violations. Cruel acts committed by political rebels are qualified as common crimes under this interpretation, while similar acts perpetrated by the semi-government CAFGUS units and by right-wing civilian vigilante groups are qualified as human rights violations. Though these latter groups may not formally be identified as state agents, they are regarded, in this interpretation, as *de facto* elements of the government machinery, openly or secretly assigned and supported to perform counter-insurgency work on behalf of the military.

The notion that the break with the Marcos era was not radical enough was reinforced by discontent with the way the Commission on Human Rights operated in its early years. To begin with, a number of staff members were closely related to the military, which undermined the Commission's independence from the very agency whose violations it was called upon to investigate. Second, the CHR initially acted very passively. It did not seize the initiative in investigating human rights violations, but waited first until a complaint had been filed with it. Moreover, the personal relationship between the first chairman of the Commission and human rights NGOs was quite problematic. Since 1992, the reputation of the CHR has improved, but is still somewhat controversial.

Nevertheless, the central focus on violations in the context of state campaigns, such as counterinsurgency, takes into account too little that the state has lost the degree of monolithic purpose and operation that characterized it under Marcos. The hold of the Aquino administration over state agencies, and most notably the military, was weak. The state was fragmented rather than monolithic. Some representatives of the state promoted human rights, others violated them. In some cases, the perpetrators and the victims of human rights violations both were state agents. In this situation of fragmented state power, it is difficult to pinpoint whether the abusive acts of one state agent or agency are really the product of a systematic state policy or merely represent individual initiatives by the agent or agency in question. The context of human rights violations may be a systematic campaign waged against political rebellion. This does not necessarily mean however that these violations are the natural results of this campaign. They may be the result of the way some specific state agents decided to implement the policies of the central government.

In practice, focus on acts which are the product of state policy restricts attention to violations committed in the context of counterinsurgency campaigns. This focus indeed characterized the approach of a substantial number of Philippine human rights advocates following the EDSA revolt. The waning power and public legitimacy of the communist insurgency, and the emergence of other general human rights concerns, made such a dominant focus on politically-inspired human rights violations increasingly problematic. By failing to adjust their human rights agenda to the changes of the times, these advocates facilitated their own marginalization in society.

Another interpretation of human rights violations also focuses on the role of state agents but excludes a link to systematic campaigns and/or general suppression of political dissent. In this interpretation, human rights violations concern acts committed by government representatives in their capacity as state agents. The context of these acts is the pursuit of a general objective of the state, such as protection against crime, but not necessarily special campaigns such as counterinsurgency efforts. Nor do these acts necessarily need to be politically-inspired. In this interpretation, the beating of a suspect by a policeman during an arrest qualifies as a human rights violation whether it concerns a suspected political dissident or not. But when a policeman beats up somebody over a private quarrel, it qualifies as a common crime.

The problem in the Philippines, however, is that the distinction between acts committed by persons in their capacity as state agents and acts by the same persons in their identity as private citizens is often difficult to make. It has been a widely acknowledged tradition-

al problem in the Philippines that the public realm frequently tends to be treated as a mere extension of the private realm. In this context, the prerogatives of government office are often used for private ends. It is not uncommon, for instance, for policemen to use information gathered in investigations to commit subsequent burglaries. One dramatic case of the rape and murder of four women by several policemen began with the arrest of these women on charges the policemen had fabricated themselves. Furthermore, criminal gangs tend to have contacts among politicians and law enforcement officers who use the prerogatives of their office to peddle protection for criminal elements.

A completely opposite interpretation is to include acts committed by any perpetrator in the definition of human rights violations. On a conceptual level, the problem posed by this position is how to demarcate human rights violations from common crimes. This interpretation also poses practical problems for defining the mandate of human rights organizations. The mandate of the Commission on Human Rights is an example of this. At the emphatic request of the military, the Commission included acts committed by communist rebels in its mandate. Later, it began to include abuses by private individuals. The resulting wide scope of its operational focus and its concomitant lack of priorities appeared to have undermined its effectiveness, at least in its early years.

Still another interpretation of human rights violations is to include acts by both individuals and state agents, but to emphasize those committed by state agents as more serious because the respect for and promotion of human rights is a special responsibility of the state. This was the position of the Senate Committee on Justice and Human Rights under President Aquino.⁴

A final interpretation of human rights concerns is to distinguish between the definition of human rights violations and the mandate and jurisdiction of human rights bodies. In that case a limitation of the focus to a specific type of potential human rights violators, for instance state agents, is based on practical expediency, not on philosophical and conceptual considerations.

Politicization of the Concept of Human Rights

To some degree, the diverging interpretations of human rights and human rights violations reflect politicization of the concept. The explicit inclusion of – and emphasis on – human rights violations by communist insurgents in the mandate of the Commission on Human Rights reportedly has been manipulated by the military for propaganda purposes.⁵ The attitude toward the CAFGUS units is another case in point. Most of the calls to abolish the CAFGUS are based on a sincere concern concerning the effects of their activity on human rights. However, among communist sympathizers, the call to abolish the CAFGUS is also partly inspired by concern over their success in fighting the rebels. Staunch anti-communists on the other hand exaggerate the degree to which communist sympathies inspire concern over CAFGU abuses.

The varying emphases expressed within the human rights movement in the interpretation of human rights violations have also been related to divergent political positions and choices. The approach to human rights protection which cites as its main focus acts allegedly produced by a systematic state campaign against dissent, appears to prevail among segments of the human rights movement that remained outside the Aquino and

Ramos administrations. Human rights violations committed by the military are considered in this view as the logical consequence of states policies such as the 'total approach'. State bodies are thus regarded with suspicion or outright hostility, whereas steps taken by the government to promote human rights are viewed with distrust. The interpretation of human rights, and the assessment of the human rights record of the government, thus become statements of political opposition. An example of this was provided at the World Conference on Human Rights in July 1993 in Vienna. While President Aquino received an award from the UN for the steps she had taken to promote human rights, the record of her administration in this area was lambasted by representatives of Philippine NGOs at the same conference.

Though many human rights advocates have been maliciously labelled as communists, it cannot be denied that communist ideologies and commitments have indeed exercised considerable influence on certain human rights NGOs in the recent past. This was demonstrated in 1994 when various NGOs replicated the split that occurred within the communist NPA/CPP/NDF.⁶ Those following the line of the Dutch-based leadership of the NPA/CPP/NDF are termed 'reaffirmists', while those opposing this line are known as 'rejectionists'. Reaffirmists believe that human rights concerns should be an integral part of, or subordinate to, a communist style struggle for national liberation. Rejectionists assert that the struggle for the defense and promotion of human rights is an important and legitimate pursuit in its own right, a point of view which reaffirmists disqualify as 'bourgeois'. Nevertheless, even various rejectionists still apply an explicitly Marxist framework in analyzing current events in the Philippines.⁷ The split appears to have strongly facilitated a drop in the ranks of participants in the activities of human rights NGOs.

Those members of the human rights movement that joined the Aquino Government tend to downplay the element of systematic state campaigns in their interpretation of human rights. On the one hand, their interpretation of human rights violations may serve to shift responsibility for the continuation of gross human rights violations after the EDSA revolt, the level of which was too obvious to ignore. If these human rights violations were natural consequences of systematic government policies, this would imply that human rights advocates in the Aquino Government shared responsibility for these violations, since they were politically responsible for these policies. By denying that these violations were a natural consequences of policies for which the Aquino human rights advocates were responsible – and by denying a necessary intrinsic link between human rights violations and systematic policies in general – personal responsibility for these human rights violations could be evaded.

An involvement in the government also changed the way various human rights advocates perceived state agents and even the military. Though the legacy of Marcos' military machinery proved very problematic, the military could no longer be viewed as merely a monolithic and systematically repressive entity. This change of perception has been very well articulated by a well known Philippine human rights lawyer who, for a while, was a close aide to President Aquino. During his time of office in the Aquino Government, he was branded a communist by the military and received several death threats. Nonetheless he said: 'when you are in government and look at the soldiers, you

see human faces with human problems, not merely robots of an oppressive machinery. I have seen soldiers who literally fainted from hunger. Others did not have a roof over their heads'.

Another remark by this human rights lawyer illustrates the politicization of human rights in the Philippines: 'I, as well as other cabinet members, were subject to death threats and harassment. During one coup attempt President Aquino's son was almost killed. Yet you do not find these incidents in the monitoring reports of human rights NGOs'.

Human rights violations that are committed within the context of the army's struggle against insurgents or suspected insurgents form a dominant emphasis in reports from international human rights NGOs. Consequently, these international human rights reports have met with a politicized response. Staunch leftist and liberal critics of the Aquino regime interpreted these reports as supporting their own position; liberal backers of the Aquino administration acknowledged the accuracy of most of the statistics, but criticized the reports for failing to convey the complexity of the Philippine context.⁸ They also counterbalanced criticism from national and international NGOs with references to the praise President Aquino had received from the United Nations for her effort in the area of human rights. For their part, right-wing soldiers and civilians have tended to regard these international reports as products of communist propaganda.

The Values Attributed to Human Rights

The value itself of the concepts of human rights and human rights violations has also been contested in certain circles. Under Marcos, the concept of human rights was branded as a tool of communist propaganda. This remained the opinion among important sections of the military after President Aquino took over. The increasing public attention paid to rampant and heinous crimes in the country has further challenged the concept of human rights, and particularly the right to due process. There is a notable perception among the public that human rights advocacy implies being soft on criminals and thus being hard on their victims as well as on the general public, which deserves protection from crime. This problem will be elaborated later in this chapter, in the section on 'Crime and Due Process'.

Perhaps the most dramatic fate to which the concept of human rights has been subjected is the tendency to reduce it from a universal principle to a mere pragmatic tool for the promotion of personal interests. Some people call everything they object to a 'violation of their human rights'. In one instance, a former president of the Integrated Bar of the Philippines complained through his university fraternity to the Commission on Human Rights that his own human rights had been violated by the Supreme Court (in the Philippines the Bar is under the supervision of the Supreme Court). Amongst other things, the Court had denied him the right to travel. This former president had been disciplined by the Supreme Court for gross mismanagement of personnel and funds. During the disciplinary investigation, the Supreme Court allegedly denied him a petition to leave the country for a lecture and a medical check-up. The Supreme Court regarded this request as a delay tactic. The absurdity of his ensuing complaint was underlined by the fact that one of the main targets of his action was a Justice who had been a veteran

human rights lawyer and Marcos opponent, and who served as the Supreme Court's special conscience in human rights cases. The Commission on Human Rights dismissed this complaint. Another example was provided by Imelda Marcos, the widow of the late dictator. She had been part of a machinery responsible for numerous gross human rights violations and which dismissed the validity of the concept of human rights altogether. Yet when she was finally convicted after due process in late 1993 to 18 years imprisonment on only a few of the numerous charges brought against her, she complained that her human rights had been violated. The availability of the term *human rights* with its rich connotations turned out, after all, to be useful to Mrs. Marcos.

Social and Economic Rights

A final human rights concern that needs to be mentioned specifically concerns violations in the context of economic policies. During the Marcos era, economic exploitation and political oppression were closely linked. The democratic space created after the EDSA revolt did not significantly alter the problem of mass poverty and of gross economic inequality, due to generally poor economic performance by the country and obstruction of reforms by the economic elite. The economic program of the Ramos administration, *Philippines 2000*, aims at addressing the issue of mass poverty.

Nevertheless, *Philippines 2000* poses serious problems for the promotion of human rights, both for individuals and collectivities. The program capitalizes on the availability of cheap labor in the country in order to stimulate investment, both foreign and domestic. The logic of the program assumes that major sacrifices by the impoverished masses are inevitable in the short run before the benefits of economic development can trickle down to them over the long term. This logic, however, may easily be abused to legitimize continuing gross exploitation in terms of wages, labor conditions, fringe benefits and job security. Another danger inherent in *Philippines 2000* is that it may serve to legitimize violations of the rights of specific groups, such as repressive and discriminatory labor policies; the massive conversion of agricultural land into industrial sites; destruction of the ancestral land of tribal minorities; environmental destruction; and forced resettlement of rural and urban poor to make way for large-scale economic or infrastructural development projects. The latter danger is particularly pressing because the development of infrastructural projects has become the most prominent and visible aspect of *Philippines 2000*. In this context, human rights advocates tend to apply the term 'development aggression' to describe such abuses. According to these advocates, development becomes development aggression 'if the people become the victims instead of the beneficiaries of development, and if they are set aside rather than made partners of development'.⁹

At least until the early 1990s, civil and political rights dominated human rights debate. But as a consequence of *Philippines 2000*, social and economic rights and 'development aggression' have increasingly become a major focus of interest for human rights NGOs in the Philippines. However, the concern for social and economic rights is also subject to politicization. Criticism of the social and economic rights record of the Ramos administration is also used as a basis for a politically-inspired rejection of the government's policies and programs. In this context, the Ramos administration has been criticized for its alleged preoccupation with rapid growth and with making the Philippines

a 'New Industrialized Country', like the tiger economies. In actual practice, critics argue, this preoccupation proceeds at the expense of sustainable – human – development and ecological stability.¹⁰ Notwithstanding the merits of much of this criticism, it is striking that communist or former communist sympathizers have joined the ranks of these critics, leading to fears that valid concern for human rights violations in the context of Philippine 2000 will be abused for the sake of sectarian political interests. Such abuse could in turn undermine the credibility of the struggle against 'development aggression' among the wider public.

The decrease in importance of the communist insurgency on one hand, and continuing resistance in the face of gross socio-economic and political inequalities and increasing emphasis on social and economic rights on the other, has given momentum to NGOs engaged in litigation and paralegal training for underprivileged groups in society, such as tribal minorities and urban poor. These groups believe that the present laws and legal system discriminate against the socially and economically underprivileged in society, despite the existence of democratic space. In their view, legal action on behalf of the underprivileged is inseparable from non-violent social action to structurally reform society, as well as restoration and maintenance of the ecological balance in the country. These groups generally work on behalf of collectivities rather than individuals.¹¹

The Commission on Human Rights

Paradoxically, the broad mandate of the Commission on Human Rights ('CHR'), which has constituted a major source of criticism from human rights NGOs, proves to be an asset in the socio-political context of the Ramos administration. This broad mandate has accounted for a degree of adaptive flexibility on the part of the CHR. In the context of a decreasing importance of politically-inspired human rights violations, the CHR can easily shift its focus to other kinds of human rights abuse. Nevertheless, the broad mandate of the CHR continues to have drawbacks as well. The attention of the CHR to an increasingly divergent number of human rights issues also disperses the application of its efforts and resources and consequently places constraints on its effectiveness.

Generally speaking, the reputation of the CHR has remained problematic. On the one hand, various improvements have been registered. Rejectionist representatives of human rights NGOs participate in the CHR's human rights training programs for military and the police, while one former representative of a critical NGO has become a member of the CHR. The appointment of the second chairman to the CHR also increased its credibility, as did the granting of an award by UNESCO in recognition of the its police training programs. But there have also been setbacks. In some cases, appointed commissioners had very little knowledge of human rights. The third chairman of the CHR, who was appointed by President Ramos in 1996, was practically unknown in human rights circles. Moreover, she is the wife of an army general, which shows at the very least that President Ramos demonstrates little concern for the sensitivities of the human rights community in the Philippines.

The Supreme Court, Human Rights and Survival Tactics during the Aquino Administration¹²

Warrantless Arrests

During the Aquino administration, the Supreme Court made various controversial decisions giving the Army and the police forces extensive powers to fight the insurgency. Three cases became particularly well known in human rights circles.

The first of these was the case of *Valmonte v. de Villa*.¹³ In the context of the 'total approach' policy a police force had set up check points in an area of Metro-Manila. At these checkpoints policemen stopped and searched cars and people at will, without a warrant. Two petitioners, one of whom was a legal NGO acting on behalf of residents in the area, requested the Supreme Court to prohibit the roadblocks and the warrantless searches. Not only did these unwarranted roadblock searches imply a violation of basic civil rights *per se*, according to the petitioners, they also involved intimidation and harassment. One civilian was reportedly shot dead by policemen at one of these roadblocks after he refused to stop his car despite repeated requests.

The majority of the Supreme Court ruled that 'checkpoints during abnormal times, if conducted within reasonable limits, are constitutional'.¹⁴ It thus assumed that the times were abnormal because the new urban strategy of assassinations by the communist insurgents posed security threats. It also believed that no proof of harassment had been provided. In the context of these 'abnormal times', the searches were considered to be reasonably conducted, and therefore, according to the Court, Article III, section 2 of the Constitution, which states that the people have an inviolable right to be secure from 'unreasonable searches and seizures of whatever nature and for whatever purpose', did not apply to this case.

But the most controversial statements in the ruling played down the rights of the individual, for the sake of peace and order. Literally the Court said: 'between the state's inherent right to preserve its existence and promote public welfare and an individual's right against a warrantless, albeit reasonably conducted, search, the former should prevail. The manning of checkpoints by the military is susceptible to abuse by the men in uniform, in the same manner that all government power is susceptible to abuse. But at the cost of occasional inconvenience, discomfort and even irritation to the citizen, checkpoints during these abnormal times when conducted within reasonable limits are part of the price we pay for a peaceful and orderly society'.¹⁵

Two Associate Justices dissented. One of them issued this strong and eloquent warning: 'Unless we are vigilant of our rights, we may find ourselves back to the dark era of the truncheon and the barbed wire, with the Court itself a captive of its own complaisance and sitting at the deathbed of liberty.'¹⁶

The second case became known as *Guazon v. de Villa* (30 December, 1990).¹⁷ A group of petitioners, consisting of community leaders and other private citizens, complained to the Supreme Court about 12 incidents in Metro-Manila in 1987, in which soldiers and policemen conducted a so-called saturation drive or 'area target zoning'. As part of these campaigns, communities were raided with residents being awakened by shouting and banging of doors, and the men of the community ordered to come out and

their tattoos and other marks searched at gunpoint. The houses were scoured for incriminating evidence. Apart from inflicting damage on the houses and property, some residents complained that soldiers and policemen stole money and valuables from them. Beatings and other violations also occurred. A number of people were arrested, some briefly, others for longer periods. Torture of detainees was also reported.

The petitioners requested the Supreme Court to prohibit this kind of saturation drive. The respondents claimed that these campaigns were planned with the assistance of community leaders who persuaded the residents to cooperate voluntarily. Furthermore, the alleged victims themselves had not complained.

The majority of the Court ruled that, strictly speaking, the affair was not a matter for the Supreme Court to address, but rather for the executive departments and the lower courts, since not one actual victim had complained and no one among the alleged violators had been charged. The Court stated in this context: 'Well-meaning citizens with only second-hand knowledge of events cannot keep indiscriminately tossing problems of the executive, military, and police to the Supreme Court as if we are the repository of all remedies for all evils.'¹⁸ The Court further stated that the case was more appropriate for the Commission on Human Rights, and that the state agencies involved in peace and order campaigns should set clear guidelines to restrain abusive behavior. It also stated the need for a method to pinpoint human rights violations and to identify perpetrators.

The Court did temporarily restrain the military and police from specific abuses while stating: '... the alleged banging of walls, the kicking in of doors, the herding of half-naked men to assembly areas for examination of tattoos, the violations of residences even if these are humble squatter shanties, and the other alleged acts which are shocking to the conscience.'¹⁹ But the Supreme Court refrained from declaring saturation drives unconstitutional as such.

The same two Associate Justices who had dissented in the case of *Valmonte v. de Villa*, dissented in this case as well. They declared that the majority of the Supreme Court had 'passed the buck' to the Commission on Human Rights and other agencies on the basis of mere technicalities. In their opinion, since this case involved constitutional rights, it fell within the jurisdiction of the Supreme Court, even without specific charges against specific perpetrators having been brought by specific victims. The two dissenters regarded saturation drives as illegal *per se*.

The third case, which became known as *Umil v. Ramos* (9 July, 1990; reconsideration 3 October, 1991), was the most controversial.²⁰ This case concerned eight petitions for *habeas corpus* on behalf of persons who had been arrested in 1988 without a warrant. In one case, a person was arrested by military agents while being treated in a hospital. These agents had acted on information that a member of an urban hit squad who had allegedly assassinated two policemen a few days earlier, was being treated for a gunshot wound in a hospital. On another occasion, a person was arrested after some witnesses had claimed that he had used subversive language during a gathering of drivers of public transport vehicles, calling for a nationwide strike. In a further instance, a man was arrested on suspicion of committing murder two weeks earlier. Upon his arrest he implicated an accomplice in the murder, who was also arrested without a warrant on the same day. In two other cases, several people were arrested without warrant while visiting

alleged hideouts of communist insurgents. These hideouts were under surveillance with the legal backing of a search warrant. The persons arrested were found in possession of alleged subversive documents, as well as guns, ammunition or both. In the last case a person was arrested without a warrant in her own house, based on documentation found in one of the above-mentioned cases. Alleged subversive documents and ammunitions were also found during the arrest.

All but one member of the Supreme Court upheld the constitutionality of these various arrests. The most crucial and controversial assertion of the majority of the Court was that the suspects concerned were lawfully arrested for subversion and/or membership of an outlawed organization.²¹ In this case the Court invoked several Supreme Court decisions from the Marcos era, including *Garcia v. Enrile* from 1983²² and the *Ilagan v. Enrile* case from 1985.²³ *Ilagan v. Enrile* concerned three lawyers who were detained on the basis of an unsigned warrant. The Supreme Court ordered their release, but the order was simply disregarded by the military. Subsequently, the military asked the Supreme Court to reconsider its decision, claiming to have filed an 'information for rebellion' and obtained warrants of arrest from a lower court in the meantime. The Supreme Court granted the military's request for reconsideration, because the military had meanwhile met the requirements of a legal arrest, despite the fact that the original arrests had been illegal. In the *Umil v. Ramos* case, the Supreme Court invoked this ruling, stating that *habeas corpus* does not apply to situations in which a person is legally arrested and in which an information against him has been filed.²⁴

The *Garcia v. Enrile* case considered rebellion as a continuing offense. The ruling further held that arrests made by President Marcos were valid and were beyond judicial review. In the interpretation of the majority of the Supreme Court in the *Umil v. Ramos* case, the doctrine of 'continuing offense' implies that a person who wants to overthrow the government is continuously acting as a subversive, and is therefore by definition caught in the act of subversion when arrested. The Court explained the distinction between continuing offenses, such as subversion, and common offenses as follows: 'Unlike other so-called common offenses, the commission of subversion and rebellion is anchored on an ideological base which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing the government is attained.' The reference to the *Garcia v. Enrile* doctrine, however, was contested by several members of the Supreme Court. In addition to the one dissenting justice, a concurring justice rejected this doctrine as a valid argument applicable to the decisions in the *Umil v. Ramos* case, while two other justices stated that the *Garcia v. Enrile* doctrine might need to be revised in the future.

Another important argument that the majority used was that the warrantless arrests were valid, because in all cases there had been personal knowledge of facts of criminal activity on the part of the arresting officers. This knowledge was based on 'probable cause' – an actual belief or reasonable grounds of suspicion – coupled with good faith on the part of the peace officers making the arrests. By its statement that the arrests were based on probable cause, the Court rejected the anticipated criticism that its ruling would legitimize arrests on the basis of mere suspicion of subversion or membership of a prohibited organization.

The only member of the Supreme Court who dissented completely from the ruling was a veteran human rights lawyer and Marcos opponent. He stated that the law defines subversion as 'knowingly, wilfully and by overt acts affiliating oneself with, becoming or remaining' a member of a subversive organization. In his opinion, 'overt acts' implies that these acts must be visible to the eye. The alleged member of the hit squad was certainly not arrested at a time when he was committing such overt acts of subversion, since he was simply lying in his hospital bed. In the justice's opinion it was also strange that this man was not charged with subversion, for which he was supposedly arrested, but with 'double murder with assaults upon agents of authority'. In his opinion, neither the *Garcia v. Enrile* nor the *Ilagan v. Enrile* doctrines rightfully belong to the jurisprudence of a democratic society. He also regarded the criteria for personal knowledge applied by the majority of the Court not merely as flimsy but also inconsistent with the most recent revision of the Rules of Court. This revision suggests that personal knowledge implies direct, first-hand knowledge, not second-hand information. In his opinion the definition of personal knowledge used by the majority validated mere hearsay as a ground for warrantless arrests. He believed that the Court's ruling created a dangerous precedent, giving the military blanket authority to seize anybody without a warrant.

The *Umil v. Ramos* decision stirred vigorous criticism in human rights circles. The dissenting justice and veteran human rights lawyer interpreted this decision as a signal that the far right had triumphed in Philippine society after a brief shining moment at EDSA.²⁵ In his original dissenting opinion, he dramatically stated that: 'Four years ago at EDSA, and many years before it, although with much fewer of us, we valiantly challenged a dictator and all the evils his regime stood for: repression of civil liberties and trampling on of human rights. We set up a popular government, restored its honored institutions, and crafted a democratic Constitution that rests on the guidepost of peace and freedom. I feel that with this Court's ruling, we have frittered away, by a stroke of the pen, what we had so painstakingly built in four years of democracy, and almost twenty years of struggle against tyranny.'²⁶ Leaders of a leading human rights NGO went one step further: 'The *Umil* decision finally unmasked the true nature of the Philippine government and stripped it of its pretensions. While it claims adherence to democratic goals and ideals, and boasts of the most progressive Bill of Rights in the world, in reality, democratic rights are "paper rights", not readily enforceable by the people.'²⁷ By this statement the NGO leaders not only accused the Aquino Government of plain hypocrisy, but also implied that the Supreme Court was functioning as a mere extension of the executive branch, rather than as an institution independent from the executive.

The *Umil v. Ramos* decision was confirmed by the Supreme Court upon reconsideration in October 1991.²⁸ However, the size of the majority confirming the decision in the reconsideration had diminished. The justice who completely dissented in the original decision dissented completely again. But in the reconsideration, three other justices also partly dissented, with an additional two justices concurring with the majority decision but nevertheless writing a separate opinion. The majority's interpretation of subversion

as a continuing offense drew particular criticism from some of the justices in the reconsideration.

There appears to be a degree of both truth and untruth to the suggestion that the Court acted as an extension of the executive in its rulings on the three major cases outlined above. In all probability, the Court reached these decisions without explicit pressure having been applied by President Aquino. At least the President herself respected the independence of the courts and was known not to lobby on individual cases, including with the Supreme Court. Various Supreme Court members held a debt of gratitude towards her because of their appointment to the Court, or their promotion to Chief Justice. But no evidence exists that she ever took advantage of these debts of gratitude in specific court cases. On the other hand, the members of the Court could have been directed by subtle signals from President Aquino as to what decision she favored. Moreover, other representatives of the administration, including the army, were generally speaking less discrete in exercising pressure on the judiciary.

Notwithstanding explicit or implicit pressures, as an important representative of the post-EDSA social-political order, the Supreme Court obviously shared President Aquino's concern to keep this order from breaking down. As it turned out, the decisions and arguments of the Court reflected very much the dilemmas that President Aquino was facing, as well as her ambivalent and sometimes even contradictory ways of dealing with them. On the one hand the Supreme Court was the guardian and an important symbol of the 1987 Constitution, which stressed respect for human rights and the rule of law. Moreover, several members of the Court, including some of those who concurred with the majority in all three cases mentioned, had expressed a personal concern for human rights in one stage or another. But the communist insurgency was perceived to be a clear threat. The urban assassination strategy of the communist guerrilla army had brought the insurgency to the very heart of the country: Metro-Manila. Though the communist sparrow units claimed to focus on the military and the police, and to particularly aim their attacks at corrupt and abusive soldiers and policemen, their actions caused insecurity and fear in many other people.²⁹ It was uncertain whether wider categories of people would be targeted next. This climate facilitated the perception that tough policies toward insurgents were necessary.

The texts of the Court rulings mentioned both the duty to uphold human rights according to the Constitution and the right and even the duty of state agents to do what is necessary to fight insurgents effectively. Yet these two sets of duties show an intrinsic tension. This tension was further aggravated by the restlessness of the military. The political order was very unstable. A Court ruling that substantially violated the military's perception of their interests could have triggered a successful coup, and could have put an end to both the 1987 Constitution and the Supreme Court. In this case, it is relevant to highlight that two of the episodes that constituted the *Umil v. Ramos* case concerned the assassination of policemen, whereas several of the other cases concerned possession of illegal firearms or ammunition, which in all likelihood would have been used specifically against policemen or soldiers. A condemnation of the warrantless arrests might have easily created the impression in the police and the military that the Court was more understanding of 'communist murderers' than of 'military and police victims'.

In all of the three major cases discussed above, this tension between constitutional rights and ugly political realities proved too difficult to resolve adequately. The *Umil v. Ramos* case most dramatically showed the failure of the Court to resolve this tension. The Court basically reconciled the contrast between the constitutional rights of suspects and the practices covered by the *Umil v. Ramos* case by defining individual rights and rules of due process in a way that made these rights and rules consistent with existing military practices. It is particularly tragic that the Supreme Court invoked two doctrines from the Marcos era that explicitly legitimized Marcos' power to issue Presidential Arrest Orders, as well as other military abuses. So the guardian of the 1987 Constitution invoked a doctrine that served to legitimize a dictatorship, whereas the leading logic underlying the 1987 Constitution was actually the introduction of safeguards to minimize the chance that dictatorship would recur.³⁰

In these three rulings the Supreme Court significantly reflected the ambivalence of the Aquino administration. The Court emphasized human rights and constitutional principles; it called for rules and procedures to properly regulate military and police action. But the Supreme Court also accepted that in actual practice, the police and military enjoyed substantial freedom to fight the insurgency in whatever way appealed to them. In the end, the Court allowed the pursuit of counterinsurgency objectives, and the effort to prevent new coup attempts, to prevail over protection of individual human rights. The 1987 Constitution emphasized the role of the Supreme Court as the guardian of individual human rights against the claims of the state. Nevertheless, in these three cases the Court resorted to asserting the state's claim against the claims of the human rights of the individual. Moreover, as continuing offenses demonstrate, the Supreme Court resorted to legal acrobatics in upholding military practices as constitutional.

The *Valmonte v. de Villa*, *Guazon v. de Villa* and *Umil v. Ramos* rulings showed that the Supreme Court applied political considerations that reflected the logic of the Aquino administration, despite the fact that the Court phrased this political logic in judicial terms.³¹ This logic was geared towards political survival. The Supreme Court found it too risky to 'clip the wings of the military' in its counterinsurgency efforts. In the face of the leftist insurgency, rightist coup attempts and a discontented army, the Supreme Court, through these decisions, weakened some of the principles of the post-EDSA democratic system in an attempt to keep this system from breaking down completely.

Marcos v. Manglapus - Right to Travel

The survival politics and legal acrobatics that characterized the *three* rulings were paradoxically most explicit in a case that involved the former dictator Ferdinand Marcos: *Marcos v. Manglapus*.³² In late 1989, Marcos and his family requested the Supreme Court to review the government's decision banning Marcos, who was old and sick, from returning from exile in Hawaii to die in the Philippines. The petition invoked his right of travel according to Article 4, sections 1 and 6 of the Philippine Constitution, Article 12 of the *Universal Declaration of Human Rights* and Article 12 of the *International Covenant on Civil and Political Rights*.³³

A majority of the Supreme Court rejected this petition on the basis of the political hazards inherent in the return of the Marcoses. Five justices dissented for various reasons.

Two important arguments raised by the dissenting minority concerned the conviction that the legal basis for the denial was too flimsy, and the opinion that the government had not convincingly demonstrated that the return of Marcos would seriously destabilize the country.

In its ruling, the majority stated that the Philippine Bill of Rights does not specifically mention the right to return to one's country, but only the liberty of abode and the right to travel. Furthermore, in the opinion of the Court, the *Universal Declaration* makes a distinction between the 'right to move within the borders of each state', according to Article 13(1), and 'the right to leave any country, including one's own, and to return to one's country'. The *ICCPR* speaks in Article 12(1) and 12(2) about the right 'to liberty and freedom to choose his residence' and to 'be free to leave any country, including his own'. These rights can only be restricted by laws based on considerations of special interests, according to Article 12(3). The right to enter one's own country, of which one cannot be arbitrarily deprived, is mentioned in Article 12(4). According to the majority of the Court, this implies that the criteria for restricting the right to enter one's own country are less strict than the criteria for restricting other rights of travel and residence. In other words, Article 12(3) which states that rights can only be restricted by laws, applies only to the rights that are stated in Article 12(1) and 12(2); but Article 12(3) does not apply to the right to return to one's country as stated in Article 12(4). According to the Court, the threat of political destabilization due to Marcos' return is certainly a valid rather than an arbitrary reason to ban him from returning to the Philippines.

This meticulous analysis of international instruments on human rights notwithstanding, the position of the majority of the Supreme Court has two major weaknesses, as was convincingly argued by one dissenting justice, who was also paradoxically a leading opponent of Marcos during his rule. The first weakness concerns the fact that the Philippine Constitution does not make the same distinctions as the *ICCPR*.³⁴ The 1987 Constitution only talks about the right to travel in general, but it does not distinguish between the right to travel within the country, the right to leave the country, and the right to re-enter the country. The Court in fact went one step further. It restricted the right to travel to the right to travel within the Philippines and to leave it, and excluded the right to re-enter the Philippines from its definition of the right to travel, which is neither stated nor implied in the text of the Constitution either.

The second weakness in the argument of the majority concerns the fact that the decision of the executive to ban Marcos from returning is not based on any specific law. Nevertheless Article V, section 6 of the 1987 Constitution states: '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* (emphasis added). The drafters of the 1987 Constitution had quite explicitly added the requirement that any restriction to the right to travel should be provided by law. In fact, this requirement was the only addition to the 1987 Constitution from the provisions concerning the right to travel and abode contained in the 1973 Constitution that legitimized the Marcos dictatorship. Marcos frequently restricted the right to travel, invoking national security or public safety as a legitimization. The requirement that a law was needed to restrict the right to travel was added in the 1987 Constitution, precisely to curb the freedom of the executive to invoke national

security and public safety as an excuse to restrict the right to travel. The phrase, 'as may be provided by law', that was added to the 1987 Constitution implied an appeal to the Philippine Congress to draft a law that would specify the conditions under which the right to travel could be impaired. The decision of the Aquino Government to prevent Marcos from returning to the country was not an act of spite, as Marcos sympathizers would claim, but was most likely made in good faith for security reasons. Nevertheless, the decision of the Aquino administration was not based on any law that specified the conditions under which national security and public safety could be validly invoked in impairing the right to travel.

In the opinion of the majority of the Court, however, section 6 of Article IV of the Constitution was not a sufficient basis to allow Marcos to return. In the interpretation of the majority of the Court the phrase 'as may be provided by law' does not imply that the existence of a law regarding a travel ban is absolutely required. Apparently, according to the Court's majority, the phrase 'as may be regarded by law' should not be interpreted as meaning 'as should be provided by law'. Section 6 of Article IV of the 1987 Constitution does not allow the executive to violate legal conditions regarding a travel ban in relation to national security, once a law setting such conditions has been passed. But this section does not prohibit the executive from restricting the freedom of travel and abode in the wake of a serious threat to national security, if such a law has not yet been passed. The majority of the court believed that a return of the Marcoses could pose a serious threat, considering the major peace and order problems being experienced by the Philippines at that time. Considerations of the survival of the post-EDSA political order therefore prevailed over Marcos' individual freedom of travel and abode.

The following statement in the ruling of the Court demonstrates the logic of political survival behind it: 'while the military establishment has given assurance that it could handle the threats posed by particular groups, it is the catalytic effect of the return of the Marcoses *that may prove to be the proverbial final straw that would break the camel's back*' (emphasis added).³⁵

The Impact of the Supreme Court's Decisions

Understandably, these four major cases of the Philippine Supreme Court stirred up considerable controversy. These rulings display a clear tension in relation to individual human rights. Furthermore, the Court's arguments are not very convincing. The invocation of two Supreme Court rulings from the Marcos era in the *Umil v. Ramos* case has been hotly contested as well. Not only did these rulings serve to legitimize Marcos' one man rule, but were also symbols of the Supreme Court's extreme restraint and impotence in human rights cases during the Marcos era.³⁶

However, the Court's fear concerning the potential collapse of the post-EDSA order, which appears to have been the driving force behind the four rulings, was not entirely without basis. The threats of rightist coup attempts and of the leftist insurgency, as well as the restlessness of the army, posed a clear and present danger to the post-EDSA order. Only a few months after the *Marcos v. Manglapus* decision was passed, the Aquino Government faced the most threatening coup attempt of its term. The coup attempt was undertaken by rebel soldiers who, amongst other things, were frustrated by the govern-

ment's alleged softness on communism. If the Supreme Court had decided to restrain the military in its counterinsurgency operations, the discontent in the army might have been stronger and more pervasive. Such a strong and pervasive discontent could have increased the possibility of a successful army coup that might have put a definitive end to the post-EDSA political order in the Philippines.

These four rulings of the Supreme Court did not meet the standards of human rights protection and promotion that the post-EDSA aspired to at its inception. Yet from a purely pragmatic point of view, these rulings may indeed have served to prevent the new constitutional and democratic order from breaking down completely. It is therefore not surprising that most of these rulings had a negative impact on the reputation of the Supreme Court with human rights advocates, but do not appear to have undermined the reputation of the Court with the general public. In 1990, one weekly even pronounced the members of the Supreme Court as 'Men and Women of the Year' because of their efforts to reform the judiciary. In the early years of the Ramos administration, the judiciary and the Supreme Court scored very low in at least one opinion poll, and faced a crisis of credibility.³⁷ But the rulings in the above-mentioned cases were barely at issue in this crisis.

Nevertheless, the three rulings that concerned military practices may have had both a substantial and a prolonged negative effect on the human rights situation in the country. This effect exceeds the direct context of subversion or suspicions of subversion. First of all, the compromises that the Supreme Court made in these cases have thrown doubt on the role of the Supreme Court as watchdog of people's rights. It also set a bad precedent. The willingness of the Supreme Court to make compromises in the area of rights and due process in order to please the military and the police, could encourage judges of the lower courts to make similar compromises, not just in the context of subversion, but in other criminal cases as well. In addition, law enforcers may infer from these compromises that the judiciary will tolerate many violations of human rights and due process in actual practice. As will be discussed in the section on 'Crime and Due Process' of this chapter, violations of due process and other rights of suspects have been massively perpetrated throughout the post-EDSA period. Though it is hard to assess to what extent the three said Supreme Court rulings have facilitated violations of the rights of suspects, these rulings certainly have not contributed to diminishing human rights violations.

The controversial doctrine of the Supreme Court that interpreted subversion as a continuing offense ended when the Anti-Subversion Act was repealed in September 1992.

The Lower Courts and Politically-Inspired Human Rights Violations

Human rights victims, as well as advocates, have displayed great displeasure with the way the judiciary has handled politically-inspired human rights violations. This displeasure was also voiced to delegates of the National Unification Committee during its meetings throughout the country in 1992 and 1993. Common complaints voiced were that the judiciary has not shown interest in granting compensation to human rights

victims, and that it has been negligent in its dealings with perpetrators of these violations. Another major complaint is that court cases concerning human rights violations were processed very slowly.

There are a number of reasons for the poor reputation of the courts regarding human rights violations and their sanctioning after EDSA. Some of these reasons can be attributed to the actions of individual judges or justices, but others can not. The first reason concerns the limited jurisdiction of the civilian courts over human rights violations by the military up to June 1991, as was mentioned in the previous chapter. President Aquino had not been willing to abolish the jurisdiction of military courts over all crimes committed by the military during the first five years of her administration. This reduced the access of human rights victims to fair and impartial justice significantly. Because human rights abuses had become an accepted feature of conduct among the military during martial law, and because of military loyalties and the pressure to cover up military abuses, military tribunals could not meet elementary criteria of impartiality toward victims of such abuses.

Moreover, this obvious lack of impartiality acted as a major inhibitor for victims and witnesses seeking to complain or testify. Thus, up until 1991, the civilian courts were mainly left with jurisdiction over human rights offenses committed by civilians, such as CAFGU members, vigilantes, and members of private armies of landlords, warlords and local politicians.

Serious factors have also inhibited access to justice for victims of human rights violations in the civilian courts. One important factor concerned the unequal impact of the EDSA revolt in the various regions of the country. The revolt was particularly influential in the center of the country, Metro-Manila, and in some of the surrounding areas. But the rebellion left many local power structures that existed under the Marcos dictatorship practically untouched. Human rights violations, which persisted after the EDSA revolt, were a structural feature of most of these power structures. Many former pro-Marcos politicians who transferred loyalty to the Aquino administration did so on the basis of opportunism, not because of sudden repentance concerning their human rights record. Links between pro-Marcos politicians and judges were also quite common. Leniency on the part of judges toward perpetrators of human rights violations was therefore common as well.

The judicial reorganization in 1986 did not change this situation significantly. All judges were compelled to resign and were reinstated on a discretionary case by case basis. One criterion guiding decisions as to the reinstatement of judges was the attitude they had displayed toward human rights violations. Though some judges were actually not reinstated, the reorganization as a whole was not very drastic. There were three major reasons for this. The first reason was that the leadership of the reorganization committee, as well as various representatives of the Aquino administration or pro-Aquino faction, did not want to antagonize influential politicians or power-brokers. A second reason was the difficulty encountered in gather compelling evidence against judges with a poor human rights record. A third reason was the sensitivity of influential people in the Aquino administration to personal lobbying by, or on behalf of, judges threatened with dismissal.

It could not reasonably be expected that judges who previously had been lenient toward human rights violations would suddenly internalize a strong concern for human rights after being reinstated. This is even more unlikely because political loyalties and local power structures from the Marcos era – which could still make or break a judge – had not changed significantly.

Other inhibiting factors involved general problems in the judiciary that also have an impact on human rights cases. One such factor is the problem of court delay and backlog, which also affects access of human rights victims to speedy justice.

Similarly, it is more difficult for the poor and the underprivileged to secure access to the court due to inadequate financial resources, psychological inhibitions and faulty knowledge of rights and procedures. Because of this problem of access for the poor and underprivileged, and because human rights victims form the major part of this category, it naturally follows that the redress human rights victims receive from the courts remains highly unsatisfactory. In this context it should be noted that the social disadvantages of the poor and underprivileged are reproduced to a significant extent in politically-inspired human rights violations. Though in principle anyone may fall victim to such rights violations – even gross ones such as torture, murder and involuntary disappearance – the poor and underprivileged are particularly vulnerable to such abuses. The great majority of victims of politically-inspired human rights violations in the Philippines fall into this category. Social status provides at least a measure of protection against human rights violations. The problem of court delay and access to justice for the poor will be elaborated in chapter 6.

A final inhibiting factor is that in the Philippines, victims and witnesses have had little effective protection against retaliation from crime suspects, including human rights violators. These violators often have an advantage over their victims, including access to force and the protection or outright support of local policemen, soldiers, politicians and other powerful groups or individuals. Human rights victims and their witnesses tend to invite more trouble for themselves if they officially lodge a complaint or testify in court. This has made it very difficult for a human rights complaint to succeed in the courts. Moreover, the explicit or implicit threat of violent retaliation acts as an inhibiting factor for prosecutors and judges wishing to try human rights perpetrators boldly.

A further complication in the prosecution of politically-inspired human rights violations is psychological in nature. Various victims do not press charges because they expect that the effort and trouble involved in filing complaints and testifying will only hinder them in reconstructing their lives, and in any case, will not repair the severe damage they suffered. The practical and psychological inhibitions experienced by underprivileged victims of politically-inspired human rights violations are quite similar to those inhibiting victims of common crimes in securing redress from the courts. These inhibitions will be further elaborated in the next section of this chapter.

Crime and Due Process³⁸

The tension between the rights of a suspect to due process and the requirements of fighting crime and criminals is a universal dilemma. This tension strongly affects the justice system in the Philippine context as well. In accordance with authoritative international instruments on human rights, the 1987 Constitution says in the Bill of Rights, Article III, section 1, that 'no person shall be deprived of life, liberty or property without due process of law'. Furthermore, Section 14(1) states that 'no person shall be held to answer for a criminal offense without due process of law'. Section 14(2) of Article III elaborates on section 14(1), by mentioning specific rights that are integral parts of the right to due process. It is striking in this context that, unlike authoritative international texts, the Bill of Rights does not mention the right to presumption of innocence as a separate fundamental right, but includes this presumption in the right to due process.³⁹ Beyond these constitutional provisions, the right to due process is further specified by congressional laws, and by Rules of Court and case law as promulgated by the Supreme Court. All the substantive and procedural requirements and rules that specify due process, which guarantee the right to a fair and speedy trial, will be referred to here as rules of due process.

Criticism of Due Process

But the rules that specify this due process clause have been subjected to widespread criticism and debate in the Philippines. Critics have alleged that the rules of due process are simply too much in favor of suspects, and therefore inhibit the prosecution and conviction of criminals, making effective crime-fighting impossible. Discontent with the protection that various specific rules of due process allegedly provide to criminals has even grown to discredit the very principle of due process itself. For some critics, the term 'due process' has come to symbolize a culture of unacceptable leniency toward criminals. The prominence of the controversy over due process in the Philippines merits this separate discussion of the issue in the present chapter on human rights.

Discontent concerning the rules of due process has also affected the interpretation and public status of human rights and human rights advocacy. According to critics, human rights advocates have narrowed the scope of human rights to mean the rights of individuals at the expense of the rights of the community. Consequently, critics regard human rights advocates as soft towards criminals at the expense of the general public, alleging that an emphasis on the rights of suspected criminals also leads to neglect of the rights of victims. It has even been said that criminal suspects enjoy 35 specific rights in the Filipino justice system, whereas victims can only invoke one.⁴⁰ Even some former opponents of Marcos voice similar views on due process. A good example of this is a newspaper and television journalist who is also a former close aide of President Aquino. In his columns and television talk shows, he frequently promotes the interests of victims of heinous crimes.

The controversy over the rules of due process was stimulated by a crime wave that began in the early 1990s and the apparent inadequacy of the justice system to deal with it. An example of this crime wave was a surge in kidnap-for-ransom cases in the Metro-

Manila area. Rich Chinese businessmen in particular were victimized by this wave, for which large organized gangs have been blamed. When the number of kidnap-for-ransom cases decreased, a surge in armed bank robberies and drug trafficking followed. Usually these bank robberies are executed in broad daylight and frequently involve shoot-outs between heavily armed robbers – who may number more than ten in any given robbery – and security guards of the banks. The possibility of innocent bystanders being killed in the crossfire is significant.

As a result of the American heritage, the laws on possession of arms are not very restrictive, and effective control over the possession and use of arms is weak in the Philippines. A pervasive perception that the average citizen enjoys very little protection against crimes from perpetrators of any kind has aggravated the problem. This perception is reinforced by evidence – or at least belief – that law enforcers often protect criminals or even play a major role in criminal activities.

The sense of insecurity among the public is also aggravated by widespread publicity concerning heinous crimes and by allegations of involvement by law enforcers and powerful politicians or businessmen. Though it is generally agreed that other factors, such as grossly inadequate law enforcement, also account for the problems of crime and insecurity, the rules of due process – which are often viewed as excessively soft on criminals – are also sharply criticized in the discussion on the spread of crime.

According to critics, the current rules of due process are inspired by American law but their application in the Filipino social context presents major problems. One such prominent problem concerns warrantless arrests. In the absence of a warrant, a suspect can only be arrested if he is caught in the act of committing a crime; if a crime has been committed and the arresting officer has personal knowledge that the suspect committed the crime; or if the suspect is an escaped prisoner.⁴¹ The suspect has to be charged in the presence of a lawyer of his choice within 36 hours, in cases involving grave crimes; within 18 hours, in cases involving less grave crimes; and within 12 hours, in cases involving light offenses. During this time, witnesses have to be located and interviewed and a report typed up, which takes considerable time in the Philippines given the old and inadequate communications and transport facilities available to police stations. Moreover, at certain moments, a lawyer is simply not available.

Another specific problem concerns cases in which no warrantless arrests can be made. In these cases, a preliminary investigation is required before a warrant of arrest can be issued. In cases of serious crimes, which are punishable by more than six years imprisonment, a suspect is allowed a maximum period of ten days to present counter-evidence regarding the complaint that was filed against him during this preliminary investigation before a warrant of arrest can be issued.⁴² This however also means that if a suspect of a heinous crime is informed about the complaint against him, he actually has ten days to go into hiding. Hiding from the authorities is relatively easy in the Philippines, since there are many outlying areas and even urban areas that are barely accessible to the authorities, and where the means of communication are very poor. It is also relatively easy to purchase a new identity or secure a false passport and visa.

Another specific problem is that the prosecution of crimes requires prior pressing of charges by the victims themselves. However, victims are often reluctant to do so out of

fear of retaliation. The right of a suspect to confront witnesses face to face, as specified in Article III, section 14 of the 1987 Constitution, may further reinforce fear on the part of victims and witnesses. Given the serious difficulty of providing effective protection for victims and witnesses – or making such persons feel effectively protected – it is not surprising that victims who do press charges sometimes become national heroes. An example of this is a girl who was the victim of a heinous crime in 1992. Her story was even dramatized in a movie. Together with three girl friends, one of them pregnant, she was rounded up by the police on a fabricated minor charge. The girls were then brought in a police car to a deserted site, where they were raped, tortured and their bodies dumped in an open field, left for dead. Miraculously this girl survived. Her three friends did not. Her testimony ultimately resulted in the conviction of the perpetrators, all active policemen, though even after the conviction she continued to receive death threats. However, it is not realistic to expect this kind of courage from every victim or relative of a victim.⁴³

Another problem is that the current rules of due process further boost the advantage that many major criminals enjoy over law enforcement sources. Filipino criminals frequently have access to larger budgets, better arms and more sophisticated technology than most law enforcement officers. These criminals also have powerful protectors among politicians and in the business sector, which makes it even more difficult for the police to catch them or the prosecution to secure convictions. Furthermore, skilful lawyers manipulate the justice system to keep their clients out of jail.

Another problem posed is that the rules of due process assume a certain degree of effectiveness in the government machinery, as well as civility in society at large. But according to critics of due process, the Philippine government is not sophisticated enough to handle complicated rules effectively. Consequently, the present rules of due process make it extremely difficult for any court to convict criminals or for any prison to keep them incarcerated. As a result, these criminals are free to terrorize society indefinitely. Moreover, many critics find the criminal segments of society frequently too ruthless to deserve the protection that due process offers .

In the opinion of these critics the balance between the rights of the individual and the rights of the community in the Philippine justice system is tilting excessively toward the rights of the individual, and is in desperate need of correction. This problem contributes to a pervasive sense of insecurity and unfairness, which undermines the credibility of law enforcement and the justice system as a whole. It also provokes policemen and citizens to take justice into their own hands through personal revenge and extra-judicial executions.⁴⁴

Critics of due process tend to dismiss fears that a drastic revision of these provisions will erode the rights of citizens and facilitate abuse of power. In their opinion, even following a drastic overhaul of the right to due process enough mechanisms would remain to ensure the protection of innocent individuals against abuses. The chief such guarantee, they say, is that each criminal case would still pass through various stages of the criminal justice process, and at each stage, any errors committed earlier could be rectified by the higher judicial authority. Thus if a policeman wrongly arrested somebody, the prosecutor could still correct it; and if the prosecutor failed to correct it, the judge

in the case could dismiss the charges; and so forth, with the Court of Appeals and the Supreme Court serving to overturn mistakes made by the lower courts. Furthermore, proponents of a drastic overhaul of existing rules of due process tend to believe that criminals who go unpunished and who continue terrorizing society represent a more serious threat to the cause of justice and public order than does the conviction of innocent people.

Prominent among such proponents have been the Vice-President and the members of the Presidential Anti-Crime Commission that he is leading. The mandate of this Commission, created shortly after the Ramos administration took office, has mainly been to coordinate the investigation and prosecution of crimes committed by organized gangs, such as drug trafficking, bank robberies and kidnaps-for-ransom.

Rigorous criticism of at least some existing rules of due process has even come from the very heart of the bar, the institution that could be expected to be most sensitive toward the defense of the rights of suspects. For instance, the present laws on bail have been severely criticized. An editorial in the official publication of the Integrated Bar of the Philippines illustrates this point. This editorial points out that someone who is arrested for involvement in a gang robbery needs to post bail of only 20,000 pesos. This is true even if the money stolen in the armed robbery is as much as a million pesos. The acceptance fee of an attorney meanwhile is only 25,000 pesos. So if a robber is released on bail and subsequently disappears – which, as pointed out above, is not difficult in the Philippines – he still will be free to spend most of his loot. Conditions like this make robbery a win-win situation for criminals and therefore invite further crime.⁴⁵

Most of the concrete suggestions about a drastic revision of the rules of due process involve substantial restrictions on the rights of suspects. These suggestions concern limitations of the right to bail; substantial increase in the amount of bail in cases of serious crimes; a softening of the rules of evidence; an increase in conditions under which arrests can be made without a warrant; fewer opportunities for criminal defense lawyers to file petitions for their clients; and an increase of the time frame during which a suspect can be detained without warrant and without a formal charge. Related proposals have been the introduction of preventive detention laws, and the possibility of detaining criminals with notorious reputations without bail and without evidence being presented regarding specific crimes committed.

Apart from these appeals for a drastic overhaul of due process, the provisions also face the threat of gradual abolishment through an accumulation of ongoing minor adjustments. Calls and proposals to streamline the rules of due process have been constant during the last decade. Minor changes have already been made or are under study. A good illustration of this involves the rules governing the amount of time suspects can be detained without being formally charged. In 1990, the Aquino Government decided to double this time frame: from six to 12 hours for light offenses; from nine to 18 hours for less grave offenses; and from 18 to 36 hours for serious offenses.

Arguments Against a Limitation of Due Process

In the controversy over due process however, strong arguments have been raised against a drastic revision of the current rules and consequent reduction of the rights of suspects.

One such argument is that further substantial restrictions on the rights of suspects will eventually result in a partial return to criminal acts being committed by the state, as during the Marcos era, when people were arrested or simply assassinated without due process. Once due process is restricted for people with a criminal reputation, the argument goes, restrictions on everyone else will inevitably follow. From this point of view, the low conviction rate cannot be blamed primarily on the rules of due process, but must be explained by other factors. In order to address the law and order problem, attention should be paid to the real causes – rather than to the rules of due process. Important factors in this context include low salaries and lack of facilities for the police and the judiciary, as well as problems of demotivation, indifference and corruption among law enforcers.

Though some rights of suspects appear to involve too much leniency toward suspected criminals, they are nevertheless already too strict for many poor and underprivileged citizens in the Philippines. The right to post bail is a case in point. Some consider the amount of money required to post bail ridiculously low. Yet for many citizens who cannot afford such amounts, the bail proves an insurmountable obstacle. CARITAS, a Catholic organization that amongst other things supplies legal and paralegal aid to poor detainees, estimates that only two out of ten prisoners in the Philippines have been proven guilty. 'The other eight may be innocent, but are detained because their poverty prevents them from posting bail.'⁴⁶

Defenders of due process have also pointed out that in the Philippines the attitude concerning due process is often ambivalent. As two knowledgeable insiders of the legal system commented: 'there is a strange ambivalence about due process in the Philippines. People complain that others enjoy too much due process. But when they themselves have a case there is never enough due process'. The widespread publicity of a dramatic incident in 1995 powerfully illustrates this ambivalence. In Singapore a Filipina, Flor Contemplacion was convicted for double murder and subsequently hanged. She had worked in Singapore as a maid, because she had not been able to support her children and contribute to the upkeep of other family members on the salary she earned in the Philippines. Following the murder, Flor Contemplacion was subjected to a formal criminal investigation and trial. She was convicted partly on the basis of a confession she had made during the police interrogation, but which she later retracted. The case became a national scandal in the Philippines and severely affected the relations between the Philippines and the Singaporean governments. A Philippine investigative team, including a coroner, was sent to Singapore at the emphatic request of the Philippine government. The team concluded that the two victims, one of them also a Filipino maid, could not have been killed by the suspect, since the killing would have involved the use of much more physical strength than the suspect could have mustered. As a result, the Philippine government asked for postponement of the execution, in order to allow a third, independent investigation. This postponement, however, was denied. This incident stirred up strong passions concerning the plight of many Filipinos abroad, and caused various Government members to resign, including the Philippine Minister of Foreign Affairs. Flor Contemplacion had become a national symbol of the exploited and discriminated Filipino.

During the course of this episode, the judicial process in Singapore was almost uniformly criticized for being excessively speedy and unfair to the suspect. Thus, in this case, which involved someone with whom there was widespread identification in the Philippines, public sentiment asserted that not enough due process had been applied.

Leniency and the Application of Rules

A complicating factor is that even if the rules of due process are strict for suspected criminals, there is little inadequate guarantee that these strict rules will be enforced. This factor is related to the issue of leniency as a socio-cultural value, to which has already been briefly referred in a previous section. As various authoritative informants and documents have stated, the Philippines is not a disciplinarian society.⁴⁷ This implies that – particularly in face-to-face relations – there is strong toleration of violations of rules, or even crimes. This leniency can also influence the attitudes of law enforcers and correctional officers, as well as of prosecutors and judges. If a suspect establishes a good personal rapport, the representatives of the justice system may treat him or her with substantial leniency, even if the formal rules of criminal justice would dictate that the representatives of the justice system behave strictly. In other words, even when the formal rules are strict, they are often very leniently applied. In this sort of case however, it is not the rules of due process that should be blamed for excessive leniency, but rather the fact that criminal justice officers apply even more leniency toward a suspect or a convict than the existing rules of due process actually require. Yet these excessively lenient attitudes wrongly convey the impression that the rules of due process themselves are inadequate. From these cases it can be argued that the present rules of due process should not be overhauled, but simply should be enforced with less leniency to suspects or criminals than is necessary and appropriate.

The problem of an excessively lenient application of the rules of due process may best be illustrated by two contrasting cases involving the Commission on Elections (Comelec) in recent years. The mandate of this Commission is to organize and supervise elections in the Philippines. In the first case, concerning the elections in 1992, a well-known Filipino lawyer who was a prominent member of the Comelec at that time explained: ‘during the last national elections we wanted to restrain the influence of warlords. During elections there is always a gun ban. However, people can apply for exemptions with the regional offices of the Commission on Elections. Since the officials of these regional offices tend to be in cahoots with the warlords, exemptions were acquired rather easily in the past. Therefore, we forced everybody now to apply for exemption at our national office. Before, 90% of all applications would be granted. This time it was only 10%. And, we held every candidate responsible for the conduct of his followers. If a follower would use violence, the candidate would be disqualified. I had wives of politicians on the phone who would try to raise pity by saying that their husbands did not dare to leave the house anymore because they could not carry guns. But we showed them and everybody else that we meant business. Consequently we had the most peaceful national elections since independence. We changed a few practical rules. Yet we did not violate any principle of due process.’

This contrasts sharply with the conduct of the Comelec chairman in 1995, in a case in which also the Court of Appeals and the Supreme Court simply applied the existing rules of due process too leniently. In the elections of 1995, a popular movie actor who ran for public office brought ten armed body guards into the office of the Comelec in defiance of a gun ban which Comelec had officially imposed. The chairman, a former Court of Appeals justice, did not disqualify the movie actor, and defended this decision on the basis that no complaint had been filed. The movie actor, however, was convicted of illegal possession of fire arms by a Regional Trial Court. He appealed to the Court of Appeals, who granted him bail. The Court of Appeals ignored a resolution from the Supreme Court which stated that the bail bond of the movie actor should be canceled and ordered that he be confined pending resolution of his appeal, in accordance with jurisprudence of the Supreme Court. The Supreme Court, however, did not react to the Court of Appeals' apparent defiance of its authority, so the movie actor remained free. The remarkable leniency that was given to the movie actor in this case, was not by any means based on the rules of due process, but only on the laxity of various public officers.⁴⁸

An inclination toward leniency can also inhibit victims from filing complaints. For instance, Filipinos have a penchant toward 'smooth interpersonal relations': relations that are harmonious at least at the surface level, allowing interpersonal communication to continue. In these relations, much effort is spent on avoiding matters that could break surface harmony, such as outward anger, loss of face, severe looks, a harsh voice or open criticism. Criticism is referred to preferably in indirect terms, or is vented through writing or through go-betweens.⁴⁹ The desire to maintain 'smooth interpersonal relationships' may encourage victims to refrain from seeking legal redress for their complaints, so as not to create further antagonisms with the perpetrator and/or his social network. This tendency on the part of victims to smooth over crimes particularly occurs when the victim and perpetrator or their networks, are acquainted.

Other Deterrents to Witnesses

As mentioned already, a major source of difficulty in combatting crime has been the fear of retaliation against victims and witnesses. The Witness Protection, Security and Benefit Program was introduced in 1991 to remedy this problem. Following a slow start, it has since gained increasing popularity. In 1994 there were 500 applications, of which 280 were approved, in contrast to 60 applications during the first year of its implementation. In 1995, 389 applicants were admitted to the program.⁵⁰

Nevertheless, the Witness Protection, Security and Benefit Program still faces problems and setbacks. First, in spite of the provision of discretionary funds by the legislature and the executive, budgetary constraints are hampering its operations. Because families and other dependants of witnesses also use the services of the program, considerable strain is placed on the limited available resources. Second, the social costs of adopting this kind of government protection are very high. One may have to leave behind one's home, job and personal network in order to receive efficient protection. The costs of this to the individual act as an impediment to the willingness of witnesses to cooperate. Third, the program does not contain provisions for identity change, partly because of inadequate

funds. Ultimately, the ability of the program officers to render effective protection to witnesses over a considerable period of time will determine whether the public will develop structural confidence in the program.

In addition to fear, there are other reasons which inhibit witnesses from testifying. Inadequate concern for the common good among the public – including concern for the cause of justice – is one such reason frequently invoked by reputable members of the judiciary.⁵¹ This allegedly inadequate commitment to the public good stems from the strong particularistic loyalties in the Philippines to family, friends, and region of origin.⁵² Consequently, people may go to very great lengths to protect members of their personal network, even though these persons may have committed grave crimes. One leading member of the bench illustrated this with the following comment: ‘we Filipinos are not like the Europeans or the Americans. Our family means everything. It comes first, even if it causes conflicts with the law. I remember an incident in America in which two military men involved in espionage were turned in by the mother of one of these men. This would be unthinkable in the Philippines.’

But unwillingness to testify may not necessarily be inspired by fear or particularistic loyalties. People may refuse to act as witnesses simply because they do not want to undergo the trouble involved. Victims may refrain from filing complaints because in their perspective an involvement in a judicial procedure will only add to – rather than relieve – the troubles they are suffering as the result of the crime.

Due Process and Inadequate Law Enforcement

The most powerful argument advanced against drastic changes to the present rules of due process – and consequently against the restriction of the rights of suspects that would result – is that such changes would likely facilitate abuses by law enforcement officers. Such an overhaul would certainly result in a dramatic increase of cases in which innocent people are wrongly detained and convicted, given the low morale of the police, the often sloppy investigations carried out, and the country’s poor record of gross human rights violations. The heritage of summary executions and other forms of police brutality practiced during the Marcos era still exercises a substantial influence on the organizational culture of the military as well as of some police forces.⁵³ Various alleged criminals continue to be summarily executed or threatened, either in isolated incidences or in the context of special campaigns launched to rid the streets of certain types of criminals, such as drug dealers. Suspects are still being charged falsely just to bring individual cases to a close or to boost statistics, and some law enforcers still settle personal feuds under the guise of crime-fighting. Under the present rules of due process, forced confessions as a result of police harassment are already frequent occurrences; in the same way, many poor Filipinos are detained without any due process at all. One study strongly suggests that most arrests are made without warrant, particularly in Metro-Manila. During administrative detention, many human rights violations take place, such as torture, the eliciting of self-incriminating confessions, and the failure to inform suspects of their rights or to grant them access to a lawyer.⁵⁴ The loosening of the rules of due process and subsequent reduction of the rights of suspects will also increase the likelihood of people being arrested and framed on fabricated charges.⁵⁵

The right of suspects to due process is also undermined by ignorance of the law on the part of prosecutors and judges. Particularly in remote areas, judges and prosecutors sometimes have a limited knowledge of the rights of suspects, or have adequate knowledge of this right but simply ignore violations of due process provisions committed by policemen.

A drastic change in the right to due process is furthermore counterproductive to crime-fighting in the long run. Part of the overall law and order problem is the low credibility of law enforcers. Potential witnesses will avoid going to the police because of fear of serious harassment. If the rules of due process are drastically changed, it is possible that the police will act with even more impunity in violating the rights of citizens. This will only further undermine the public's confidence in law enforcers, and consequently further inhibit citizens from collaborating with the police in solving crimes.

A dramatic incident in May 1995 illustrates the various dimensions of the controversy over due process in the Philippines. Representatives of several police forces reported that they had killed 11 members of a bank robbery gang in a shoot-out during which the gang members had resisted arrest. This criminal gang had originally been a religious sect in the countryside which was used by the military as a tool in counter-insurgency operations. Members of the sect, known as Kuratong Baleleng, had moved to Metro-Manila and allegedly turned to perpetrating armed bank robberies. However a policeman who witnessed the shoot-out subsequently revealed that these gang members had been summarily executed by the policemen. His statement corresponded to ballistics reports. The incident took a further twist when allegations were made that the gang members had actually been killed because they were carrying a huge amount of money with them. The policemen involved had allegedly stolen the money from the robbers and killed them in order to silence potential witnesses.⁵⁶

News reports concerning the activities of abusive and corrupt policemen sharply increased in the aftermath of this incident, with the government announcing another reorganization of the police forces and sending some senior officers into early retirement. The episode also affected the credibility of the PACC, since some of its officers had specifically been implicated. The Senate Committee on Justice and Human Rights, the Committee on National Defense and Security and the Committee on Crime jointly investigated the alleged shoot-out. The vast majority of the members of these committees concluded that the gang members had been summarily executed, and reaffirmed the importance of due process as a guiding principle of justice in the Philippines.

Nevertheless, the policemen involved also had their defenders, such as anti-crime groups like the Citizens Action Against Crime and the Movement for the Restoration of Peace and Order.⁵⁷ Some of these defenders rationalized the conduct of the policemen on the basis of their frustration over the slowness of the judicial process and over the difficulty in convicting criminals under the present rules of due process. Discontent with the slowness of the judicial process has added to the controversy over the rules of due process.

One may conclude that there is a high price to pay for a drastic softening of the rules of due process, not just for some individual criminal suspects, but for many sections of Philippine society.

Death Penalty

Frustration over the crime rate, as well as publicity concerning sensational cases, culminated in the reintroduction of the death penalty by Congress on 13 1993.⁵⁸ The death penalty had been abolished following the EDSA revolt, but its reintroduction by Congress was an option left open in the 1987 Constitution. The reinstatement of the death penalty has been applied to 13 crimes considered as heinous, including kidnap-for-ransom, murder, drug trafficking and rape. Proponents of the death penalty have argued that its application will serve as a major deterrent to criminals, with some advocates proposing that the first execution be shown on television. In their opinion, a televised execution would send a strong signal to criminals that the government is serious about fighting them, and would persuade some potential felons not to run the same risk as the persons executed in the broadcast.

Opponents of the death penalty believe that capital punishment does not accord with the moral principles of modern civilization, and assert that application of the death penalty will only increase the gap between the poor and powerless on one hand, and the rich and powerful on the other. In the opinion of these critics, the death penalty will only be employed against the powerless poor, who may not have adequate means and the opportunity to prove their innocence. On the other hand, rich and powerful criminals will always find a way to escape the death penalty, as long as inefficiency, corruption and nepotism in society persist within law enforcement, the judiciary and politics. Furthermore, they say, capital punishment will most likely be applied to cases in which rich, famous or well-connected people are the victims, but that murderers will still act with virtual impunity if their victims are poor and uninfluential, because law enforcers and prosecutors may not bother to invest the time and effort necessary to investigate such cases properly.

On 20 March, 1996 a law was signed by President Ramos designating death by lethal injection as the means for carrying out capital punishment.⁵⁹ Furthermore, it was determined that death sentences should be carried out not earlier than one year and not later than 18 months after judgment becomes final and executory.

Judicial and Other Efforts in the Fight Against Crime

Some organizational changes to improve the record of the judiciary in dealing with crime have been implemented or are being studied. In order to facilitate the fight against heinous crimes and organized criminal gangs, in August 1987 the Supreme Court designated 18 branches of the Regional Trial Courts (RTCs) in the Metro-Manila area as particularly competent to try heinous crimes. On September 28, 1994, this number was increased, with a further 37 RTCs in the Metro-Manila area assigned to deal with such cases, including drug trafficking and kidnapping. On May 3, 1996, this number was again increased to 56. These special judicial branches deal with criminal cases on a virtually continuous basis. Cases are tried without interruption, with a maximum time frame of 60 days for completion of the trial. Decisions in such cases must be rendered no later than 30 days following termination of the proceedings.

The Supreme Court, however, has not acceded to emphatic demands from various sectors of government and civil society to exempt these criminal courts entirely from

trying other cases. Though the judges who work in these special criminal branches are exempted from work on other cases during the course of special criminal trials, they nevertheless are not restricted to dealing only with such cases. A major reason for this is that, at least from the perspective of the Supreme Court, there are simply not enough heinous crimes brought to trial by the prosecution to fill the dockets of these 56 courts on a continuous basis. If these courts would deal only with heinous crimes, they would fall idle from time to time, which would imply an inefficient use of their resources as well as an unnecessary extra burden for the other regular criminal courts. The cases tried in these special courts, other than ones falling under the definition of heinous crime, are not just regular criminal cases but civil cases as well. An important reason for this is that judges themselves seem reluctant to specialize on criminal cases only. This specialization would undermine their expertise in civil cases, which would inhibit their chances for future promotion in the judiciary.

Another organizational change has been the introduction on 19 July 1995 of the National Council on the Administration of Justice. This Council consists of the Department of Justice, the Office of the Court Administrator, the Philippine Judges Association, and the Integrated Bar of the Philippines. The Council aims to address the problems experienced by the five pillars of the criminal justice system and to propose and expedite reforms. One proposal was to revise the Bail Bond Guide, taking into account new penal laws. The revision was approved by the Department of Justice and took effect on 1 February 1996. Another proposal was to use accredited private security and investigation agencies to serve warrants of arrest, and authorize payment of their expenses for this work. The main objective of this proposal is to reduce the increasing number of criminal cases that have to be archived in the courts because law enforcers fail to execute warrants of arrest. Another proposal is to organize local and provincial committees, consisting of members of the judiciary, the police, the bar and executive representatives. These committees are intended to discuss and address problems of the administration of criminal justice at the local and provincial levels. The Philippine National Police reports a steady decline of the crime rate since 1992.⁶⁰ However, it is uncertain as to what extent this decrease implies an increase of the effectiveness of law enforcement and to what extent it reflects increased apathy among the general public in reporting crimes.

Comparative Crime Statistics (1992-1996)

Year	Crimes Against Persons	Crimes Against Property	Rape	Index Crimes	Non-Index Crimes	Total Crime Volume
1992	36,667	25,538	2,149	67,354	37,365	104,719
1993	33,603	22,796	2,285	58,684	38,002	96,686
1994	30,543	21,409	2,494	54,446	38,854	93,300
1995	26,324	15,823	2,346	44,493	34,755	79,248
1996	24,908	14,967	2,505	42,380	34,535	76,915

The Bottom Line

Concerning due process, it is both legitimate and necessary to adjust such rules in the light of historical experience. The liability inherent in effecting a series of small adjustments to these provisions, however – as compared with debating proposals for a drastic overhaul of due process – is that a tendency will exist to overlook resulting limitations of citizen's rights. Moreover, because the tension between the rights of suspects and effective crime-fighting can never be entirely resolved, crime-fighters may never be satisfied and, consequently, keep appealing for further reductions of due process. The maximum time frame for detention without formal charge may serve as an illustration of this point. Various human rights organizations have expressed that, in their opinion, the Aquino Government already crossed a line that should not have been crossed when it doubled this maximum time frame in 1990.⁶¹ Nevertheless, some crime-fighters find even this extended time frame too restrictive, because it does not allow law enforcers sufficient time to collect adequate evidence against serious criminals. Therefore, clear lines should be drawn beyond which further reductions of the rights of suspects should no longer be considered.

In this context, hope might be drawn from an instance in which the Supreme Court clearly drew such a line in a 'heinous crime case' in May 1994. In this case, the Court restored at least some of the moral credibility it had lost following the *Valmonte v. de Villa*, *Guazon v. de Villa*, and *Umil versus Ramos* rulings:

In late 1993 the Presidential Anti-Crime Commission had accused two young lawyers of the kidnapping and murder of a foreigner who had disappeared without a trace. The source of evidence for the charge was an extrajudicial statement from a security guard who had been dismissed from the police forces earlier in his life. Rumors had it that the accusation was a frame up by an enemy of the two lawyers who wanted to settle a personal score. Nevertheless, the judge of a special criminal court who handled the case, ordered the arrest of the two lawyers without bail. A famous veteran politician and human rights advocate, who was also the father of an associate of the two lawyers, filed a petition before the Supreme Court on their behalf, claiming that their human rights had been violated in this case. The Supreme Court ruled that the judge had committed grave abuse of discretion in the case by relying completely on the information provided by the PACC prosecutors without examining the evidence himself. Since the evidence lacked credibility, the Supreme Court threw out the case against the two lawyers and prohibited the judge from taking any further action against them in relation to the case. Furthermore, the Court reminded 'judges, prosecutors, and other government agents tasked with the enforcement of the law, that in the performance of their duties they must act with circumspection, lest their thoughtless ways, methods and practices cause a disservice to their office and maim their countrymen they are sworn to protect and serve'. The Court further cautioned 'government agents, particularly law enforcers, to be more prudent in the prosecution of cases and not to be oblivious of human rights protected by the fundamental law'.⁶²

Summary and Considerations

Following the EDSA revolt, politically-inspired human rights violations have remained an important problem, but have been increasingly overshadowed by other concerns. This process has been facilitated by the increased democratic space created in society and by the loss of military backbone and of the public legitimacy of the communist left. During the Ramos administration, this process was further facilitated by a decrease in unrest among the military over alleged leniency by the government towards the communists.

Though some sections of the human rights movement have successfully adjusted to the post-EDSA changes, some sections have not, particularly because of the continuing influence of old Marxist loyalties and ideologies. The constitutionally instituted Commission on Human Rights has, after a controversial start, been able to gain legitimacy gradually.

In four major cases involving individual constitutional rights, the Philippine Supreme Court was faced with resolving a fundamental dilemma. On the one hand it had to live up to its constitutional role as guardian of the human rights of the individual citizen and as a watchdog over abuses committed by state agents. But on the other hand, a strict interpretation of this role, as well as of the text of the Constitution itself, in a very unstable political climate could have facilitated the collapse of the post-EDSA order and resulted in a new dictatorship. Consequently, the Supreme Court adopted a balancing act similar to that of the Aquino Government in solving this dilemma. In this balancing act, the logic of political survival ultimately prevailed. As in the case of the Aquino Government, the Court cautiously invoked the importance of human rights. But the Supreme Court's 'judicial survival tactics' tolerated quite a substantial freedom on the part of the police and the military in their implementation of counter-insurgency operations. These rulings have not contributed to respect for due process and human rights by law enforcers, prosecutors and judges.

The problems of the lower courts in their dealings with politically-inspired human rights violations cannot be separated from the problems of the judicial process in general. The victim of a politically-inspired human rights violation who does not secure redress from the courts shares this fate with numerous victims of non-politically motivated crimes, because of similar problems plaguing the judicial process.

The issue of due process in relation to common crimes has increasingly become the major human rights controversy in the Philippines. On the one hand, the rules of due process are experienced as a major obstacle to effective action on crime. But on the other hand, the proponents of due process should not be on the defensive in supporting the maintenance of these provisions. Due process is already massively violated in the Philippines without producing significant benefit in terms of effective crime-fighting. Generally speaking, Filipino citizens suffer from too little respect for due process rather than from too much. The lives of thousands of innocent persons are seriously damaged by illegal detention and police brutality. This is partly due to the legacy of the Marcos era, which has greatly contributed to an organizational culture of violation of citizens' rights. Moreover, there tends to be a degree of ambivalence toward due process in Philippine society. People who would rally for a reduction of due process in cases

involving others, may complain about insufficient due process in cases involving themselves. It has to be kept in mind that there is no quick and easy fix to peace and order problems in any country, including the Philippines. Many causes are related to historically developed political, economic and socio-cultural factors that elude social engineering to an important extent. Furthermore, it is inevitable that some tension will remain between an effective fight against crime and terrorism on the one hand, and citizen's rights on the other. Nevertheless, some broad suggestions toward improvement of both peace and order and the human rights situation in the country can be outlined.

It is to be recommended that some unworkable rules in the present situation be adjusted. In the Philippine context a revision in the requirement that the victim press charges would be appropriate, particularly in cases involving strong evidence against an accused. Such a revision would prevent crimes from going unpunished simply because victims are afraid or indifferent, or have decided for invalid reasons to smooth over the crime as the result of family or peer group pressure. One could also envisage a restriction of the right of the accused to a face-to-face confrontation with witnesses, if it can be established with plausibility that such a face-to-face meeting would have a serious intimidating effect on the said witness or victim. Such revisions however, might require constitutional amendments, which in turn demand politically suitable timing for their introduction. The political climate at present is not propitious for such amendments, because the discussion that would ensue would provoke recommendations of all sorts of other constitutional amendments that are both controversial and sensitive. Amendments in this area therefore have to wait.

It is also important to make sure that criminal procedures are clear and transparent to law enforcers. Though many violations of due process have resulted from indifference toward the rights of suspects, other violations have been due to ignorance on the part of law enforcement agents. This implies that the teaching of rules about evidence and procedures, as well as the rules themselves, should be made more easily understandable in order to help law enforcers minimize errors. The clarity and practicality of each change in criminal procedures could also be tested using a selected number of honest representatives in the lower layers of the law enforcement hierarchy.

Nevertheless, any rule of due process, whether lenient or strict, will be interpreted as an unnecessary restriction on the power to combat crime, and will be subjected to calls for adjustment. Adjustment of these rules, however, will be experienced ultimately as inadequate, leading to calls for further revisions. Consequently, the rights and freedoms of citizens will be severely restricted step by step. It is therefore imperative that a clear line be drawn beyond which the rights of citizens as expressed in the rules of due process will not be subjected to any further restrictions. Otherwise erosion of due process will effectively be legitimized and will further aggravate the already massive violation of these rights.

Instead of effecting a drastic change of the rules of due process, the improvement of crime-fighting should have utmost priority. It is to be recommended that the reorganization of police structures should be much more drastic than previous such efforts. The police culture of brutality should be squarely addressed. This implies clearer teaching,

the introduction of effective supervision, strict discipline, integrity as a major criterion for promotion, and more extensive dismissal of corrupt and abusive elements.

The government has to display clear political will by setting an example in choosing integrity and competence as important criteria above that of personal and political loyalties in the organization and reorganization of the police forces. Qualities of competence and integrity in the police will improve the fight against crime in two ways. First, it will prevent policemen from getting involved in crimes and from protecting criminals. Second, it will boost the public's confidence in the police, thereby leading them to cooperate more readily with police agents in preventing and solving crimes. This principle also applies to the witness protection program, the effectiveness of which does not depend merely on adequate logistic and economic assistance, but first and foremost on police credibility.

Respect for due process is not an excuse for unlimited leniency toward suspects or convicted criminals on the part of representatives of the various pillars of the criminal justice system. Respect for human rights does not contradict legitimate force under the rule of law. Necessary and legitimate toughness and respect for due process can and should be combined. Given the importance of modelling and example-setting in any sphere of life, it is imperative that the leadership of the various pillars of the criminal justice system set positive examples to their subordinates, as well as to the rest of society. So we may conclude that value formation is very crucial in the improvement of the justice system. This issue will be elaborated in chapter 5.

Notes

1. Human rights violations committed in the struggle against Muslim secessionists in some parts of Mindanao can also be considered as politically-inspired. These human rights violations have been less prominent in human rights debate than violations committed in the context of the struggle against communism.
2. *BAR Briefs*. Official Publication of the Integrated Bar of the Philippines. Vol.1, No 4, January-March 1996: 1.
3. This is roughly the position of veteran human rights lawyer, and later Supreme Court Justice Abraham Sarmiento who enjoys very high prestige in human rights circles and beyond (Commission of Human Rights: The Philippine Context. Lecture delivered at Madras, India, December 1992). Sarmiento was a political dissenter and human rights lawyer under Marcos and was appointed to the Supreme Court after the EDSA revolution, serving until 1991 when he had reached retirement age. He acted as the Supreme Court's special human rights conscience and dissented very frequently from the majority of the court in cases involving human rights.
4. 'Human rights are for all human beings, and respect for these are the responsibility of every member of the human race. However, the Committee emphasizes that the greater responsibility for the protection, promotion and fulfillment of human rights lies on the shoulders of the government because it is tasked by the Constitution with the sacred duty to protect the rights of all its citizens, to uphold the law, and to create the necessary conditions for the full flowering of democracy and social justice in the land. Thus, when the government violates the rights of its citizens, whether through breach, neglect or outright commission of a crime

- against them, such act becomes doubly reprehensible and doubly condemnable than if such act were committed by ordinary citizens' (Senate Report of the Committee on Justice and Human Rights, Manila 1990: 4).
5. See for instance: *Impunity, Prosecution of Human Rights Violations in the Philippines*. New York: Lawyers Committee for Human Rights, 1991: 82, and A.F. Sarmiento: 'Commission on Human Rights: The Philippine Context.' Lecture delivered in Madras, India, 19 and 20 December, 1992: 12.
 6. The human rights organizations that were affected by this split included PAHRA, the main alliance of human rights NGOs in the Philippines. At the 6th National Congress of PAHRA (26-28 October, 1994) seven reaffirmist delegations out of a total number of 52 delegations staged a walk-out.
 7. A prominent example is the article of Ramon Casiple 'Questioning Human Rights', in which he defended the rejectionist position against a reaffirmist critique (*Human Rights Forum*, IV No 2: 87-111).
 8. An example of this position is the minority reaction of CHR's commissioners Sycam and Mallillin to Amnesty International's report *The Killing Goes On* in 1992.
 9. This is the position of the Philippine Alliance of Human Rights Advocates. See for instance Casiple, 'Human Rights versus Development Aggression', *Human Rights Forum*, Vol. VI, No. 1, 1996: 43.
 10. 'Philippines 2000' Human Rights'. A policy paper by Philrights, August 1994, Philippines.
 11. 19 of these NGOs have formed an association called Alternative Law Groups.
 12. The discussion of *Valmonte v. de Villa*, and of *Guazon v. de Villa* is predominantly based on a reprint of the Supreme Court decisions in the *Ateneo Human Rights Law Journal Supplement*, December 1992: 161-166; 178-187. The original decision, *Umil v. Ramos* is based on: 187 SCRA 311-46, 202 SCRA 251.
 13. 178 SCRA 211.
 14. *Ateneo Human Rights Law Journal Supplement*, December 1992: 162.
 15. *Idem*: 162.
 16. Justice Cruz. 'Dissenting in *Valmonte v. de Villa*'. *Ateneo Human Rights Law Journal Supplement*, December 1992: 163.
 17. 181 SCRA 623.
 18. *Idem*: 165.
 19. *Idem*: 165.
 20. 187 SCRA 311; reconsideration 202 SCRA 251.
 21. The different cases constituting the *Umil vs. Ramos* case all had various specific complex details. In my discussion of this case, however, I will limit myself to the major general aspects of the decision of the Supreme Court.
 22. 121 SCRA 472.
 23. 139 SCRA 349.
 24. Section 4, Rule 110 of the Rules of Court defines an information as: 'An accusation in writing charging a person with an offense subscribed by the fiscal (prosecutor) and filed with the court.'
 25. Sarmiento in the *Ateneo Human Rights Law Journal*, December 1992: 110-113.
 26. 187 SCRA: 346-7. Reprinted in Sarmiento, A.F. *In Dissent*. Metro-Manila: A Supreme Court special edition, 1991: 84.
 27. Diokno, M.S.I. and Sanidad, A.V. 'Justice and the Rule of Law.' Paper presented before the Solidarity Seminar on Justice, 1990: 7.
 28. 202 SCRA 251, 3 October, 1991.

29. Some Filipinos regarded this assassination campaign as an effective instrument for ridding the country of corrupt and abusive law enforcers, however.
30. One Justice concurred with the majority but nevertheless objected to the invocation of Court rulings from the martial law period (*Ateneo Human Rights Law Supplement*, 1992: 184).
31. However, I do not intend in any way to suggest that members of the Supreme Court acted in bad faith.
32. 177 SCRA 310, 1989.
33. The reprint of the *Marcos v. Manglapus* case in *Ateneo Human Rights Law Journal Supplement*, December 1992: 159-161.
34. Sarmiento, 'Dissenting Opinion in *Marcos v. Manglapus*.' *Ateneo Human Rights Law Journal Supplement*, December 1992: 161.
35. *Marcos v. Manglapus*. *Ateneo Human Rights Law Journal Supplement* 1992: 160.
36. See Sarmiento: 'The Supreme Court and Human Rights. An Analysis.' *Ateneo Human Rights Journal*, Vol. 1, December 1992: 108.
37. 'Perceptions on the Judiciary: Slow Moving and Corrupt.' *Social Weather Bulletin*, 93-13, July 1993. Social Weather Station.
38. The right to a speedy disposition of cases, and the right of the poor to free access to the courts and quasi-judicial bodies and to adequate legal assistance, will be discussed in chapter 6.
39. Section 14(2) states: 'In all criminal prosecution, 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 attendance of witness 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.'
40. Sinfuego, R.C., *Manila Bulletin*, 8 June, 1995.
41. Section 5 of Rule 112 of the Law on Criminal Procedure. See Nollado, *Handbook on the Philippine National Police under the New Department of Interior and Local Government*. Metro-Manila: National Book Store, 1995: 292.
42. Section 3 of Rule 112 of the Law on Criminal Procedure. In case of lesser crimes a warrant of arrest may be issued if the judge is satisfied by the evidence presented by the complainant during the preliminary investigation, without requiring counterevidence to be presented by the suspect first (section 6b of Rule 112 of the Law on Criminal Procedure). See Nollado. *Supra*, at note 40: 288-90.
43. One government prosecutor illustrated this with the story of a kidnap-for-ransom case. Two brothers, Chinese businessmen, were abducted in their car by a kidnap-for-ransom gang. Their mother and a domestic helper accidentally were present as well. Already during the trip to the gang's hide-out, negotiations about the terms of release took place. The mother was released from the car to raise the money. A special police squad was tipped-off about the incident. This squad managed to locate the hide-out of the gang and to arrest its members before ransom could be paid. In spite of the fact that the gang was arrested, the brothers and the mother were too terrified to press charges. Fortunately in this instance, the domestic helper did, though she was just an incidental target of the crime. She had been sexually abused by the gang, which made her anger stronger than her fear.
44. It is striking in this context that the announcement by the Alex Boncayao Brigade, the urban hit squad of the CPP/NPA, that it would assassinate criminals met a positive response amongst various non-communist newspaper journalists. Another recent manifestation of extra-judicial justice was the killing of suspected drug peddlers in downtown Manila in late 1993. The victims usually carried a message stating that they had been killed because of drug trafficking.

It is not certain yet, however, whether these killings were conducted by secret police hit squads or were the result of a war between rivaling drug gangs. These extra-judicial killings have also met a positive response from various sectors of society.

45. *The making of injustice*. Editorial by Leonard S. de Vera. *BAR Briefs*, January-March, 1996.
46. 'Is There Life Behind Bars? Prison Justice and Development Program.' Flyer from Caritas Manila.
47. This leniency is also characteristic of child-raising which is predominantly non-disciplinarian. See for instance Kabisig, *Filipino Values and National Development, Readings on the Moral Recovery Program*. Metro-Manila: Kabisig People's Movement 1993: 18.
48. This remarkable leniency was clearly exposed and strongly criticized by a retired Supreme Court justice in his column in a well-read newspaper (Justice Isagani A. Cruz in the *Philippine Daily Inquirer* of 14 May, 1995). The movie actor's luck with the judiciary ran out when a Regional Trial Court Judge gave him a long prison sentence for illegal possession of firearms. Nevertheless, he was given preferential treatment in prison as well. For instance, he was allowed a celebrity wedding held on the prison grounds.
49. Another term in this context is *pakikisama*. It refers to a tendency to get along with others in such a way as to avoid outward signs of conflict, including the acceptance of conduct from others that one actually dislikes or of which one disapproves. It is related to a deeper value called *pakikipagkapwa* which refers to a shared human identity and a desire to be treated as an equal. *Pakikisama* also refers to a spirit of unselfish comradeship. Related to the second meaning of the latter term is *tayo-tayo* which refers to special in-group relations. Despite the penchant toward 'smooth interpersonal relations', social harmony breaks down very frequently. In those cases smooth interpersonal relations may turn into bitter feuds and rivalries that may go on for a long time, even among relatives and former friends.
50. Department of Justice.
51. See for instance Narvasa, *Challenge and Triumph. Reflections on Law and Justice Part III*. 1995, Metro-Manila: Supreme Court Press: 178.
52. Kabisig, *Supra*, at note 46: 13-14. This allegedly inadequate commitment to the common good is frequently explained on the basis of the colonial experience. Because the Philippines was under colonial rule for many centuries, and for the most part even under very direct colonial rule, the realm of the nation-at-large was experienced as alien, as part of the world of the colonizers. This experience further facilitated the strength of particularistic loyalties and inhibited the development of a commitment to the interests of the nation at large.
53. This 'salvage' culture has been analyzed by, amongst others, Amando Doronila in his column in the *Philippine Daily Inquirer* of 26 June, 1995.
54. Study by the Ateneo Law School's Human Rights Center, as quoted in the *Philippine Daily Inquirer* of 17 November, 1994.
55. A good example of such a frame-up is the case of a former Filipino boxing champion who dismissed his manager. The manager was offended by this decision and retaliated. Through the promise of some material benefits, he persuaded the boxer's housemaid to file a complaint against the boxer for rape. The boxer was arrested and denied bail. After a while, the former manager changed his mind and publicly confessed that he had framed the boxer. Yet charges against the boxer could not be dropped. Since the housemaid filed the complaint, only she could retract it. She went home to a locality far from Manila and was not able or willing to return to retract her statement. Since a motion for bail had been denied, the boxer had to stay in jail for the time being (Joaquin Henson in the *Philippine Star*, 24 November, 1993).
56. As of July 1996, the case was still dragging on. FLAG, a leading human rights NGO is presently acting as counsel for the policemen who 'blew the whistle'. Out of discontent with

the treatment of these whistleblowers, FLAG has even taken the case to a United Nations body.

57. *Philippine Daily Inquirer*, 4 June, 1995.
58. Republic Act No 7659, 13 December, 1993.
59. R.A. 8177, 20 March, 1996.
60. Case Monitoring Division, ODI, PNP, as quoted in Philrights, *Growth 2000: Selective Prosperity*. Metro-Manila: the Philippine Alliance of Human Rights Advocates, 1997: 63.
61. Diokno, M.S.I. and Sanidad, A.V. 'Justice and the Rule of Law.' Paper presented before the Solidarity Seminar on Justice, 1990: 11.
62. Alledo, et al. v. Judge Diokno, G.R. 113630. *1993-1994 Annual Report of the Supreme Court*: 42.

Politics and the Independence of the Judiciary and the Bar

Fiscal Autonomy and Administrative Supervision of the Courts

During the 20 years of his rule, Marcos controlled the judiciary through a system of appointments, manipulation of debts of gratitude, subtle pressures, active discouragement of dissent through repression and – when necessary – by circumventing or ignoring the courts.¹ Strikingly, however, Marcos actually increased the formal independence of the judiciary after declaring martial law in 1972.

This paradox of increased formal – and decreased effective – independence stems from the fact that Marcos was both a skillful tactician as well as an eminent lawyer himself. Therefore he was quite resourceful in legitimizing his *de facto* monopolization of power with plebiscites, institutional changes, populist or nationalist rhetoric and constitutional provisions regarding the independence of the judiciary.

His 1973 Constitution granted the Supreme Court substantial powers. Marcos had adopted from the 1971 Constitutional Convention the proposal to transfer the supervision of the lower courts from the Department of Justice to the Supreme Court. This supervision included both practical care of the material facilities and labor conditions of the courts plus the disciplining of judges, justices and court personnel. Before 1973, supervision over the courts was primarily the duty of the Judicial Superintendent, who was an official of the Department of Justice under the executive arm of the government.

An important argument advanced by the 1971 Constitutional Convention in favor of the transfer of disciplinary supervision over the courts from an officer of the executive branch to the Supreme Court, was that such a shift would reduce political influence on the dispensing of discipline. A further argument was that the Judicial Superintendent exercised sizeable powers in disciplinary matters and consequently could easily use favoritism in his administrative and disciplinary actions as well as in the transferring of judges. A shift of administrative and disciplinary responsibilities would therefore increase the independence of the judiciary. The 1973 Constitution further assigned ultimate responsibility over organization and discipline of the bar to the Supreme Court as well.

The 1987 Constitution adopted the provisions from the 1973 Constitution concerning supervision over the lower courts and the bar. Clearly, the new democratic order after the EDSA revolt could not legitimately afford to grant the judiciary less formal powers of independence than had the Marcos dictatorship. The extensive supervisory powers made the renovated Supreme Court a powerful instrument in devising and implementing much needed reforms in the legal system. In this judicial reorganization only five incumbent justices of the Supreme Court under Marcos were reappointed by President Aquino.

The Administration of the Supreme Court

A few years after the EDSA revolt, the extensive supervisory powers of the Supreme Court raised considerable problems. One such problem was that the details of administrative supervision represented a considerable strain on the work load of the Supreme Court. Marcos had already created the Office of the Court Administrator to deal with the administrative burdens. This office remained in charge of judicial administration in the post-EDSA era. Nevertheless many decisions regarding administrative matters were still presented to the Supreme Court justices for confirmation. A knowledgeable insider estimates that in 1993, around 40% of the *en banc* meetings of the Supreme Court were dominated by administrative matters, such as how many pencils should be allocated to a particular court, how many typists, etc. Furthermore, the Office of the Court Administrator has limited staff and facilities.

A more fundamental objection to the extensive powers of administrative supervision exercised by the Supreme Court, is that the justices of the Court are simply not capable of efficient judicial management, since they have not been recruited on the basis of managerial or administrative skills. This objection also applies to the staff of the Court Administrator's office, which, according to critics, consists of former judges with little training and experience in management.

The notion that the administrative burden of the Supreme Court has become too heavy is widely accepted, even by the Court itself. Therefore there appears to be ample support for a transfer of at least a part of the administrative responsibility over the courts to the Department of Justice. A major problem posed by this, however, is that such a transfer would require a constitutional amendment. But proposal of constitutional amendments, as mentioned earlier, is very risky in the Philippine political climate of the 1990s, since this would trigger numerous other proposals for less desirable constitutional amendments. In addition, no consensus exists concerning to what extent responsibilities over the courts should be transferred. The least controversial proposal involves shift of responsibility for the material resources of the courts, such as books, pencils, typewriters, computer, etc. back to the *Department of Justice*. The shift of responsibility for human resources decisions, such as transfer of judges from one sala to another and the allocation of court staff, is already much more contested.

The most controversial part of a potential transfer of responsibility to the *Department of Justice* concerns the disciplinary supervision of judges and court staff. Proponents of a shift of disciplinary supervision argue that discipline by the Supreme Court cannot be adequate, as justices will naturally be inclined to be too lenient on their fellow members of the judiciary. Such persons believe that the degree of favoritism on the part of the Judicial Superintendent in judicial organization before 1973 has been exaggerated. In disciplinary matters against judges complaints first had to be investigated by the Office of the Solicitor-General. This office would articulate recommendations regarding disciplinary actions which were binding on the action of the Judicial Superintendent. So the role of the Office of the Solicitor-General acted as a check on the power of the Judicial Superintendent in disciplinary cases.

The Supreme Court has consistently defended itself against accusations of being too lenient in disciplining judges by referring to its disciplinary record, which will be

discussed in the section on 'Supervision and Discipline', in chapter 5 of this study. Furthermore, disciplinary cases against judges are always reviewed by the Supreme Court as a whole. This inhibits favoritism by individual justices in disciplinary cases and acts as a check against possible favoritism from the Court Administrator or his deputies.

A fundamental argument against the transfer of disciplinary supervision to the Department of Justice is that it increases the possibility that such supervision of the judiciary will become politicized again. The executive can, in principle, be tempted to use disciplinary measures to punish judges who decide cases against the executive's interests. Furthermore, fear of retaliation through disciplinary action will act as a form of self-censorship, so that judges and justices feel pressured to decide cases in favor of the interests of the executive. Disciplinary supervision by the executive over the courts is therefore a serious potential threat to the independence of the judiciary. The foreseen role of the Office of the Solicitor-General in disciplinary cases against judges would not diminish this threat, as this Office is as much a part of the machinery of the executive as that of the Department of Justice. The involvement of the Office of the Solicitor-General therefore constitutes an insufficient guarantee against politicization of the disciplinary supervision of judges. Such a threat to judicial independence also exists if the Department of Justice is put in charge of the administrative transfer of judges. The executive may punish judges it feels are too independent-minded by transferring them to salas in remote areas.

Fiscal Autonomy

According to the 1987 Constitution, the judiciary exercises fiscal autonomy. In actual practice, however, this autonomy has not been respected. Until 1993 the budget proposals for the judiciary as drafted by the Supreme Court were integrated into the overall budget proposal for government branches that the Department for Budget and Management offered for ratification by Congress. This department tended to introduce considerable changes in the budget for the judiciary, even without consulting the Supreme Court. In 1993, the Supreme Court decided to send its budget proposal directly to Congress, and to urge the Department of Budget and Management to consult the Supreme Court before proposing any changes. However, the budget proposal for the judiciary may still be subjected to considerable changes, both from Congress and from the Department of Budget and Management. The timing of the release of the allocated funds is also still determined by this Department.

In practice, this means that both the executive and legislative bodies exercise substantial control over the budget for the judiciary. It also implies that the extent to which the financial demands of the judiciary are met by Congress and the government is to a large extent an outcome of political bargaining rather than a matter of automatic appropriation. Success in this bargaining process depends greatly on the political skill of the Supreme Court, notably of the Chief Justice.

The budget for the judiciary has been grossly inadequate. The Supreme Court has estimated that an effective judiciary would require a raise in its budget from less than 1% to at least 2.5% of the annual total government budget. The low allocation of funds to the judiciary have often been legitimized by the fact that the judiciary has to compete

with other important concerns in the country, such as education and medical expenses. Moreover, a significant portion of the budget is 'eaten up' by expenditures related to repayment of the country's huge international debt, which the Aquino and Ramos administrations inherited from the Marcos era.

In 1995, the Ramos administration and influential members of Congress promised a substantial amount of extra money for the judiciary on top of the regular allocations. This amount is the judiciary's share of a special allocation to the various sectors of the criminal justice system. This special allocation was expected to be financed from the sale and conversion for commercial uses of former military land. Initially, the amount of money that was promised as the result of the sales was one billion pesos. Later, the promised amount dropped to 600 million, and consequently to 300 million pesos. Since many agencies lobbied to secure a large share of the fund, by July 20, 1996, it was uncertain whether the amount to be allocated for the judiciary might drop even further, and whether the original promise to release the amount in one lump sum, rather than in a piecemeal fashion, would be kept. Apart from that, this allocation was to be released through the Department for Budget and Management, rather than transferred directly to the Supreme Court.

Although quite welcome from a purely pragmatic point of view, a huge incidental lump sum also has its drawbacks for the independence of the judiciary. In the Filipino context, in which reciprocal favors and obligations play a crucial role in the political field as well as in society in general, such a lump sum is like a large political spoil for the judiciary. Such a spoil consequently exercises pressure on the judiciary to reciprocate to the government – or to the ruling party or politicians primarily responsible for fixing this amount – by means of favorable rulings. Strictly speaking from the perspective of the independence of the judiciary, it appears to be more appropriate for the government and the Congress to provide the judiciary adequate funds through structural, automatic appropriations rather than through incidental spoils.²

In addition to funds from the national budget for the judiciary, individual judges also receive an allowance of about 25% of their salaries from the local governments of the areas in which their salas are located. However, the local authority can withhold the allowance at its discretion. Because the salaries of judges are modest and the Supreme Court is unable to provide sufficient extra resources, this allowance from the local government is widely accepted in the judicial system. However it holds obvious risks for the independence of the lower courts, since the allowances can be – deliberately or indeliberately – used by local governments to exercise undue pressure on judges to decide in favor of their interests.

Another provision of both the 1973 and 1987 Constitutions is the security of tenure that judges and justices enjoy. The national executive branch does not have the right to 'punish' uncooperative judges and justices by dismissing them. Congress has the right to impeach the members of the Supreme Court, but for this a two-thirds majority is required. A drawback of tenure security is that it acts as an inhibiting factor in dismissing incompetent judges. The judicial reorganizations in 1972, under Marcos, and in 1986, under Aquino, in which judges were forced to resign and were reappointed selectively, were supposed to cleanse the ranks of the judiciary of bad elements. The reorganization

in 1973 partly served to subordinate the judiciary to the Marcos regime, while the reorganization of 1986 was insufficient, as was pointed out in the section on 'The Lower Courts and Politically-Inspired Human Right Violations' in chapter 3, since, amongst other things, this reorganization was impeded by political considerations exercised in the reappointment of judges.

The Appointment of Judges and Justices

The most important change that the 1987 Constitution introduced in order to increase judicial independence concerned procedures for the appointment of judges and justices. Prior to 1987 judges and justices were directly appointed by the Philippine President, with the decisions having to be confirmed by the Commission of Appointments, a congressional body that reviews a range of presidential appointees for public service. In actual practice this meant that each appointee had to be backed by a powerful politician. This arrangement did not contribute to judicial independence in a country in which the principle of *utang ng loob* or 'debt of gratitude' (literally debt from within) runs strong.³ Another reported drawback of the old system was that it gave the Judicial Superintendent power, which he could use to promote friends or allies to positions in the judiciary.

Since 1987 prospective members of the judiciary are selected by the Judicial and Bar Council (JBC). This is a committee consisting of seven members representing the Supreme Court, the Department of Justice, Congress, the Integrated Bar of the Philippines, the academic community, the private sector, and a retired member of the Supreme Court. It is assisted by several consultants, the most important of whom is the Court Administrator. Formally the Judicial and Bar Council operates under the supervision of the Supreme Court. However the appointments of specific members to the Council have to be approved by the Commission of Appointments.

In principle every citizen has the right to file names of candidates for the judiciary with the JBC. For each vacancy the JBC selects three to five formal candidates, from whom the President appoints one. The three to five candidates are not hierarchically listed; the JBC does not explicitly express preference for one of the three to five candidates that it recommends to the President. This procedure reduces – but does not altogether eliminate – the influence of both the executive and the legislative branches. Before the Judicial and Bar Council formally presents candidates to the President, their names are made public (though these names are generally not widely publicized in the press, unless the nominations concern vacancies in the Supreme Court). It is a prerogative of the public to raise potential objections to candidates selected by the JBC, for instance if a nominee has a reputation for corruption. The JBC assesses these objections and declares them valid or invalid. Candidates must file individual applications as well, and are interviewed once or twice by the JBC.

Initially, the JBC tried to strike a balance between candidates from the private sector, academia, the bench and government agencies, such as quasi-judicial bodies. During the last few years it has started to put more emphasis on career options for members of the bench. Increasingly, Regional Trial Court Judges have been promoted to the Court of

Appeals, which had been an emphatic request from the Philippine Judges Association. Similarly, candidates for the Supreme Court increasingly tend to be selected from among senior justices of the Court of Appeals and from the *Sandiganbayan*. This tendency deviates from that of the first years following the EDSA revolt, in which many private lawyers and law professors were appointed to the Supreme Court. Between 1993 and July 1996, all except one of the new Supreme Court justices were appointed from the ranks of justices from these higher courts.

The Chief Justice is directly appointed by the President at his or her discretion from among the Associate Justices of the Supreme Court. In the post-EDSA era, four Chief Justices have been appointed, all by President Aquino. The degree of seniority has been an important, though not always decisive, criterion in the appointment of the Chief Justice, as in the appointment of the Presiding Justice of the Court of Appeals.

The JBC has remained controversial in the Philippines. The judges generally seem to be relieved that they no longer need to be screened by the Commission of Appointments. One of the reported problems of this congressional body is that it is frequently abused by politicians for personal grandstanding. Candidates for the bench who were screened by this committee were subjected to a severe review by politicians who wanted to show their toughness to the public.

Yet it was also argued that the Commission of Appointments exercised a positive impact on the quality of the members of the bench, particularly when it concerned vacancies for the Supreme Court. The tough screening by the Commission of Appointments ensured that only the very best candidates for a position in the higher courts remained. One senior lawyer recalled that on one occasion in the past, when a candidate for the bench still had to pass the Commission of Appointments, a rumor that a specific candidate for the Supreme Court had consulted a psychiatrist resulted in close scrutiny of his mental stability. In this lawyer's opinion, the screening procedure of the JBC is not by any means strict, thus allowing vacancies in the higher courts to be filled by rather mediocre candidates: 'a few decades ago the members of the Supreme Court were legal giants you would look up to. If you would meet them, you would keep your hands on your back because you did not feel worthy to shake their hand. Their decisions were a pleasure to read, profound, creative and eloquent. Many members of the present Supreme Court are adequate, but not of top quality. And some members cannot even write intelligible English'. In his opinion, the negative influence of meddling politicians in the previous procedures for appointment of judges and justices tends to be exaggerated: 'if a politician actively lobbied for the appointment of a candidate, he really had to make sure that candidate was good. If he supported a candidate of poor quality, it would backfire on him. He would lose credibility with his colleagues'.

For the staunch defenders of the JBC, however, the reduction of the influence of politicians on the appointment of judges and justices is primarily one of principle, not of practical expediency. In their opinion, politicians should have only a limited impact on the appointment of the members of an independent judiciary.

Because the Philippine President ultimately appoints one candidate from the list submitted by the JBC, he necessarily exercises an important influence on the judiciary.

Although President Ramos inherited a full Supreme Court from his predecessor, he has had the possibility of drastically influencing the composition of the Court. Between his inauguration in 1992 and July 1995 he replaced 10 justices from the Aquino period, due to retirement, death or voluntary resignation.⁴ So as of July 1995 he had appointed two-thirds of the members of the judicial institution that must review the constitutionality of his decisions.⁵ Thus naturally President Ramos appointed candidates whom he expected would be at least relatively favorable to his government, or expected loyalty from these new appointees because of their debt of gratitude toward him.

Nevertheless, the debt of gratitude expected by the President has not always worked in his favor, as was shown in a controversial decision by the first division of the Supreme Court in June, 1996. In this ruling, earlier decisions by a Regional Trial Court and by the Court of Appeals were upheld restraining the government from continuing a preliminary criminal investigation against the cigarette companies of an industrial tycoon and former Marcos crony. The Ramos administration filed a petition for review on *certiorari* with the Supreme Court, arguing, amongst other things, that the RTC and Court of Appeals had committed 'grave abuse of discretion amounting to lack or excess of jurisdiction'. The government's petition was dismissed by the smallest possible margin: 3 against 2, with one of the three members of the majority dissenting in part. It is striking however that the two justices who formed the heart of the majority were both recent Ramos appointees, and the chairman of the division, who dissented in the strongest possible terms, was an Aquino appointee. This controversial case will be further discussed in chapter 5.

The Politics of the JBC

Though the JBC has somewhat reduced the influence of powerful politicians on judicial appointments in terms of formal procedures, its introduction has not precluded informal lobbying for appointments. The set-up of the JBC does not even automatically prevent the President from appointing a candidate he already was considering before the JBC recommendation procedure started. If he, or another executive representative or political ally in Congress, is able to convince the JBC to include his favorite candidate on the list of three to five nominees, he can freely and legitimately appoint his own candidate, all the hard work by the JBC in screening candidates notwithstanding.

Apart from the informal meddling of politicians there is also the influence of other personal networks, such as fraternities, business, and cause-oriented civil groups. Some critics of the JBC even doubt whether the influence of powerful lobbies in the appointment of judges and justices is any less now than under Marcos: 'the judiciary under Marcos was not independent of course. Yet the impact of the Marcos administration was very subtle. You hardly noticed it. But these days the lobbyists are so conspicuous in what they are doing.' Apart from lobbying by third parties, direct lobbying by prospective candidates for an appointment or promotion in the judiciary has by no means disappeared.

The influence of networks in the appointment and promotion of judges and justices is stronger in the higher courts: i.e. the Supreme Court and the Court of Appeals. These courts have relatively few members (15 for the Supreme Court and 51 for the Court of Appeals) and many interested candidates for available positions. The influence of

networks is less relevant in the appointment of members of the lower courts, since there are actually few qualified and interested candidates for the many vacancies available.

Critics argue that the members of the JBC themselves base their recommendations predominantly on personal and political considerations rather than on professional qualifications. This has allegedly resulted in the admission of misfits into the judiciary. However in all probability in the early stages of selection by the JBC, personal and political factors tend to be subordinate. The increasing tendency to promote career judges to the higher courts automatically restrains political and personal considerations to a certain degree. But in the final nomination and appointment of justices personal and political considerations certainly play a role. As a court official put it: 'if you have to choose between two candidates with good paper qualifications, you naturally want to minimize risks and choose the person you know best'.

The JBC is further unable to prevent candidates from exercising 'self-censorship' to boost their chances for appointment or promotion. Generally candidates for a promotion or *prime* appointment to the bench receive advice not to antagonize powerful interests in their judicial decisions, particularly when they aspire to a high position in the judiciary.

Quality of Judicial Candidates

Another important challenge to the credibility of the JBC concerns its ability to present competent and honest candidates. The JBC has been subjected to heavy criticism on this issue. Critics argue that many recent candidates for the bench are of low professional quality and sometimes of dubious moral character. They cited a case in 1993 in which a former member of a quasi-judicial body, who allegedly had a reputation for corruption in the exercise of his previous public office, was appointed as a judge to a Regional Trial Court. Some critics are clearly biased in their judgments, however, and have hidden personal motivations for articulating this criticism. One staunch critic is a former senator who served as the running mate of Marcos during the 'snap elections' in 1986 which finally resulted in the EDSA revolt, and was also involved in the first coup attempt against the Aquino regime in 1986. Another very vocal lawyer-columnist holds various personal grudges against the Supreme Court which he vents in his newspaper columns. Nevertheless, honest and well-informed representatives of the legal system also voice criticism of the Judicial and JBC's lists of candidates for the bench.

Staunch defenders of the JBC do acknowledge that there are still serious problems. One such defender, a reputable former leading member of the bench, stated that she is sometimes shocked by the ignorance of the law demonstrated by many judges, even among those appointed after 1986. Another reputable defender of the JBC partly blames the public for the fact that some judges with notorious reputations are appointed to the bench. In her opinion, the JBC does its very best to screen candidates, frequently calling upon the National Bureau of Investigation to keep out lawyers with poor reputations. But she thinks that the public often fails to notify the JBC of complaints against candidates, or publicizes these complaints only after a candidate has already been appointed. The public's reluctance to file complaints against notorious candidates seeking a position in

the judiciary is comparable to the reluctance that many witnesses and victims display whenever they have to testify in crime cases.

Two factors that obviously inhibit the efforts of the JBC in finding competent and sincere candidates are that corruption is often hard to prove and that a shortage exists of eligible and willing candidates for the bench, particularly for the MTC's and RTC's. This problem is aggravated by the great number of vacancies in these courts. In certain cases, the JBC has to choose between two evils: either to nominate candidates of questionable competence, or to leave yet another judicial position vacant.

Because of this shortage of eligible candidates, the JBC's method of operation has a serious practical drawback: it slows down the appointment of judges in the lower courts. Because each vacancy in the judiciary requires at least three candidates, the President cannot appoint and fill that vacancy, even if there is only one good candidate for the position. This requirement further facilitates complicated and artificial strategies to cope with the problem of unfilled vacancies. The problem of filling the vacancies in the 220 new Regional Trial Court salas after 1986 is a case in point. The majority of these new salas are still vacant. If one wants to fill 220 vacancies immediately, one has to nominate 660 candidates. There are simply not that many candidates available. Consequently, these vacancies are filled in a piecemeal fashion. First several salas are completed. Candidates not appointed for posts in these salas are placed on the list of three candidates for another vacancy. When that vacancy is filled, candidates not selected will be presented for another vacancy, and so forth. Another implication of this is that very few candidates are ultimately rejected. Most candidates will be appointed somewhere in the end according to this scheme of operation.

The problem of finding suitable candidates is much less pressing in relation to the higher courts, such as the Court of Appeals and the Supreme Court, since these courts have quite a restricted membership and consequently few vacancies. Since an appointment in one of the higher courts is also rather prestigious, despite the comparatively low salary, it is less problematic to find a sufficient number of candidates for vacancies in these courts. Nevertheless, it is increasingly becoming problematic to attract the very best candidates for these posts. As a result, the quality of decision-making in the higher courts has become subject to criticism, and the Supreme Court has been plagued by several public scandals and controversial decisions. Therefore reputable members of the legal system currently no longer consider it a great honor to be appointed to the Supreme Court. The classic idea that membership in the Supreme Court forms the crown in the career of every lawyer is now subject to erosion. This trend poses a serious problem, because the very heavy responsibilities with which the Supreme Court is charged under the 1987 Constitution – and the complex nature of the various issues it addresses, such as commercial disputes and economic policies – require the very best candidates that the Filipino legal system has to offer.

The Appointment of the Chief Justice

A special case among the procedures for appointing judges and justices is the appointment of the Chief Justice. Though he is formally a *primus inter pares* in the Supreme Court, his influence is formidable. He heads various important committees, such as the

Judicial and Bar Council; he presides the *en banc* deliberations and plays a key role in the decision making process; he is the ultimate supervisor of all activities of the Supreme Court; and he is the central link in the chain of contacts between the judiciary and the other main powers in society. Because of the important role of the Supreme Court in the post-EDSA political order and the central role of the Chief Justice in this Court, the Chief Justice faces strong and multiple pressures in his work. His central role makes the work and appointment of the Chief Justice easily subject to a high degree of politicization.

The Chief Justice is appointed by the President from among the incumbent Supreme Court justices at his or her discretion. The Constitution does not mention any additional substantive or procedural requirement for the appointment of the Chief Justice, apart from the fact that he or she has to be an incumbent justice of the Supreme Court. Between 1986 and July 1996 four Chief Justices were appointed, all by President Aquino. Though seniority played some role in the appointment of these chief justices, the criterion of seniority was not strictly or consistently followed.

The criteria applied in appointment of the Chief Justice have also been subject to debate in the Philippines. Some persons favor seniority as the sole criterion, pointing to the clarity of its application and the opportunity it offers to prevent politicization of the appointment. A disadvantage of the seniority criterion is that the most senior justices may not necessarily constitute the most competent candidates. Other alternative proposals have also been advanced. One retired justice, for instance, has proposed that the Chief Justice be elected by the justices of the Supreme Court themselves at least every two years.⁶ He asserts that this arrangement seems to work well in certain Latin-American countries. An important argument for this proposal is that election by his or her peers will guarantee that the Chief Justice is really trusted by the other justices, which is an absolute requirement for an effective functioning of this position. Another argument suggests that if the Supreme Court is truly independent, then the appointment of its head, the Chief Justice, should be the exclusive prerogative of the Supreme Court itself. An argument against this proposal, however, is that election by peers might increase rivalry between justices who aspire for the position of Chief Justice, and may lead to active lobbying and factionalism in the Supreme Court.

It seems that the criteria for the appointment of the Chief Justice cannot be isolated from the scope of the Supreme Court's responsibilities, nor from its internal division of labor. The wide range of administrative responsibilities assigned to the Supreme Court in the Philippines makes it difficult to apply the same criteria for appointment of the Chief Justice as are used in other national contexts in which the Supreme Court merely deals with issues of law. The broad scope of administrative responsibilities requires substantial competence in the area of management and administration. The most senior associate justice may not necessarily meet this profile. One could address this issue by delegating administrative responsibilities to a special administrative division in the Supreme Court which would be in charge of the supervision of the Office of the Court Administrator. The chairman of this division should be specifically selected on the basis of management and administrative qualities. As a result the Chief Justice would be relieved from administrative duties, and therefore not need to be appointed partially on the basis of qualities in the area of management and administration.

The criteria for appointment of the Chief Justice also cannot be isolated from the quality of the criteria and procedures for appointment of justices of the Supreme Court in general. If the appointed justices of the Supreme Court are consistently of top quality, the criteria for the appointment of the Chief Justice are somewhat relativized and the chances of an inadequate Chief Justice being appointed are consequently low, provided that the executive does not resort to appointing a complete outsider to the Court as Chief Justice. Consistent top quality and integrity among the Associate Justices further acts as a check on potential usurpation of excessive power by the Chief Justice. Lastly, even if the Chief Justice does not prove adequate in his tasks, the consistent top quality and integrity of the associate justices guarantees that other justices will step in to compensate for the Chief Justice's inadequacy, and thus guarantee the continuation of proper administration of justice by the Supreme Court.

The Economic and Political Power of the Judiciary

The 1973 Constitution of Marcos retained and even increased the powers of judicial review over executive decisions that the Supreme Court had exercised under the pre-martial law Constitution of 1935.⁷ But the 1973 Constitution did not include, at least not explicitly, the power of judicial review over presidential decrees, whereas these presidential decrees formed the main instrument through which Marcos exercised his power.

The 1987 Constitution remedied the omission in the 1973 Constitution by explicitly subjecting presidential decrees to the Supreme Court's powers of judicial review. According to the 1987 Constitution, the Supreme Court has the power to declare any decision or action by an executive agency or legislative body unconstitutional by a mere majority vote. But the power of review also includes the power to declare executive decisions invalid because of 'abuse of discretion amounting to a lack or excess of jurisdiction'. A dominant objective of these provisions was to protect civil and political liberties as a reaction to the excesses during the Marcos dictatorship. During the Marcos era, the courts were often denied the right to order the release of political detainees, or to deal with other measures regarding civil liberties, because Marcos regarded these measures as political matters and thus as exclusively within his executive jurisdiction. In a number of cases the judiciary accepted the invocation of the political argument and refused to review these measures affecting civil liberties. The 1987 Constitution enlarged the provisions on judicial review in order to prevent this abuse of the political prerogative from occurring again.⁸

The influence of the Supreme Court on the political life of the country, and more significantly on issues of economic policies, increased as a consequence of the enlarged judicial review. If there was 'abuse of discretion amounting to a lack or excess of jurisdiction' on the part of a government official or agency, individuals or organizations whose interests were affected by government decisions could approach the courts to seek redress. This provided aggrieved parties, including large companies, the opportunity to address petitions to the courts pertaining to economic policies or specific decisions by

government agencies that in some way affected their economic interests. Since aggrieved parties eagerly sought this kind of redress from the courts in economic disputes, the Supreme Court became a final arbiter in matters of economic policy on many occasions.

Political Influence

The extensive influence of the Supreme Court on the political and economic life of the country through the power of judicial review has been seriously criticized.⁹ One fundamental objection to this review is that it is undemocratic because a body that is not elected by the people can overrule decisions made by an elected president and/or Congress. A related argument is that judicial review may tempt the judiciary to unduly interfere in matters of the executive and legislature, and thus violate the doctrine of the separation of powers.

A case in 1992, in which the Supreme Court became involved in the specific composition of an important legislative committee, may illustrate this point. The Commission of Appointment, which has to approve presidential appointments in the cabinet and various other important offices, consists of 12 senators and 12 members of Congress, in addition to the President of the Senate serving in an 'ex officio' capacity. The members of the Commission are elected by the Senate and the House of Representatives on the basis of equal representation. Following the 1992 elections, four party coalitions were represented in the Senate. The number of their Senate seats determined the number of seats to which they were entitled on the Commission, according to the following schema:

Coalition	Senate seats	Entitled Commission	Actual Commission
Coalition No. 1	15	7.5	8
Coalition No. 2	5	2.5	2
Coalition No. 3	3	1.5	1
Coalition No. 4	1	0.5	1

Coalitions 1, 2 and 4 decided to pool their resources, thus becoming entitled to 10.5 seats collectively, for which they claimed 11. To achieve this, the largest coalition received a total of eight seats, whereas it could officially claim only 7.5, the second group agreed to two seats, whereas it could have claimed 2.5, and the smallest coalition received one seat, whereas it was entitled to only 0.5 seats. Faction number three, which was left with only one seat, whereas officially it could claim 1.5, protested to the Supreme Court, claiming that the pooling of resources was a breach of the constitutional principle of proportionate representation. The Supreme Court agreed with this protest, interpreting the constitutional requirement of proportional representation as meaning that no coalition could convert a claim to half a seat into a whole seat in the Commission. Consequently it annulled the election of two members of the Commission and articulated three specific guidelines for the future appointment of its members. The Court further argued that if

the requirement of proportionate representation presented difficulty in filling all the seats in the Commission of Appointments, some seats should better remain vacant, as long as there was the required quorum in the Commission meetings.¹⁰

Judicial review also makes the judiciary, and particularly the Supreme Court, a key player in major political controversies. This has become dramatically evident in a few cases involving initiatives to extend the terms of elective officials.¹¹ According to the Constitution, a so-called people's initiative can directly propose constitutional amendments upon a petition of at least 12 percent of the total number of registered voters, of which every legislative district must be represented by at least three percent of its registered voters. Subsequently, such a people's initiative has to file a petition with the Commission on Elections (Comelec). Subsequently, the Comelec has to organize a plebiscite in which the electorate at large will vote on the proposed amendment, provided that Comelec considers the petition as valid. In the course of 1996, an organization called PIRMA, filed such a petition with the Comelec. The main amendment proposed by this organization consisted of a change in the maximum term that the 1987 Constitution had imposed on elective officials. This and accompanying amendments would allow President Ramos to run for another term of office, and permit various other politicians reaching term limits in 1998 to stand for re-election as well. Various opponents to the proposed constitutional amendments filed a petition with the Supreme Court to stop the Comelec and PIRMA from proceeding with the initiative toward constitutional amendments. One of the arguments raised by the opponents was that the 1987 Constitution does not allow a people's initiative to propose drastic changes such as the extension of terms of elective officials. Section 1 of Article XVII of the Constitution permits Congress to propose both amendments to and revisions of the 1987 Constitution. But according to section 2 of the same Article, the 1987 Constitution restricts the people's initiative to proposing amendments. In the opinion of the opponents, an extension of the maximum term of office of elective officials would so violate the spirit of the Constitution that it would amount to an overhaul of the Constitution rather than a mere amendment of it.

On 19 March, 1997, the Supreme Court upheld the petition of the opponents to the constitutional amendments. The Supreme Court unanimously ordered the dismissal of PIRMA's petition toward constitutional amendments to the Comelec. On 16 December, 1996, the Supreme Court had already issued a Temporary Restraining Order preventing the people's initiative from proceeding while the case was pending in court. The Supreme Court ordered the dismissal of PIRMA's petition for constitutional amendments mainly on technical grounds. According to the Supreme Court PIRMA had failed to 'append the number of signatures required for the initiative to proceed'. Eight of the justices also mentioned a more fundamental reason for dismissing the petition. In their opinion the Constitution requires that an appropriate law be passed regarding the implementation of the right to a people's initiative and that such a law does not exist yet. Six justices disagreed with this opinion. In their view such a law should not be necessary, and in any case one existing law may be regarded as already adequate for the implementation of the right to a people's initiative.

Since the people's initiative has been facilitated by the ruling Ramos faction, and since both President Ramos and various of his supporters are important beneficiaries of such

a people's initiative, this decision implies a clear counteracting of the political interests of the powers-that-be. More importantly, it is difficult for the Supreme Court to act, and appear to act, as a completely neutral arbiter in a case like this, since its own interests are also at stake. If such a people's initiative toward constitutional amendments succeeds, it would allow powerful opponents of judicial power, and particularly President Ramos, to remain in political office, and would increase the possibility of their eventually materializing their recurrent threat to reduce the scope of judicial review and power.

A related decision bearing a high degree of politicization concerns a petition by two organizations of *barangay* officials who asked for the postponement of *barangay* elections for two years. Critics of the government regard this petition as a move by the government to help pave the way for the extension of the terms of other elective officials. The Supreme Court unanimously decided that neither the Constitution nor the laws allow a postponement of *barangay* elections and the extension of the terms of incumbent *barangay* officials.

Economic Influence

Discontent with judicial power in the realm of economics is both stronger and more widespread than with that of such power in the realm of politics. Many critics object emphatically to the enlarged judicial review because they believe it impedes economic development in various ways. To begin with, the judiciary may force the abolition of projects that are vital for the economic development of the country. Second, judicial review may lead to significant delay in the execution of important projects. When a case involving an economic project is pending before the courts, the complainant in a dispute may ask the courts to issue a restraining order to prevent the other party or parties from proceeding with the project until a judicial verdict has been reached. Third, the extensive review implies a degree of unpredictability which allegedly frightens away foreign investors. Such investors can negotiate with the national or local governments about the terms of investment before they make a decision to invest, but they cannot negotiate with the courts about how these courts will review cases or decisions affecting their investment.

This criticism of the extensive powers of judicial review has been reinforced by the perception of some critics that the Supreme Court had adopted a rather activist interpretation of its role in economic controversies – at least up until 1991 – in reaction to the docile attitude of the Supreme Court under the late dictator Marcos. They charge that the Court has resorted to consideration of economic policy in various cases, though it has been broadly inconsistent in its presumption of jurisdiction in cases pertinent to economic policy.¹² A major criticism of the trend toward judicial activism, in which the Supreme Court assumes considerable liberty in shaping public policies, is that it inhibits the executive from implementing a coherent and effective economic program in a context of economic crisis requiring such a program.

Another objection to judicial activism on economic issues is that it presumes an economic and technical expertise that the Supreme Court simply does not have. Defenders of the powers of judicial review tend to argue that the influence of the courts on the economic and political life of the country is purely incidental to their legal considerations

and decisions. Though it inevitably influences politics and economics, they say, the judiciary does not intend to step into explicitly technical, political, or economic arguments in its exercise of this review. According to critics, however, in actual practice the Supreme Court frequently resorts to such explicitly non-legal arguments. For instance, in a case involving the transfer of a petrochemical plant in 1990, the Court used in its argument the 'clear advantages' of the original site, and the 'murky reasons for the transfer', which were technical and economic in nature, to oppose the transfer.¹³ In an earlier case involving the same transfer in 1989, the Court had recognized that it did not have the knowledge and expertise to judge whether the transfer was good for the country.¹⁴

Judicial activism also allegedly results in inconsistent decisions and argumentation. In the case involving the petrochemical plant in 1989, the transfer was allowed by the Supreme Court, whereas the same transfer was denied in the case in 1990. Some critics attribute the dramatic drop of Taiwanese investment from 3.4 billion pesos in 1990 to 328 million pesos in 1991 to this specific case.¹⁵

In another case in 1990, the Supreme Court approved the permission which the National Telecommunications Commission had granted to a foreign company to operate a mobile cellular phone system. The Philippine Long Distance Company, the PLDT objected to this permission before the courts. The interest of the public in breaking the virtual monopoly of PLDT, whose telecommunication network had been grossly inadequate, was an important argument in the approval of the permission of the new competitor. In 1992 the PLDT filed a suit to prevent another competitor from exploiting a mobile phone system. The Supreme Court withheld the permission this time, interpreting the franchise that the National Telecommunications Commission had granted to this new competitor very strictly. The fact that the telecommunication system of the country was still grossly inadequate, and that it might thus be in the public interest to allow another telephone company to operate in the country, was ignored in the case.¹⁶ In 1994 however, the Supreme Court reversed itself in this case. Deciding on a motion for reconsideration, the permission to exploit a mobile phone system by the new competitor was approved after all.

The Government Response

Some degree of discontent among government officials over the economic and political effects of judicial power is universal. But judicial power has particularly explosive potential in contexts like those of the Philippines under Ramos. In this context, an extensive judicial review and an urgent push toward economic development by the government occur at the same time. Inevitably, the Supreme Court has clashed with the Ramos administration over the issues of judicial review and judicial activism. The Ramos administration has created an economic program to swiftly boost the country's economic growth. According to this program, which is known as Philippines 2000, the Philippines should become a Newly Industrialized Nation by the year 2000, and embark on the launching of steady and substantial economic growth. As has been mentioned in chapter one, the proponents of this program look enviously at surrounding countries, such as Singapore, Malaysia and Indonesia, which have less democracy and a less independent

and powerful judiciary, but which have overtaken the Philippines economically. An important part of the 'Philippines 2000 plan' is to reinforce the earlier attempts of the Aquino administration to break up existing monopolies of the traditional elite. Large-scale investment in special projects to improve the country's infrastructure and efforts to attract foreign investments are also part of this program. An activist Supreme Court assuming a strong and independent role in economic cases and controversies could constitute an obvious hazard to the implementation of the program.

The Ramos administration and its proponents have exercised considerable pressure on the Supreme Court to refrain from judicial activist tendencies. An important strategy of the proponents of the administration was to stimulate a discussion of proposed amendments to the 1987 Constitution which would limit the powers of review of the judiciary. Even if these amendments would ultimately not be accepted, their very public discussion sent a message to the Supreme Court to back down on judicial activism regarding economic issues.

During the early days of the Ramos administration, a wave of negative publicity concerning the judiciary appeared, lasting for more than a year. Anonymous letters, or letters with false names and addresses and containing charges of corruption or other irregularities against judges and justices, were sent to newspaper editors and to people of some influence. Negative newspaper reports and columns reproduced the charges. Powerful advisers to the President were suspected of orchestrating this campaign. This suspicion enjoyed a degree of credibility – though there has never been hard evidence of such an involvement – and demonstrated the tense relation existing between the Ramos administration and the Supreme Court, or at least the public perception of it. The alleged purpose of this publicity campaign was to intimidate the judiciary into judicial restraint or force the Supreme Court to resign, so that the incumbent justices could be replaced by others who would be more cooperative with the executive. In the chapter on challenges to judicial independence, impartiality and credibility this wave of negative publicity will be further elaborated.

The tension between the judiciary and the government over judicial review and over the substantial influence of the judiciary on economic matters in general, has been a constant factor in the post-EDSA period, though its intensity has varied from time to time. One important source of conflict regarding judicial review concerns infrastructure or development projects that are wholly or partially financed, implemented and/or operated by the private sector. These projects concern a variety of contractual agreements between the government and the private sector which are referred to as 'build, operate and transfer agreements'.¹⁷ These projects are often allocated through a public bidding that is organized and supervised by a government agency. The procedures of public bidding are vulnerable to law suits. Losers in these biddings often feel cheated because the government agencies allegedly tend to manipulate the process of the bidding in order to favor a particular bidder. A loser consequently may complain about indiscretionary use of government power in the bidding and petition for an order, thus restraining the winner of the bidding from initiating the execution of the project as long as the case is pending in the courts. As a result of these court procedures, important projects can be significantly delayed. A remedy to this particular problem, as proposed by some, is to

prohibit the filing of restraining orders which may delay important projects executed or operated by the private sector. Under this proposal, a losing bidder may still file a protest in court if he feels he has been cheated, but can only ask for financial compensation, not for the court to restrain the winning bidder from implementing or executing the development project concerned. However the 1994 version of the Build, Operate and Transfer law has not yet incorporated this proposed remedy.

In 1994, tension over judicial review seemed to decrease somewhat. President Ramos had the opportunity to change the composition of the Supreme Court substantially through filling various vacancies that arose on the Court. The Supreme Court also took some action to block restraining orders filed against government agencies concerning infrastructural projects. During his rule, Marcos had issued a presidential decree prohibiting the filing of restraining orders against government agencies regarding execution, implementation and/or operation of infrastructure and natural resource development projects of public utilities.¹⁸ The Aquino and Ramos Governments did not repeal this presidential decree. In a decision in 1989, the Supreme Court validated the use of the decree during the Aquino administration.¹⁹ Nevertheless, some lower court judges still issued restraining orders against government agencies in the context of such projects. The Supreme Court disseminated circulars in which strict compliance to this presidential decree was imposed.²⁰

An indication of the temporary decrease of tension between the judiciary and the Ramos administration can be seen in the fact that the former Chief Justice was allowed to join the ticket of the Ramos faction for the senatorial elections in 1995. This former Chief Justice had resigned in 1991 in order to run for Vice-President the following year on a ticket opposing Ramos, but was not elected. He subsequently had been clearly identified with tendencies toward judicial activism. Following the 1995 elections, however, the tension over judicial review increased again.

The controversy over judicial review demonstrates the difficulty that various proponents of the government program Philippines 2000 seem to experience in respecting the important role of the judiciary in the post-EDSA political order. At the same time, the judiciary must also take part of the blame for this controversy. In a context where the effects of judicial power on the economic and political situation in the country is seriously contested, judicial decisions can be expected to be very closely monitored, by friend and foe alike. In such circumstances, it is important that judicial decisions with far-reaching economic or political effects be carefully legitimized in the eyes of the government and the general public, both in terms of the legal arguments invoked and the procedures followed. The absence of such a legitimization will only facilitate criticism of the extensive role assigned to the judiciary by the Constitution. In the opinion of the author of this study the legitimization of some Supreme Court decisions are inadequate.

A case in which the first division of the Supreme Court upheld decisions of an RTC judge and the Court of Appeals – with a narrow margin of three votes against two – illustrates this problem of inadequate legitimization. The decision restrained the government from continuing a preliminary criminal investigation against a business tycoon for alleged tax evasion. This case was extremely important for the government, who believed that the Supreme Court's decision represented a great setback for the government's larger

campaign against major tax evaders and for its efforts to gain some degree of control over big business in general. The split decision with a very narrow margin already posed a problem vis-à-vis securing public acceptance of the decision. The partial dissent of one of the three concurring justices further undermined this public acceptance, but arguments used by one of the dissenting justices were perhaps more serious. This justice, the chairman of the first division, argued that the majority decision changed existing Supreme Court jurisprudence on two counts, whereas the Supreme Court can only effect such broad jurisprudence changes in *en banc* decisions. The lack of public acceptance was further aggravated by a quarrel and scandal that broke out over this case, which will be elaborated in chapter 5. The government filed a motion for reconsideration and urgently requested the Supreme Court to decide on this motion *en banc*.

Culmination of the Friction over Judicial Review

The frictions between the Supreme Court and the Ramos administration over the Court's role in economic matters culminated in February 1997. At stake was the issue of majority shares of a government-owned hotel, the Manila Hotel.²¹ In the context of the government's privatization campaign, a government organization had sold these majority shares to an international consortium headed by a Malaysian company. This consortium had entered the highest bid in bidding conducted in September 1995. A Filipino company, Manila Prince Hotel, which had made a lower bid during the bidding procedure contested the decision before the Supreme Court, charging that the decision went against the 'Filipino-first' provision in the Constitution. In response to the petition by Manila Prince Hotel, the Supreme Court issued a temporary restraining order, preventing the government from selling the hotel while the case was pending in the court. In February 1997 a majority of 11 justices decided to overrule the government's decision to sell the Manila Hotel to the international consortium. It further compelled the government to sell the majority shares to the Philippine organization, after this organization clarified that it would raise its original bid to the level of that made by the international consortium headed by a Malaysian company.²² The Supreme Court ruled that the hotel for sale was not merely a hotel, but a part of the cultural heritage of the Philippines, since it had played a role in many historic events. And because the hotel formed part of the national patrimony, the Filipino-first policy, articulated in paragraph 2 of Section 10 of Article XII of the Constitution, applied.

Two justices wrote dissenting opinions and two other justices wrote separate opinions concerning this ruling. An important argument of the dissenters was that the Filipino company had agreed to the rules of the bidding, including the participation of foreign consortiums. It had not raised the nationalist issue before the government institution that had organized the sale, and therefore did not have the prerogative of subsequently contesting these rules after it had lost the bidding. Furthermore, the 'Filipino-first' policy only applies when the bids of a foreign entity or individual and that of a Filipino one are comparable. But during the official bidding for the hotel, the bid of the international consortium had clearly been higher. The Filipino company raised its bid only after the bidding was completed. No law or constitutional provision allows bidders to raise their bids after the official procedure of bidding has been terminated.

The Supreme Court's decision raised considerable criticism for several reasons. First, critics did not understand on what objective and explicit grounds the Manila Hotel really qualified as national patrimony. Second, the critics agreed with the dissenting justices that no legal basis exists for allowing a bidding company to raise its bid after the bidding process has closed, particularly if this company has agreed to the terms of the bidding beforehand. Third, the Supreme Court's decision was considered by critics to be a case of clear favoritism. The Filipino company to which the Supreme Court gave the right to buy the Manila Hotel, was led by the publisher of a national newspaper that has a long and consistent track record of writing favorably on the judiciary. Fourth, according to critics, if the Supreme Court did not approve the outcome of the bidding, it would have been more appropriate for it to have ordered a rebidding process.

The government was furious, since it regarded this decision as constituting a serious discouragement to foreign investment. This fury was fuelled by reports that the Malaysian prime-minister had sent a warning signal in the aftermath of the case.²³ In a speech before the Philippine Constitution Association, President Ramos called the decision 'intrusive', and publicly announced an initiative for a constitutional amendment that would seriously reduce the scope of judicial review.²⁴ Though the threat to undertake such an initiative has not yet materialized, it gave another strong signal to the Supreme Court, warning it not to meddle in affairs that the President considers the exclusive domain of the executive.

In all probability, judicial power will remain a major source of controversy in Philippine political debate. It seems inevitable that the scope of judicial review according to the 1987 Constitution will be subject to amendments at least at some point in the future. On the other hand, the long tradition of formal judicial review in the history of the Philippines appears to be an inhibiting factor against any drastic overhaul of judicial powers. All three of the country's Constitutions – those of 1935, 1973 and 1987 – have attributed power of review to the judiciary to a greater or smaller extent. A drastic reduction of formal judicial power would appear to go against the grain of Philippine history.

Politicians and Judicial Decisions

The constitutional provisions limiting the influence of the executive and legislative branches on the judiciary notwithstanding, politicians try to influence judicial decisions in actual practice. They do so both directly and indirectly through third parties supposedly having influence on the judges. If a third party is involved one speaks of 'influence-peddling'. 'Influence-peddling' refers to a practice in which people make their real or imagined influence with a judge or justice available to others in exchange for money or other favors.

The degree to which politicians are willing to use personal influence, or the influence of powerful connections, is a matter of personal discretion. For instance, former President Aquino was a dedicated constitutionalist who played everything by the book. During her term she never lobbied with the judiciary, neither with the Supreme Court nor with lower

courts. Yet this policy of non-interference was not adopted by all of her political allies. Influence-peddling by powerful legislators for instance, was rather common. But the succeeding Ramos administration appears to exercise such pressure on judicial decisions as a matter of routine.

The relation between the Ramos administration and the judiciary has been ambivalent. On one hand, many judges and justices respect President Ramos highly, particularly those who have been appointed or promoted by him. The President has expressed his commitment both to democracy and to the rule of law on several public occasions. Yet at the same time, as mentioned in the previous section, the extensive powers of the judiciary in cases affecting economic policy have been a major and permanent source of tension between the judiciary and the administration.

Apart from representatives of the executive, the exercise of informal influence by legislators and local government officials is quite persistent in the Philippines. Indeed, local governments pose a further danger to the independence of judges. Judges tend to join clubs structured along lines inherited from the Spanish colonialists and generally composed of the local mayor, the judge, the chief of police and a few other notables. In short, such clubs consist of the local elite. The members develop a mentality, particular to in-group relations, referred to as *tayo-tayo* in the Philippines, which involves reinforcing social bonds through granting mutual favors. Among other things, these social ties tend to hinder the prosecution of court cases against mayors who have become local or regional warlords. The court case against a mayor who was convicted in 1994 for the rape and slaying of two students is a case in point. The local MTC judge ordered the cleaning of a van which has been used to transport and dump the two corpses of the students, before the van was inspected by investigators. As a result, potentially vital evidence in the case was destroyed.

The exercise of undue influence has proven to be very tenacious in the Philippines, despite constitutional provisions and practical measures taken to combat it. The security measures applied in the present Supreme Court building illustrate this point. The building housing the offices of the Supreme Court justices is quite inaccessible. Persons visiting a justice must pass through two checkpoints manned by armed security guards. When the justice's secretary has confirmed the meeting through the intercom, the visitor is personally accompanied in the elevator by a security guard with a sophisticated automatic gun. The main reason behind this tight security is not fear of terrorist attacks, but the wish to discourage influence-peddlers and lobbyists from visiting the offices of the justices. But as one of the justices pointed out realistically: 'if the lobbyists mean real business, they will always find a way. They may visit you in your house at night or on the weekend. Or they wait for you outside the gate after you leave the office. Or they call you over the phone, wherever you are.'

The Independence of the Bar

Article 24 of the *United Nations Basic Principles on the Role of Lawyers* states: 'lawyers should be entitled to form and join self-governing professional associations to represent

their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional association shall be elected by its members and shall exercise its functions without external interference.' Other authoritative international instruments also call for a self-governing bar.²⁵

In the Philippines, however, the Supreme Court supervises the bar, and has exclusive jurisdiction over the discipline of bar members. This jurisdiction covers the budget and administrative affairs of the Integrated Bar of the Philippines (IBP), of which every Philippine lawyer is a compulsory member. The Court also has the right to interfere in the election of IBP board members.

The jurisdiction of the Supreme Court over the bar has been controversial in the Philippines. Not only is this jurisdiction not in line with international standards regarding the independence of the bar, but a practical objection has also been raised against this jurisdiction. Supervision over the bar, *in casu* the IBP, adds to the heavy work load of the Court and thus undermines its efficiency and effectiveness.

Unfortunately, the recent history of the IBP has thrown some serious doubts on its ability to live up to the necessary standards of self-governance and independence in the short run. Not only has the record of the IBP in the exercise of discipline and promotion of integrity been rather poor, its national leadership has been subjected to disciplinary action on several occasions, as will be expounded here below.

From July 1985 until the controversial elections of June 1989, the 15 main officers of the IBP were elected by the House of Delegates, consisting of the presidents of local chapters, or their alternates, during a national convention. Among the elective positions were the office of President, of Executive Vice-President, and offices of regional governors. Normally the presidency of the IBP is a much desired position and the elections for it are intensely contested, since the position may serve as a spring board for career advances, notably in politics. One particular law fraternity of the University of the Philippines has been quite influential in the IBP, and has provided various IBP presidents from among its ranks. In 1989, the election for the presidency was again intensely contested. The winning candidate also happened to be the wife of a cabinet minister. Since the minister was a member of the fraternity that has dominated the IBP leadership, this fraternity provided active support to his wife. A public scandal then arose about these elections. Reports appeared in several newspapers alleging that the candidates had bribed delegates, used various other forms of improper lobbying and spent excessively on their campaigns. Furthermore, the winner was accused of having used resources and manpower from her husband's office, and of using a plane that the Philippine National Bank had lent to the government.

On the basis of its supervisory powers over the IBP, the Supreme Court formed a committee which investigated the rumors and allegations. The findings of the committee were quite devastating for the IBP. The committee concluded that the IBP by-laws had been grossly violated, and that the conduct of the candidates was unbecoming of lawyers. One important finding was that the elections had been highly politicized, which implied a gross violation of the principle that the IBP should be a non-political body. The three candidates for the presidency had each formed their own individual list of candidates

covering all 15 elective positions. The list of the winning candidate for president consisted entirely of members of the dominant law fraternity in the IBP, or of people closely linked to it. Each of the three factions in the election had organized their campaign headquarters in a five star hotel, had lobbied with excessive intensity for their candidates and had spent excessive amounts of money on their campaigns. Furthermore, the candidates had paid travel expenses and/or had given free lodgings to various delegates during the convention, or had offered to do so. The investigating committee of the Supreme Court stated: 'investigation revealed that the parties had been less than candid with the Court and seem to have conspired among themselves to deceive it or at least withhold vital information from it to conceal the irregularities committed during the campaign'.²⁶

The Supreme Court annulled the elections and imposed a drastic revision of the procedures governing election of officers of the bar. The Court abolished the House of Delegates of the IBP as well as four of the 15 elected positions. The nine regional governors must now be elected within the respective regions themselves, and must elect a national executive vice-president from within their own ranks. Every two years the executive vice-president automatically succeeds the president. As a temporary provision, the Court ordered that the first president chosen following the annulled elections had to be directly elected by the nine governors as well.

As a result of this annulment, new elections had to be held to choose the IBP officers, including a president. Apart from the fact that the new rules made it more difficult for a law fraternity to dominate the elections, the scandal had created a great deal of embarrassment in IBP circles, particularly among the dominant fraternity/sorority. The new situation opened the door to the subsequent election of a member of a different fraternity from Ateneo Law School.

When the newly elected IBP president took office, he fired various staff members, and replaced them with his own people, allocating them salaries three to four times higher than those of the old personnel. The ousted employees turned to the Supreme Court for help. The President challenged the right the Supreme Court to interfere, asserting that the matter was a simple labor relations case. The Court disagreed, invoking its jurisdiction over the IBP and noting that IBP funds come partly from the Supreme Court. In addition to mismanagement of personnel, there were also allegations of financial malversations, though the budget had been approved by the government's Commission on Audit. The IBP President was also accused of using IBP funds to buy favorable press releases.

A committee of three Supreme Court justices conducted a formal investigation over a period of almost six months in which 25 witnesses were heard, and in which the IBP President was given the opportunity to testify. He had secured the assistance of representatives of two international lawyers organizations, asserting that the principle of the independence of the bar was at stake. The Supreme Court countered that the matter was as of no concern to international organizations, and refused any mediation by these representatives in the case. The IBP President also sent statements concerning the issues under investigation to the press, to many individuals and to judges of the Regional Trial Court in Metro-Manila.

During the investigation, the IBP President requested the right to participate in a conference in Taiwan, as well as permission to travel to the United States for medical treatment of his only functioning eye. The Supreme Court considered these requests to be delay tactics and denied them.²⁷ Before the investigative Committee had made its final report, the Court suspended the IBP President, who decided to resign. His official term of office came to an end some time thereafter. Though the President was no longer in office when the investigative committee issued its findings, the Supreme Court dismissed him and officially reprimanded him for mismanagement of funds and personnel. The Court also reinstated the IBP staff members who had been fired by him.

The former IBP President contested this verdict. First, he filed a series of motions for reconsideration with the Supreme Court which were all denied. This culminated in a Supreme Court resolution in which he was warned that he would be subjected to discipline if he filed additional motions. Subsequently he asked a special *ad hoc* committee of the Supreme Court charged with looking into widely published charges of corruption in the judiciary and which was headed by the Chief Justice, to review the matter. The committee refused to do so, since the case was considered closed and terminated. Next, he brought his case to the Commission on Human Rights (CHR), though officially the case was filed by his university fraternity. He claimed that the Court had violated his human rights to travel and to medical treatment during the investigation, and had treated him rudely in general. The CHR dismissed the complaint, since it considered the Supreme Court to have exclusive jurisdiction over the matter. Nevertheless, a draft report from the Legal Office of the CHR was leaked to the newspapers indicating that a three-member panel of the CHR had indeed found the Court guilty of violating the human rights of the former president. The Commissioners of the CHR, however, denied the existence of such a committee and stated that the internal draft document on which the newspaper report was partly based, did not reflect the views of the CHR on the matter and was later corrected by the CHR chairman.²⁸

When negative reports on the judiciary started to accumulate in the press in 1992, the former IBP President publicly voiced his discontent over the Supreme Court's disciplinary measures against him, and filed an impeachment case with the Philippine Congress against the justices who had participated in the disciplinary proceedings against him. Six congressmen were willing to sign the impeachment suit. Since some of the justices who participated had already resigned, the former IBP President filed an anti-graft suit against them with the *Sandiganbayan*. The main argument in these suits was abuse of power by the Supreme Court in its disciplinary action against him. The anti-graft case was obviously hopeless from the outset, since a court under the jurisdiction of the Supreme Court can not – and will never – accept jurisdiction over actions taken by former justices during their time of office.

The impeachment case in Congress also encountered serious difficulties. The chairman of the Committee on Justice and Human Rights of the Lower House proposed outright dismissal, so that the case would not be discussed by Congress at all. The IBP president, however, called upon this chairman to disqualify himself from the case. He argued that the chairman could not be impartial, since he is also a member of the Judicial and Bar Council, in which capacity he must work closely with the Chief Justice. The six con-

gressmen who had signed the impeachment suit insisted that the case be placed on the agenda of Congress despite its slim chances of success, because they wished to send a clear signal to the Court about their discontent with the way it had handled complaints about corruption in the judiciary. The former IBP president published the integral text of the official complaint in two full pages of a daily newspaper that had been quite critical of the Supreme Court, and that had written regularly in his favor.

The Supreme Court considered this impeachment suit, as well as the previous complaint with the CHR, as 'forum shopping', and merely based on personal spite. One close insider remarked: 'when this suit is dismissed, this former IBP President will probably take his problem to the United Nations. And what about these congressmen who signed his request? Some congressmen will sign anything that you put under their noses.' The Committee on Justice of the Congress dismissed the case unanimously, with one member disqualifying himself. The war between this former IBP President and the Supreme Court finally ended when the former IBP President became the victim of a heinous crime in 1994.

This case illustrates various problems of the Philippine legal system which are discussed in separate chapters of the present study: the influence of networks, corner-cutting tactics, unwillingness to accept defeat, litigation journalism and the dilemma of strict versus lenient judicial discipline. On the one hand the Supreme Court refrained from reacting to the former IBP President's animosity by disbaring him, which was a serious option available to the Court, considering his outright acts and declarations of war. On the other hand, various critics believe that the Court had dealt too harshly with this former IBP President, injuring his *amor proprio* unnecessarily and thus provoking this intense animosity. They find it inconsistent, for instance, that the Court had not disciplined the previous winner of the elections that were annulled. She was allowed an honorable way out which was not granted to her successor.

Whatever mistakes the Supreme Court may or may not have made in dealing with the IBP, or in disciplinary matters regarding the bar specifically, the events outlined here did not encourage confidence in the bar's competence for self-governance. The subsequent leadership has expressed willingness to set the IBP's house in order. Nevertheless, the traumatic impact of this case acts as a serious inhibitor against possible acquisition of independence by the bar, at least in the short run.

Summary and Considerations

The post-EDSA political order has taken various steps to promote both the formal and the effective independence of the judiciary, in line with numerous authoritative instruments from UN bodies. The promotion and increase of formal independence, as laid down in various constitutional provisions, has proved to be much easier than an increase in effective independence from the executive branch, as well as from individual politicians. Moreover, in some respects the increase in formal independence of the judiciary has also put a strain on the quantity and quality of work performed by the judiciary, most notably the Supreme Court.

The administrative and disciplinary supervision exercised by the Supreme Court over lower courts has been rather controversial. This supervision has given substance to the principle of independence of the judiciary. But a major drawback of such supervision is that it has increased the work load of justices with duties for which they have only limited expertise. It is thus a challenge to the competence and credibility of the judiciary. There are advantages and disadvantages to transferring parts of this responsibility to the Department of Justice (DOJ). It is imperative, however, that responsibility for the disciplining of judges remains with the Supreme Court as a formal guarantee against politicization of such discipline. Similarly, if the supervision of human resources is going to be transferred to the DOJ, the need exists for a guarantee that transfer of judges will not be subject to political considerations. One could think, for instance of a provision stating that each administrative transfer of a judge requires approval from the Chief Justice or from other Supreme Court members who have been specifically assigned to review transfers.

If the Supreme Court maintains extensive administrative duties, its organizational structure should be adjusted to exercise these duties efficiently. For instance, administrative duties could be entirely delegated to an extended office of the Court Administrator, possibly in conjunction with a special administrative division in the Supreme Court. The members of this special division, as well as of the Court Administrator's office, need to be specifically appointed on the basis of managerial and administrative expertise, training and experience.

The budget for the judiciary needs to be substantially increased, in spite of budgetary constraints on the government as a result of debt payments and other important social concerns. Fair and speedy justice for all citizens constitutes a very important human right, but is not possible without adequate funding being provided for the judiciary. Both government officials, members of Congress and representatives of civil society have complained about the inadequacy of the justice system for many years. If these various sectors of society are really serious about their desire to see the justice system improved, they should be willing to pay the price.

It is commendable that in recent years some ideas have been proposed for a drastic increase in funds for the judiciary, for example the allocation of proceeds from the sale and conversion of former military land. Incidental lump sums, however, should not function as political spoils for which specific politicians can claim credit, which would pose dangers for judicial independence. Furthermore, the executive government and the Senate and House of Representatives should respect the fiscal autonomy of the judiciary in practice through adequate automatic annual appropriations, rather than through mere lip service to this fiscal autonomy.

The Judicial and Bar Council (JBC), as introduced by the 1987 Constitution, has been a valuable institution, at least in principle. This Council restrains and regulates the influence of politics on the appointment and promotion of judges. Its composition as well as its procedures further aim at involving wide sections of society in its efforts. At least in principle, it tries to involve individual citizens and sectors of society in active concern that the quality of the bench be safeguarded. Nevertheless, the JBC has had its shortcomings and frustrations. It has not been able to avoid political and other forms of lobbying,

including from prospective candidates themselves. Nor has it been able to guarantee a continuous influx of competent and reliable candidates. There is certainly room for improvement of the functioning of the JBC. For instance, the suggestion that the JBC could recommend a single candidate for judicial vacancies that are difficult to fill, provided that he or she is competent and honest, should be taken very seriously.

It is questionable, however, whether the abolition of the JBC and a subsequent return to the procedures of appointment before 1973 would be a real improvement. Lobbying by politicians, both in the appointment of judges and in specific judicial decisions, has been pervasive and extremely tenacious in the Philippines. No organizational procedure would likely prevent lobbying and the impact of personal and political preferences any more effectively than the JBC. Organizational changes will simply be inadequate to solve problems that are primarily and predominantly moral in nature. An ethical shift towards a genuine respect for judicial independence among politicians who would refrain from interfering in judicial processes is required. Furthermore, the difficulty in finding capable candidates is related to inadequate salary levels on the bench and to insufficient cooperation from the public in screening candidates. Over these factors, the JBC has only limited control.

Yet the procedures for appointment of judges and justices do need constant reconsideration. The suggestion that the Supreme Court should review the candidates for the judiciary that are proposed by the JBC in *en banc* sessions would appear to be an imperative step in this context.²⁹ With regard to the higher judiciary, and particularly the Supreme Court, a negative spiral must be prevented in which the most competent members of the legal system no longer find it an honor to sit on the Supreme Court, as a consequence of which more mediocre candidates are appointed, leading in turn to a further lessening of interest among prominent figures. Perhaps recommendations of the JBC and thorough screening by the congressional Commission of Appointment could be combined in the selection of justices of the higher courts. Such a joint effort between the JBC and the Commission of Appointment would require more time and effort than the present and former procedures of appointment, and would not constitute an automatic guarantee that only the very best people would be appointed. But such combined efforts would at least make sure that appointees have the competence and integrity needed in the higher courts. Nevertheless, such a change would require a constitutional amendment.

The criteria applied for appointment of the Chief Justice need to be more consistent and explicit. The possibility of the position of Chief Justice – and the procedures of his appointment – becoming politicized should be minimized. However, criteria for the appointment of the Chief Justice cannot be isolated from the scope of administrative responsibilities incumbent on the Supreme Court or its internal division of labor, nor from the quality of criteria and procedures of the appointment of Supreme Court justices in general.

Judicial review should be boldly and extensively applied in the area for which it was primarily meant to function: the protection of fundamental civil and political liberties. The judiciary should exercise appropriate restraint in using the review for settling economic and political disputes, in which these fundamental liberties are not clearly at stake. Judicial activism may tempt the judiciary, and most notably the Supreme Court,

to overstep its expertise, frustrate economic development unnecessarily and undermine its own credibility and competence. In addition, the legitimacy of judicial decisions with far-reaching economic or political ramifications requires careful attention, lest the exercise of judicial power undermine public confidence in the judiciary.

More time is needed to study and discuss important cases. It is therefore necessary to reduce the work load of the Supreme Court. A decrease of the work load would give the Supreme Court more time to deal convincingly with important cases. This issue will be further discussed in chapter 6, in the section on 'The Work Load of the Supreme Court'.

The primary meaning and scope of judicial review could be further specified and clarified through constitutional amendments in the future. However, this needs to be handled with extreme care, lest the scope of judicial review becomes too narrow. Philippine history shows that judicial checks against potential abuse of people's rights are invaluable. The current political atmosphere with its heated controversy over the role of the judiciary in economic affairs, is not conducive to the articulation of a careful amendment of judicial review. Therefore such an amendment should only be considered after the presidential elections of 1998.

An independent and self-governing bar is needed, as has been called for in the *United Nations Basic Principles on the Role of Lawyers*. Recent events have cast serious doubt on the ability of the bar to govern itself. In the near future, however, the issue of self-governance needs to be reviewed. Not only would self-governance of the IBP bring the Philippines in line with authoritative international standards, it would also lighten the heavy work load of the Supreme Court.

Notes

1. The judiciary has not been completely docile all the time, however. For instance, Justice Cecilia Palma, who had initially approved of the declaration of martial law, had become increasingly critical. In 1984, she joined the ticket of the Marcos opposition during parliamentary elections. Another relatively critical justice was Claudio Teehankee. In 1985, the Supreme Court unanimously threw out a subversion case against a veteran Marcos opponent. The lawyer who defended this opponent, and who became Chief Justice under President Aquino for a short period, paid a high price for his defense. His son disappeared without a trace.
2. The promise of a huge lump sum presents an apparent and complicated problem for judicial independence. The government sold former military land to a consortium after a procedure of bidding. The promise of the lump sum to the judiciary and to the other pillars of the criminal justice system, was based on the expected profit from the winning bid. However, another consortium that lost in the bidding filed a complaint with the Supreme Court, because it had doubts about the honesty of the procedures that the government had followed. This implies that the Supreme Court has to rule in a case in which it has become an interested party itself. If the Supreme Court would not uphold the government's decision regarding the winning bid, it could jeopardize the big lump sum that was promised to it from the winning bid.

3. *Utang ng loob* refers to a sense of gratitude for a favor or favors that cannot really be repaid. Consequently the person who has been the object of the favor will reciprocate through strong and persistent loyalty toward his benefactor. Favors that generate this kind of gratitude may consist of action to save someone's life, help in obtaining a job or promotion, support that enables one to send his children to school, etc. Debts of gratitude are frequently exploited by 'benefactors' for their own interest. A classic example of this is the patron-client network between powerful politicians and new politicians on the rise. The more powerful politician may use his power and network to help his client to acquire a political position. This client is consequently expected to reciprocate through strengthening the power base of his benefactor. Such problems may also occur in the relation between a judge and a politician that supported his appointment or promotion. The politician may exploit the debt of gratitude of the judge, by influencing particular decisions of this judge on that basis. Or the judge may thus reciprocate the favor of the politician at his own initiative.
4. Not included in this computation are the justices who were appointed by President Ramos in order to replace other Ramos appointees who retired rather shortly after their appointment to the Supreme Court.
5. However, the remaining five members of the Aquino Supreme Court will reach their age of retirement only after the 1998 presidential elections are scheduled.
6. Justice A.F. Sarmiento in his Validictory speech on the occasion of his retirement from the Supreme Court, 1991: 6. This point of view has been elaborated in: A.F. Sarmiento, 'Constitutional and other reforms toward a more independent Supreme Court.' *The Judges Journal*, Vols. 6&7, 1991-1992: 3.
7. Section 5. of the 1973 Constitution. See Nollado, *The Constitution of the Republic of the Philippines Explained*. Metro-Manila: National Book Store 1992: 376-7.
8. Ricardo J. Romulo, 'The Supreme Court and Economic Policy: A Plea for Judicial Abstinence.' *Philippine Law Journal*, Vol 67, March 1993: 349-350.
9. The special issue of the *Philippine Law Journal* on the function of judicial review, Vol 67, March 1993, contains several critical articles, notably: 'Judicial Overreaching in Selected Supreme Court Decisions Affecting Economic Policy', by Perfecto V. Fernandez; 'The Supreme Court and Economic Policy: A Plea for Judicial Abstinence', by Ricardo J. Romulo; and 'The Economic Policy Determining Function of the Supreme Court in Times of National Crisis', by Ricardo Solomon B. Castro and Martin Israel L. Pison. These articles form important sources for this section.
10. *1992-1993 Annual Report of the Supreme Court*: 22-23.
11. The discussion in this section is largely based on various newspaper articles which were reprinted in *Kilosbayan Magazine*, 16 April, 1997: 6-14, and on *Philippine Graphic*, 3 March, 1997: 6, 8; *Philippine Graphic*, 7 April, 1997: 14-6; *Philippine Free Press*, 8 February, 1997: 2, 8-10; and *Philippine Free Press*, 19 April, 1997: 12.
12. Castro and Pison, 'The Economic Policy Function Determining Function of the Supreme Court in Times of National Crisis.' *Philippine Law Journal*, Vol 67, March 1993: 381.
13. *Garcia v. Board of Investments*, 191 SCRA 288.
14. 177 SCRA 374. See Castro and Pison, *Supra*, note 13: 390-2.
15. Castro and Pison, *Supra*, at note 13: 394.
16. Castro and Pison, *Supra*, at note 13: 385-9.
17. Republic Act No. 6957, 9 July, 1990, which was revised by Republic Act No. 7718, 5 May, 1994.
18. Presidential Decree No. 1818, 16 January 1981.

19. *The national Power Corporation vs. Hon. Abraham Vera*, G.R. 83558, 27 February, 1989, 170 SCRA 721.
20. Circular No. 13-93, 5 March, 1993 and Circular No. 68-94, 3 November, 1994.
21. *Manila Prince Hotel v. Committee on Privatization and GSIS*. G.R. No. 122156. Promulgated 3 February, 1997. The discussion of the decision is based on excerpts from this decision as published in *Philippine Graphic*, 24 February, 1997: 16-8; *Philippine Graphic*, 22 March, 1997: 30-1; and *Philippines Free Press*, 22 February, 1997: 1-5.
22. The original bid of the Filipino company was 636 million Philippine pesos, whereas the winning bid was 673 million Philippine pesos.
23. *Philippine Free Press*, 22 February, 1997.
24. *Idem*.
25. For instance articles 97 and 103 of the *Draft Universal Declaration on the Independence of Justice* (or 'Singvhi Declaration'), E/CN.4Sub2/1988/20 and E/CN.4Sub.2/1988/20/Add. and Add.Corr.1, and articles 33 and 40 of the *Draft Principles on the Independence of the Legal Profession* (Noto Principles), E/CN.4/Sub.2/1982/23 and E/CN.4Sub.2/1985/18, Annex III. Both declarations are reprinted in: *CIJL Bulletin*, 25-26, 1990: 38-58; 72-83.
26. 178 SCRA 398.
27. See section on lawyers and court delay in chapter 6. In this context one must bear in mind that in the Philippines it is quite easy to obtain a medical declaration stating the need for treatment abroad.
28. The letter of the CHR on this issue was reprinted in: *Faith and Trust. The Bedrock of the Justice System*. Narvasa 1993. Supreme Court Historical Society: 200-201.
29. A.F. Sarmiento. 'Constitutional and other reforms toward a more independent Supreme Court.' *The Judges' Journal*, Vols. 6&7, 1991-1992: 4.

Challenges to Judicial Independence, Impartiality and Credibility from Non-Political Actors

Personalistic Pressures on Judges and Justices

Undue Influence from Lawyers and Litigants

Representatives of the executive and legislative branches are by no means the only persons or agencies involved in lobbying or pressuring the judiciary. Rich individuals and business firms for instance are also very active in this respect. The cases involving the PLDT monopoly mentioned in an earlier chapter are a clear example of this point. Government representatives were not the only actors who attempted to influence the decisions of the Supreme Court. Various parties involved tried to lobby or exert pressure in diverse ways. Because actual power is somewhat fragmented in the Philippines, the lobbying of 'informal powers' may be more successful than lobbying conducted by executive or legislative representatives. Attempted lobbying and influence-peddling are a common phenomenon in the lower courts as well.

Any company, organization or private individual may resort to the tactic of pulling strings in court. The exercise of personal influence is not automatically condemned by most Filipinos. There is a widespread conviction that one can and should always try one's luck in using personal influence, whether or not this will ultimately prove successful. This attitude recalls the American dictum 'if at first you don't succeed, try, try again'. This spirit of persistence is resorted to initially. In case of failure, one can always apply the spirit of *lusot*, which 'literally means to escape from something by wriggling into a hole or through a split. It points to a mentality that is concerned with getting away from an undesirable, unpleasant or altogether difficult situation with cunning.'¹ The *lusot* mentality may result in side-stepping any formal rule that is not in one's personal interest, including the rule not to use personal influence to interfere in the judicial process.

Socio-Cultural Pressures on Judges

Strictly speaking, it is forbidden for litigants and lawyers to discuss a pending case privately with a judge, unless the other party in the case is also present and agrees to discuss the issue. In 1993, the Supreme Court sharpened this prohibition by explicitly forbidding judges to receive any lawyers or litigants in his office during office hours. This rule, however, is not strictly applied by all judges. A problem involved here is the clear tension illustrated by this rule with regard to the personalistic character of the socio-cultural system in the Philippines. In order to properly understand this point and the following ones, it is necessary to describe certain characteristics of this personalistic approach, and why these characters make it difficult for judges and justices to strictly obey the written and unwritten rules of judicial conduct.

Face to face interaction and personal networks are of prime importance in the Philippines. Even in dealings between public officials, or private citizens and public officials, the awareness of person-to-person interaction is very strong. The demarcation line between professional contacts and those which are purely personal tends to be quite blurred in the Philippines. In the judiciary for instance, the professional interaction is often not so much experienced as an interaction between a lawyer and a judge but as a dynamic between two individuals, one of whom happens to be a judge and the other of whom happens to be a lawyer. This also implies that professional acts of conduct are often taken personally. A denial of a lawyer's petition by a judge for instance is easily interpreted as a personal offense and as evidence of personal bias on the part of the judge.

Personal networks are actively created and sustained. On one hand, this reflects the importance of close personal contacts for the sense of identity or well-being of many Filipinos. But personal networks are also of prime importance in achieving utilitarian objectives. Without such networks, one tends to be isolated in the Philippines. Personal networks are built and also manipulated for concrete pragmatic purposes. An example of this is the *compradizo* or godparent system. In this system, people are invited to act as sponsors at weddings or baptisms. For the rest of their lives, these sponsors will have a ritual kinship with the people they sponsored, as well as with their parents. In addition to relatives and close friends, people of power and status are frequently asked to act as godparents. On the one hand, the ritual kinship reflects and reinforces emotional ties between the *compadres* and *commadres*, like affection and respect. But the system also serves very practical purposes. Not only does some of the status of the godparents reflect on that of the godchildren, but ritual kinship bonds with people of status and power can be used by the godchildren later in life to obtain a job, to receive help in schooling, etc. The sponsors may also benefit from this relationship. It confirms their social status and it provides them with loyal supporters who may be useful in the future.

Another example of 'networking' that has special relevance to the judiciary is fraternity ties. The ties developed in university fraternities and sororities are useful throughout one's life. Members of one's fraternity, including senior members who graduated long ago, can be relied upon for help in one's future career. Membership in a powerful fraternity is an investment in the future. Students, particularly of the prestigious law schools of Ateneo de Manila and the University of the Philippines, may go to great lengths to be accepted as members of a powerful fraternity or sorority, enduring even the sometimes decidedly cruel and dangerous hazing practices involved, in which senior members with high social positions often participate.

An important consequence of this personalistic socio-cultural context for the judiciary is that it is difficult for judges not to allow people to discuss matters with them personally, even if this would constitute a violation of a formal rule. In other words, in this instance there is a clear tension between judicial formality and socio-cultural logic.

As in many areas of judicial conduct, each judge tends to draw the line for himself. A judge defended his policy to allow litigants and their lawyers into his office as follows: 'a judgeship is a public office. So one should be open to the public. If somebody wants information about his case, I will talk to him, in my office or outside. If his opponent in the case comes along, I am willing to talk to him as well.'

In the informal discussion of the case with a judge, a litigant or his lawyer will not merely elaborate on the merits of a case, but also invoke pity or common points of reference between himself and the judge in order to raise sympathy. Such points may include specific friends in common, fraternity ties, mutual region of origin, invoking of high social connections etc. But sympathy may also be raised by means of socializing with the judge, for instance by inviting him for a meal.

Personalistic Strategies No Guarantee for Success

It should be stressed, that the influence of personal and informal lobbying with judges is by no means a guarantee of a favorable decision. Nor, as mentioned earlier in the PLDT cases, can a favorable decision automatically be attributed to the influence-peddling of the proponents of the case. As one lawyer described it: 'in the town of Central Luzon where I have many cases, the legal community is small. Judges and lawyers know one another very well and meet regularly. They cannot help discussing pending cases. But when you see the judges render their decisions, you would think they do not know the lawyers at all. The judges really decide on the merits of the case.'

The exact extent to which personal meddling actually influences judicial decisions, is difficult to assess. There are some tendencies in the Philippines that exaggerate this influence. For instance, it is not uncommon for lawyers, politicians and other individuals to be vocal about their influence-peddling, claiming certain court decisions have been made as a result of their clout with the judges. These claims, however, may be mere personal grandstanding with little factual basis. When made by lawyers, such claims may serve to impress clients or to attract prospective new ones, suggesting they can manipulate judges successfully. Another relevant tendency in this context is a common suspicion that the decisions of people other than oneself are based on personal meddling and biases. This suspicion is also applied to judicial decisions. Consequently the impact of lobbying and influence-peddling on judicial decisions may be quite exaggerated.

Another factor that may facilitate an overestimation of such lobbying and influence-peddling in judicial decisions, is that in the Philippines, it is rude to reject requests openly. This implies that if a personal friend or a person of influence approaches a judge with a request for a favor, the judge may listen out of courtesy. This code of courtesy may further induce the judge to tell the person who requested the favor that he will look into the matter, even if the judge already knows he is going to reject the request. The person who asked the favor however may interpret these acts of courtesy wishfully and expect that the favor will be granted. If it is not granted, he may conclude that a more influential rival became involved in the case which turned the tables against him. At both stages of the process, the judge's attitude is falsely interpreted as having been shaped by personalistic considerations.

The Problem of Socializing

There are not only rules that regulate the interaction between judges and parties involved in law suits. There are also written and unwritten codes that regulate his social contacts in general. In order to limit the possibility of undue influence on a judge or justice, he or she is supposed to minimize socializing in general. This requirement is part of the

judge's code of *delicadeza*, and is formally rooted in several sections of the Code of Judicial Conduct.² This code not only seeks to prevent the judge from succumbing to the temptation of discussing pending cases with litigants or lawyers personally, but also from getting too close to specific persons or social groups who might undermine his impartiality – or the appearance of impartiality – in future cases. This code is particularly important in small communities where it will be immediately known with whom the judge is socializing, and where suspicion can be generated easily.

Just as there are judges who are strict in their interaction with parties involved in law suits, there are also judges and justices who are very strict in the area of socializing in general. These strict judges and justices reduce their social contacts to the bare minimum and accept professional satisfaction as their main reward. One Supreme Court justice has even refrained from attending birthday parties that were organized on his behalf. However, this code runs counter to the personalistic character of Philippine culture in general, with its emphasis on face-to-face contacts and thus on frequent socializing. In this context, someone who refrains from joining important social events, such as parties and fiestas, can easily get the reputation of being a maverick or of being snobbish (called *suplado* in the Philippines). And even if a judge would prefer to abstain from socializing and partying, his family often pressures him to join.

The pressure on Philippine judges and justices to socialize and join social celebrations is further aggravated by the status the office of judge or justice traditionally enjoys. Since judges and justices enjoy high status in the community, they are frequently asked to act as sponsors in weddings or as godparents in baptisms. These requests are difficult to decline. Turning down such requests may easily be taken as a serious insult. Upon their appointment, some judges and justices make it clear to everybody they know that they can no longer act as sponsors or godparents. Others wait until the occasion arises and then try to explain gently why they cannot do so, attempting not to give offense. But for many members of the bench, it is hard to retreat from what is felt as a social obligation.

There is another important reason why it is problematic to restrict socializing by judges and justices, in spite of formal codes and unwritten rules. As was noted earlier, in the Philippines it is hard to succeed without actively building and making use of a personal network. Thus judges who restrict the extent of their socializing also restrict their chances for promotion. A high court official illustrated this dilemma by citing the case of a judge who served for more than 20 years as a Regional Trial Court judge before he was finally promoted to the Court of Appeals. This judge had a public reputation for dedication, sincerity and competence. However, he spent so much time and energy on deciding cases that he neglected to invest in the development of his personal network. This was the main reason why he was overlooked in promotions until 1993.

In actual practice, many judges are actively involved in networking. In Metro-Manila for instance, they may join social clubs which are quite popular among professionals in the city. The favorite meeting places of these clubs are the coffeeshops of luxurious hotels. Some clubs meet once a week, others more frequently, one club even meets daily (though it does not appear that this club has a judge as a member). Club meetings take place over breakfast or lunch or in some cases simply over coffee and snacks. The clubs spend time discussing current public issues and gossip (called *tsismis* in the Philippines).

The Impact of Personalistic Strategies on Judicial Credibility

In spite of the fact that lobbying, influence-peddling and networking in the judicial system are not automatically condemned by the general public – because of the personalistic character of the socio-cultural system – these practices nonetheless constitute serious threats to the credibility of judges and justices. First of all, considering the importance of personal ties, and given the pervasiveness of attempts to influence judges unduly, it cannot be ruled out that personal factors indeed play an inappropriate role in a number of judicial decisions. Second, the informal discussion of cases that are *sub judice* also feeds suspicions of foul play on the part of judges, even in those many cases in which judges have based their decisions on the merits of the case. Third, influence-peddling and lobbying greatly favor the rich and powerful over the poor and underprivileged in terms of access to the courts. This latter issue will be elaborated in the chapter on Fair and Speedy Justice for all Filipinos.

Pervasive lobbying and influence-peddling also have a negative effect on the reputation of the law profession. There is a pervasive public perception that lawyers concentrate as much on influence-peddling as on elaborating the merits of cases. Lawyers are frequently selected on the basis of their alleged influence, rather than on their professional qualities, just as some lawyers try to attract clients on the basis of claims that they can influence certain judges. Another expression of this public perception is that law firms closely tied to powerful legislators or executive representatives are often particularly successful because of their connections. This implies that with every change of administration there is a shift in popularity among law firms. Firms identified with the new administration prosper, those identified with the former administration decline.

Another expression of this perception is that lawyers who are close relatives of members of the judiciary have an edge in professional recruitment by law firms. A personal connection to a Supreme Court justice is perceived to be a particularly valuable asset in this context, because the candidate in question is perceived as being able to capitalize on this connection in future legal dealings. Consequently, relatively inexperienced lawyers may be given large and complicated cases on the basis of the personal influence they are perceived to have in the courts. An illustration of this is the very sensational case of the rape and killing of two students from the University of the Philippines in a town south of Manila, referred to briefly in the section on ‘Politicians and Judicial Decisions’ in chapter 4 of this study. Being a man of considerable resources, the mayor hired the services of a well-known experienced defence lawyer. However the general public was greatly shocked when the name of the second lawyer was disclosed. This turned out to be the son of the incumbent Chief Justice of the Supreme Court. The son at that time was in his early thirties and unlike the mayor’s first choice had not yet made a name for himself as a defense lawyer. This contributed to the widely publicized conviction that the young lawyer was not chosen by the mayor for his professional qualities as a lawyer, but merely because of his connection to the Chief Justice. However, in this specific case, the Chief Justice’s son withdrew from the case after intense pressure from public opinion.

Corruption and Perceptions of Corruption

The Philippines has a long history of corruption – and perception of corruption – in public office. Corruption proliferated during the Marcos era, stimulated by the negative example set by the political leadership during that period. In the post-EDSA era, reduction of corruption has proven to be no easy task.

Though there have always been suspicions of corruption in the judiciary, until recently the general perception was that this phenomenon has not been quite as rampant in the judiciary as in executive departments. In the early 1990s, this perception changed: since then rumors of corruption have been the subject of recurrent and sustained attention in newspapers and public conversation.

It is quite difficult to assess the scope of this problem precisely. Corruption is hard to prove, since it is usually committed discretely. An indication of the extent of this phenomenon can be had partially by studying people's perceptions of the problem, which are not necessarily accurate. As part of the research on which the present study is based, knowledgeable and reliable representatives of various sectors of the judicial system were asked in the context of in-depth interviews for their assessment of the scope of corruption. Views varied greatly among respondents. In 1993, the lowest estimate given was between 2 to 5 per cent of judges; various other estimates ranged between 25 and 50 per cent; several respondents asserted that nearly all judges are 'on the take'. The most frequently cited proportion of judges engaged in corruption was 10%, though one gets the impression that the frequency of this estimate was influenced by the fact that the figure of 10% has been mentioned in various newspaper articles.³ In June 1996, a few respondents that were interviewed again were more pessimistic about judicial corruption than in 1993.

In the Philippines, a certain amount of quantitative research has also been conducted on public perceptions concerning the scope of judicial corruption. In early 1993 and 1994 a reputable quantitative research organization, Social Weather Stations, published public survey reports on a series of judicial issues including public perception of judicial corruption. In the 1993 survey, 39% of respondents stated that they believed few judges are corruptible, 37% that many are corruptible and 20% that most judges are corruptible.⁴ In the 1994 survey, 5% of the respondents said they believed that none of the judges are corrupt, 44% that few are corrupt, 39% that many judges are corrupt and 10% that most of them are corrupt.⁵ The 1994 survey also confirmed the popular view that public respect for the honesty of judges has substantially decreased.⁶ It must be noted, however, that both these surveys and the interviews previously mentioned were conducted during a period marked by a particularly high degree of negative publicity about the judiciary, which of course could have influenced the responses.

Whether the decline in the public reputation of judges actually means that corruption in the judiciary has been increasing substantially is also hard to prove. There are only circumstantial indications that this is actually the case. The memories of senior lawyers seem to suggest this increase is a reality. One senior lawyer with a reputation for high integrity said: 'when I started in the law practice in 1964 you did not hear so much about corrupt judges. I knew of one judge in Manila who was notoriously corrupt. But that is

why I knew about him specifically: because he was rather exceptional. These days you are bombarded with rumors and stories about corrupt judges.'

The perception of these senior lawyers that judicial corruption has increased sounds plausible in the light of recent historical developments. The subjugation of the judiciary and the pervasive corruption that occurred under Marcos exercised considerable pressure on judicial integrity. Furthermore, the judicial reorganization undertaken in 1986 following the EDSA revolt was not very radical.

The perception of corruption has not been restricted to judges in the lower courts and their supporting judicial staff. The higher courts, including the Supreme Court, have not been exempt from suspicion. Some of the perceptions about corruption in the higher courts might be based on sensationalism, ignorance or clear malice, as will be elaborated in the sections of the role of this press in this chapter. But perceptions that even the higher courts are not clean also exist among honest and reputable members of the legal system.

Nevertheless, instances of judicial corruption cannot be blamed solely on judges. In every instance of corruption at least one lawyer and his or her client have also been involved. Without corrupting lawyers and clients there can be no corrupt judges. It is even likely that the majority of the cases of corruption are initiated by lawyers, rather than by their clients or the judge in the case. One top lawyer, who is also a journalist, has even estimated that about 80% of all corruption cases are initiated by lawyers. Generally, the client tends to follow the advice of his counsel, and will not often object if the lawyer suggests that bribery is necessary. However, there also seems to be a degree of symbiosis between client and lawyer. Clients who do not have fundamental objections to corruption tend to choose lawyers who may engage in bribery, while clients wishing to play by the book tend to choose lawyers with a reputation for honesty. On the other hand, a lawyer may have encouraged corruption only after having received a subtle signal from a judge suggesting to the lawyer that the judge required a bribe. An example of such a signal might be an unexpected delay introduced by the judge in a case without a convincing rationale.

Normally, corruption is practiced indirectly and discretely: go-betweens and coded language are often used.⁷ Bribery may begin with an anonymous phone call, or intermediaries such as relatives and staff members are drafted into service. Large law firms may assign the most junior partners to do the dirty work, while a judge may use the court clerk or an administrative aide. The aide may request the intermediary proposing the bribery to speak 'loud and clear', meaning to be explicit about the bribe. The advantage of coded language is that when a judge or lawyer is accused of bribery he can always assert that his words have been misinterpreted. And the use of go-betweens offers the advantage of shifting the responsibility to the intermediary if the bribery attempt becomes public.

Sometimes a judge may be faced with acts of bribery that are not only difficult to resist but also difficult to reverse. For instance, a judge might discover that a hospital bill of a close relative, or tuition fees for a child's college education, have been suddenly paid anonymously. This might have occurred without the judge being consulted. Though the judge will have a reasonable suspicion as to who has paid the bill, there is no clear

proof, and the judge may therefore not know how to return the money even if he or she wishes to.

The success of a bribery attempt is further facilitated by an already existing personal rapport between the judge and the lawyer and/or litigant. Personal relations lower the barrier against entering into the delicate negotiations around a bribe. Furthermore, these relations lower the hazards of a bribery attempt in case the offer is declined. A judge may reject an offer of money from a lawyer friend in exchange for favorable decisions, but nevertheless refrain from reporting this attempt to the Supreme Court in order not to subject this friend to a severe punishment.

Sometimes lawyers who are involved in bribery are the victims of resourceful court staff members. An employee of a judge who discovers the prospective verdict the judge intends to hand down in a case may approach the lawyer of the party marked to win. The court employee may suggest that the judge wants money in exchange for a positive verdict, and without being aware that the judge is not involved in the attempt, the lawyer may pay the employee, who proceeds to pocket the money. When the positive verdict becomes public, the winning lawyer mistakenly attributes this decision to his bribe.

A lawyer may also deceive his client by telling him that the judge wants money to render a favorable decision, but the lawyer keeps the money himself. A positive verdict will serve as evidence of the efficacy of the bribe. If the verdict is negative, the lawyer will either complain that the judge did not keep his promise or he will suggest that the opposing party paid the judge an even higher sum.

A more elusive form of bribery is the gift. As noted above, in the personalistic society of the Philippines, a thin line of demarcation exists between professional dealings and personal relations. Consequently, colleagues or people who frequently interact with one another professionally may treat one another like friends, providing each other with gifts on particular occasions such as Christmas, birthdays, the weddings of children, etc. Moreover, presents may be given as spontaneous tokens of appreciation for well-valued professional services. For instance, teachers and doctors often receive gifts from grateful parents or patients. In the judicial context, a client's appreciation of a favorable outcome may make the client feel so generous that he or she gives gifts not only to his or her lawyers but to the presiding judge as well.

Gifts, however, are also often used to win professional favor. For instance, it is common for students to give presents to teachers to facilitate the chances of a smooth graduation. Similarly, lawyers frequently provide presents to judges to win their favor, even though judges are officially prohibited from accepting gifts.⁸ If somebody raises objections to these gifts, pointing to their potential for corruption, a lawyer may defend the practice by saying that the gift was only intended to show personal appreciation and courtesy.

The success of the strategy of gift-giving is facilitated by the system of reciprocal favors so dominant in Filipino society. Furthermore, it is not easy to decline gifts, because culturally this is considered to be rude and offensive. The presents usually involve clothes or material for clothes, or items such as bottles of liquor for men or perfume for women. But sometimes much more expensive gifts are involved as well. So cultural considerations can highlight a tension surrounding some of the formal require-

ments of judicial conduct, and which lawyers or litigants may manipulate to their advantage.

Judicial Corruption and Income

Inadequate income for judges is very frequently cited as a major factor facilitating corruption in the judiciary. The salaries of judges are standardized nationwide in accordance with the general compensation and classification system of the civil service. The system currently in effect, which was established in August 1989 and revised most recently in 1994, foresees the following monthly salary scales for judges in the various categories, applied according to seniority:⁹

	1989	1994
Chief Justice	22,000 pesos ¹⁰ (\$830)	44,000-47,547 pesos (\$1,160-1,794)
Associate Justices of the Supreme Court	19,500 pesos (\$738)	35,000-41,604 pesos (\$1,321-1,570)
Presiding Justices of the Court of Appeals and <i>Sandiganbayan</i>	19,500 pesos (\$738)	30,000-35,661 pesos (\$1,132-1,346)
Associate Justices of the Court of Appeals and <i>Sandiganbayan</i>	18,975 pesos (\$716)	25,000-29,717 pesos (\$943-1,121)
Regional Trial Court Judges	17,075-18,307 pesos (\$644-691)	22,811-27,115 pesos (\$861-1,123)
Metropolitan Trial Court Judges	15,180-16,275 pesos (\$573-614)	21,090-25,096 pesos (\$796-947)
Municipal Trial Court Judges/Municipal Circuit Trial Court Judges	12,650-13,563 pesos (\$477-512)	19,499-23,178 pesos (\$736-875)

On top of his regular salary, a Philippine judge receives a supplement from the Supreme Court – which amounted to approximately 3,000 pesos in 1993 – and an allowance from the local administration which may equal up to 25% of his salary. In addition, the higher court justices receive extra allowances, whereas the justices of the Supreme Court are provided a car with driver. Because of these extra allowances, the income of judges is higher than that of most other categories of employees in government bureaucracies, and may exceed the income of most top ranking officers in the executive branches. Furthermore, the judge's salary is usually not the sole source of income for his family, since it is common in the Philippines for both husbands and wives to work.

Nevertheless, the income of judges leaves something to be desired, particularly in the Metro-Manila area where the costs of living are high and continue to rise steadily. In 1993, a three-room apartment in a middle class neighborhood easily cost 8,000 to 10,000 pesos a month. The combined costs of medical expenses for which judges receive only modest compensation, schooling for children, food etc., can render it a struggle to make ends meet. This struggle strengthens the temptation to engage in corruption, particularly when a judge is suddenly confronted with a major expense. Furthermore, many judges cannot afford even a second-hand car, forcing them to use the very uncomfortable and time-consuming public transportation. Obviously the income is least adequate in those cases in which the spouses of judges have even lower salaries. One particular Regional Trial Court judge in Manila is a good case in point:

The wife of the judge is a primary school teacher. In 1993, primary school teachers in the Philippines earned barely more than 3,000 pesos a month, though the pay of teachers, at least in public schools, will be more than doubled gradually over a period of four years according to the new compensation and position classification scheme of 1994. In this instance, the judge's earnings accounts for more than 80% of his family total income. He has to travel four hours a day in open jeepneys, which is a common means of public transport in the Philippines for the poor and lower middle class. Though traditionally the jeepney has been somewhat romanticized as an example of Filipino ingenuity and adaptability, it is an extremely uncomfortable means of transportation. Jeepneys are usually overcrowded – particularly during the rush hour – and slow, because they stop constantly to disembark or pick up passengers. They are furthermore very unhealthy, since they are completely open vehicles and thus constantly expose passengers to the extremely polluted air of Metro Manila. Moreover, a passenger runs considerable risk of being the victim of pickpockets or even of armed robbery. In order not to be too conspicuous and thus attract potential thieves, this judge wears an old polo shirt in the jeepney and carries his *barong*, a native formal shirt, in his bag. Sighing, he compared his situation with that of colleagues in Singapore: 'the moment you become a judge in Singapore you receive two sets of keys: one for your new home and one for your car'.

Another factor that affects the actual living standards of judges relates to their specific family circumstances. A judge may be assigned to a position in the countryside, whereas his spouse works in the city where the children also go to school. It may be inconvenient and unprofitable for the wife to leave her job in the city and for the children to transfer to a rural school, particularly as rural schools generally occupy a lower place than urban ones in the hierarchy of educational institutions. So the judge may decide to rent a second home in the countryside for use during the week and travel from there to the city for the weekend. Such an arrangement of course involves extra costs. Some judges solve this problem by simply sleeping in their rural salas at no charge, but this is not always feasible.

The low level of income paid to judicial court staff also accounts to a large extent for the pervasive practice amongst lawyers of donating gifts and providing financial rewards to court staff members. Under the 1989 compensation and position classification scheme, most court employees – such as administrative assistants, typists and legal researchers – received between 2,000 and 6,000 pesos per month. Court clerks and sheriffs earned

slightly more. A Court of Appeals Justice noted that one of his secretaries had been with the court for thirty years already, but still earned only 3,500 pesos per month in 1993 (approximately US \$125), which was several thousand pesos below the poverty level for a family of four in the Philippines. He further reported that one administrative assistant had stayed home for more than a week, not because she was ill, but simply because she was unable to raise the public transport fare to travel to work. Fringe benefits for court employees are also small. For instance, there is no compensation for overtime work.

The revised compensation and classification system of 1994 will more than double the salaries of the lowest paid court employees gradually over a period of four years. A stenographer, for instance, earned between 2,250 and 2,412 pesos monthly according to the 1989 system (which is equivalent to between \$85 and \$91). Under the revised system, this salary will be raised gradually by 1998 to between 5,646 and 6,711 pesos per month (equivalent to between \$213 and \$233). Although such raises have certainly been very welcome, the salaries of court staff remain problematic. The official annual inflation rate swallows a significant part of the salary increase. Equally important, as noted in the introduction, the complaint is frequently voiced in the Philippines that the official inflation rates as provided by the government do not adequately reflect the constant struggle experienced by common Filipinos in dealing with continuously soaring prices.

Pervasive embarrassment over the low salaries of court staff exists among judges and justices as well as among private lawyers. Some lawyers provide a measure of compensation for these low salaries and benefits, for instance by driving court employees home themselves if the employees have to do engage in overtime work on their cases, paying an extra amount per page for typewriting on major cases, providing small presents at Christmas and other occasions, etc. Such measures however are not merely based on pity for the underpaid court staff. Through this practice lawyers hope to receive favors in return, notably the smooth and speedy processing of resolutions concerning their clients' cases. Aware of this motive, some court employees explicitly mention a price to private lawyers for their dedicated and speedy cooperation.

Although the giving and receiving of small gifts and rewards for underpaid court staff enjoys a degree of cultural acceptance, it is nonetheless formally forbidden, like the granting of gifts to judges.¹¹ Violators can be charged with and convicted of corruption. Apart from being formally prohibited, these practices reinforce substantive problems in the judicial system. They facilitate a climate in which speedy justice is provided only to the highest bidder, and also degenerate sometimes into more serious forms of corruption. For instance, court staff may be bribed to grant lawyers access to confidential information or to steal specific documents that may be incriminating for a particular client.

Judicial Income and Social Status

In the Philippines, the problem of inadequate income in the judiciary is reinforced by the gap between the perceived status of the position of the judge and the salary he receives. Judges generally cannot afford a lifestyle befitting their status. It is relevant to repeat that one can only be appointed as a judge if one has five to ten years (five years for a MTC judge, ten years for a RTC judge) of experience as a private lawyer or in a

relevant government position. The standards of reference for a judge are not those of government employees – who may have even lower salaries and benefits than judges – but private or company lawyers who earn much more. A company lawyer having 10 to 15 years experience may earn 75,000 pesos a month, and senior associates of major law firms or top company lawyers considerably more than that. Moreover, even a moderately successful lawyer tends to have his or her own car with driver. Consequently a judge may be tempted to engage in corruption to afford a lifestyle which he feels is more in keeping with his status and comparable to that of private lawyers.¹²

The gap between perceived status and income is particularly wide in the higher courts: the Supreme Court, the Court of Appeals and the *Sandiganbayan*. The Chief Justice is the highest paid member of the judiciary. He has the same salary scale as the Vice-President, the President of the Senate and the Speaker of the House of Representatives, with only the President receiving a higher salary in the public sector. Despite the substantial raise as a consequence of the revision of the general compensation and classification scheme of 1994, in the context of an annual inflation rate of 11 to 12%, the income of higher court justices is low in comparison to the most successful private lawyers in the country, who earn more than a million pesos in income monthly. This implies that the salaries and allowances of higher court justices, including the Supreme Court, by no means enable them to afford a lifestyle approximating the life style of top lawyers, even though the formal status of justices in the legal system might be higher.

Obstacles to a Raise of Income in the Judiciary

If low salaries are indeed the main reason for corruption in the judiciary, the obvious solution to the problem is to increase substantially the salaries of judges, justices and court staff. The revised compensation and classification of the public sector, which includes judges and court staff, thus implies a measure of improvement in this context. A main bottleneck to a further increase in salaries in the public sector however is that the Philippine government is traditionally short of funds. The present level of economic development and the country's foreign debt burden inhibit such salary increases in the public sector. Moreover, it may be socially and politically difficult to single out court employees, judges, justices and their staff for a dramatic further salary increase without also increasing other salaries in the public sector. After all, other important public officials such as teachers and policemen face much tougher economic hardships than members of the judiciary. Even the President's official salary is not much higher than that of a judge or justice.

Comparatively speaking, the retirement benefits of judges are also reasonable. Judges receive a lump sum to cover the first five years following retirement. If the judge is still alive at the end of these five years, he or she begins to receive a monthly pension equal to his or her final salary, plus various allowances. These comparatively reasonable retirement benefits have acted as a stimulus to prosecutors to apply for judicial positions. Since the salaries of government prosecutors are not higher than those of judges and their retirement benefits are less, prosecutors who pass the age of 50 are therefore interested in joining the bench. This acts as a drain on the government's prosecution machinery which is plagued by vacancies as much as the judiciary. If the salaries and retirement

benefits of judges would be further increased and the gap between judges and prosecutors widened in this respect, the shortage of public prosecutors would certainly increase further.

Plans and Strategies to Increase the Income of Justices, Judges and Court Staff

Nevertheless, there have been various suggestions for improving judicial income further without drastically upsetting the salary system in the public sector. One such suggestion is to exempt the judiciary from income tax. Another is to provide them with additional fringe benefits, such as an elaborate medical insurance also covering their families. An automatic increase in the retirement benefits of judges has also been proposed. However, it remains an open question whether such improvements would raise judicial income to such an extent that judges would be relatively free from economic worries and pressures and thus shielded from the temptation to engage in corruption.

It is striking that the ones most concerned about the depressed pay of court staff seem to be the judges themselves. This concern is again related to the personalistic nature of Filipino society. An employer or supervisor feels – or is supposed to feel – a sense of personal responsibility for the concerns and problems of his subordinates. Moreover, the willingness of court staff to serve a judge for such little remuneration creates a sense of obligation on the part of the judge to reciprocate this loyalty.

Judges employ various strategies to boost the income of their staff. Some allow their employees to accept presents or financial rewards as long as these are small, even though this practice is formally forbidden. The problem with this approach is that it is hard to pinpoint where a small reward ends and where ‘real’ corruption begins. One former judge placed a box in the office where lawyers could donate anonymously for the court staff. The measure was meant to provide the staff with a little extra income, which they could use, for example, for a Christmas party or an outing. By the anonymous character of the donations, the giving was depersonalized and thus would not create a sense of personal obligation on the part of specific court employees toward specific lawyers/benefactors. Another judge organized a handicraft project as a sideline for his staff. The staff fabricated small items like keyhangers with judicial symbols as motifs, which were sold to other court rooms and the income used for special occasions. The judge also organized a program to help his staff make savings from their meager incomes. Another measure involves allowing court staff to sell products in the office to fellow workers. This is a very pervasive and accepted practice in Philippine offices in both the commercial and public sectors. The employees get the products— usually clothes and processed foodstuffs – wholesale from a distributor and sell them at a small profit margin.¹³ In some cases, employees are assigned a space in or around the court building at which to buy and sell products to one another. A further strategy is to reallocate budgetary left-overs in the form of additional bonuses for the staff. For instance, in 1993 some vacancies in the Court of Appeals were not filled immediately and the resulting savings on salaries were partly used for court staff bonuses.

All these various strategies imply that the financial situation of court employees varies somewhat, depending on the judge served or the court for which one works. An employee working for a lenient or inventive judge may be somewhat better off than one working

for a strict and less inventive one. However the extra benefits that may derive from these hustling strategies remain rather marginal.

Judicial Income and Different Criteria for Recruitment

Another proposal to deal with the relation between moderate salaries and the temptation to corruption is to change the recruitment of judges. This means that rather than raising salaries one must appoint the kind of people that are able and willing to content themselves with moderate remuneration. In this scenario, one does not focus on private lawyers whose income will drop when they are appointed to the bench. Instead young lawyers are recruited who are not yet used to a relatively high standard of living, and who might manage to make ends meet with a moderate salary. This could involve for instance, members of legal NGOs or alternative law groups. Other target groups might be government employees used to a moderate salary (provided of course corrupt government employees are not selected) and possibly lawyers who have passed the bar only recently.

This proposal is not based solely on financial considerations but also on pessimism about the chances of significantly improving the judiciary with the existing corps of judges. It was advanced in the context of general dissatisfaction with the effects of the 1987 reorganization of the judiciary, as well as with the efficiency of existing training programs for judges. Despite the efforts that have been made to reorganize and improve the judiciary, various knowledgeable and reliable informants have complained that many judges function poorly and have an inadequate knowledge and grasp of the law. Such observers argue that it would better to invest in a whole new generation of judges, rather than waste time and resources on the present selection.

An important counterargument to such a drastic change in recruitment policy is that new graduates and lawyers from other sectors of government lack the experience with litigation that a newly appointed judge needs to have.

Other objections have been voiced to the proposal to appoint young lawyers. To accept a moderate salary one needs to be somewhat idealistic. While idealistic young lawyers do indeed exist – as evidenced by the operation of various alternative law groups – apart from some notable exceptions, idealism is not generally promoted in law schools, as many people from the law profession itself have emphatically stressed. In particular, the atmosphere in the top law schools is geared towards money and status. Ethics plays a subordinate role, both in the curriculum and in the interests of the students. Therefore young lawyers interested in a career in the judiciary might come predominantly from second and third grade law schools, which according to those who object to this proposal would not boost the quality of the judiciary. In addition, there is no guarantee that new and young judges will remain free from corruption, given the various pressures of wider society.

A final objection to the appointment of young judges is that they may have difficulty exercising authority effectively, particularly in relation to older lawyers and litigants. This is because seniority is often an important indicator of authority in the Philippine context.

Corruption, Status, Nepotism and Ethics

Nepotism and Patronage

Generally speaking, though economic hardships may facilitate corruption, corrupt practices are by no means restricted to people struggling to make a living. It is a universal phenomenon that corruption on a grander scale is also practiced by the wealthy. Thus other factors operate that facilitate corruption. One such factor, to live according to a perceived social status that one cannot really afford on the basis of one's salary alone, has already been discussed in the section on 'Judicial Corruption and Income' of this chapter.

Another important set of factors facilitating corruption – and contributing to public perceptions of corruption – are nepotism and political patronage: the appointment of people to judicial positions on the basis of personal connections rather than merit or moral integrity. People appointed as the result of personal networking often feel free to engage in corruption because they believe that their patron will protect them from disciplinary action. In the public perception the appointment of family members to one's professional staff is easily identified with corruption.

The fact that various justices, both in the Court of Appeals and in the Supreme Court, employ close relatives as assistants has therefore provoked criticism of judicial integrity. Such appointments have led to fears that some of these relatives may abuse their connections to incumbent justices. Moreover, the appointment of relatives to the public court staff has contributed to suspicions that members of the higher judiciary give jobs to relatives who are allegedly incapable of finding a job for themselves. As a result, such appointments have constituted a challenge to judicial credibility.

Upon closer investigation, however, the relation between nepotism and corruption in the judiciary is quite complex. It is related to the various facets of personalism in the Philippines. On the one hand, the appointment of relatives and other trustees certainly presents great potential for corruption. On the other hand, in a personalistic social climate, the degree of professional dedication is to a large extent determined by the personal loyalty workers feel toward their boss. Despite the corrupting potential involved, it is therefore commonly accepted in every sector of Filipino society that important positions are given on the basis of network considerations. One senator who has a reputation for high integrity, for instance, nevertheless has recruited nearly all his staff from the circle of his former law school.

Sometimes persons with strong personal loyalty are appointed to strategic positions because the boss needs to be certain of the integrity and confidentiality of his assistant. This implies that appointment on the basis of personal relations may potentially facilitate corruption in a number of instances, while practically inhibiting corruption in others. One Court of Appeals justice with a record of exceptional dedication and integrity noted that: 'when I got appointed I asked my wife, who is a practicing lawyer, to become my assistant at least during my first year of office. I need somebody I can surely trust to supervise the office and tell me what is going on. Otherwise records might get lost or people will try to get money from lawyers claiming they speak on my behalf.'

There is another important counterargument to the perception that the appointment of family members to strategic positions on the court staff facilitates corruption. Normally these family members are lawyers themselves. It would be more profitable for them to remain in or join a private legal practice than to abuse their position as an assistant to a justice. They would certainly earn more money in private practice than they would in a justice's office, and in principle could raise the price of their counsel to clients by suggesting a high success rate in litigation before the higher courts as a consequence of their special personal relation.

The Code of Conduct and Ethical Standards for Public Officials and Employees allows the practice of appointing close relatives as staff members in some cases.¹⁴ The Code of Judicial Conduct does not explicitly allow this practice for judges, though it does not categorically prohibit the appointment of close relatives as assistants either, as long as appointment is made strictly on the basis of merit and qualifications, and nepotism and favoritism are avoided.¹⁵ However, it cannot be ruled out that the appointment of relatives by members of the judiciary is in fact based on nepotism rather than on qualifications and merit. Moreover, even in cases in which such appointments are based on objective qualifications, they may still raise suspicion and thus undermine judicial credibility.

Various other threats to judicial independence and credibility are posed by relatives and friends. Pressures from relatives may tempt a judge to incur extraordinary expenses that he cannot really afford. For instance, relatives may require financial assistance in order to celebrate birthdays, graduations, weddings and other events, or in times of need, such as for funerals, calamity relief, etc. Even a judge who is honest in nearly all cases could be tempted to make an exception to his normal conduct in order to finance such family celebrations or assist in meeting family obligations.

Campaigns Against Corruption

Though an insufficient salary may have a bearing on corruption, such corruption obviously cannot be reduced to economic factors. Moral, social and cultural issues also play a role. This was illustrated earlier in the discussion of the tendency of lawyers and clients to win court cases at all costs and in every possible manner, including that of cutting corners.

Various measures and campaigns have been launched to raise the ethical standards of the bench and the bar. These can be divided into campaigns aimed at society in general and those focused on the judiciary in particular. In the former, corruption and other ethical deviations in the judicial system are dealt with as an integral part of the ethical problems of wider society.

By far the best known example of such a general campaign is the Moral Recovery Program. This is an initiative established shortly after the EDSA revolt, based on the notion that more than economic measures alone are needed to move the country forward. The program assumes that partly because of the effects of colonialism and the Marcos dictatorship, no strong concern for the larger society or the common good has developed in the Philippines. As a consequence, corruption and indifference to the welfare of all Filipinos are widespread. The Moral Recovery Program believes that without assigning

top priority to attempts to address this phenomenon it will not be possible to solve the economic and related problems of the country.

The Moral Recovery Program began its efforts with an inventory of Filipino characteristics, both positive and negative. This inventory was developed on the basis of interviews with experts on Philippine society, a large scale public survey and an intensive study of a poor urban neighborhood. Results of the inventory were published in a report presented to the government and Congress. As a result, a government-sponsored organization, the *Kabisig* Movement, was created to devise a strategy of action to address these findings. The organization gives lectures to groups interested in the issue of moral recovery and how to implement this principle in their social environment. At the same time, it works to change the moral climate in government sectors. In coordination with the leaders of government agencies, the *Kabisig* tries to recruit employees in these agencies who are well-respected and appreciated by their colleagues. These persons receive intensive training aimed at 'enriching their personalities' and providing practical recommendations for action. The trainees are asked to devise a strategy to boost the interest of their agency colleagues in the principles of honesty and dedication to the common good.

The Moral Recovery Program has met a varied response. On the one hand, appreciation has been expressed that issues of corruption and civic spirit are so explicitly addressed. On the other hand, the Moral Recovery Program has encountered serious criticism, suspicion, and indifference in certain circles. Some people have assumed that the program serves an ulterior political motive. The initiator and main driving force of the program is a senator who has been ascribed presidential ambitions. She has thus been suspected of initiating the program merely to boost her public image and sustain and enlarge her power bases. Some critics have stated that the program focuses too much on outmoded negative stereotypes of Filipino culture, whereas others have described it as excessively ambitious or moralistic, charging that it produces mere talk and no action.

A further criticism is that the Moral Recovery's training programs rely too heavily on syncretistic 'new age' groups, thus alienating the rapidly growing Catholic Charismatic and Protestant groups, which by virtue of their priorities and sheer numbers are potential allies of the organization.

The impact of this Moral Recovery Program on the judiciary has been minimal, due mainly to the general problems facing the movement. Moreover, less comprehensive programs dealing with ethics in the judicial system itself already exist, rivaling the efforts of the Moral Recovery Program. Some representatives of the judicial system think that the MRP should be restricted to the executive branches, whereas the bench and bar should have their own ethical campaigns, thus underlining the independence of the judiciary from the executive branches.

An important step toward raising ethical standards specifically tailored to the judicial system has been the promulgation of official codes by the Supreme Court to regulate the conduct of judges, lawyers and prosecutors. The Code of Professional Responsibility for lawyers and prosecutors, which partly applies to judges as well, was issued in June 1989. To date the actual impact of this document has been rather small. According to critics, one reason for this limited impact is that the code is too comprehensive, containing 22

canons which are subdivided into 77 rules. They say that the document contains too many prescriptions without a clear prioritizing in order of importance.

Some of the rules of the Code of Professional Responsibility are also controversial. A case in point is rule 1.01 which states that 'a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct'. As several cases of dismissal or disbarment have shown, the prohibition of immoral conduct forbids lawyers or judges from having a mistress or engaging in any other kind of extramarital affairs.¹⁶ It is important to bear in mind in this context that marital infidelity is a criminal offense in the Philippines, both for men and for women. In actual practice, this law has not been enforced, however, partly because prosecution requires an official complaint from the aggrieved spouse, which usually constitutes a major obstacle to enforcement.¹⁷ Traditionally it has been common for married men to have one or more mistresses,¹⁸ and critics believe it unnecessary or superfluous to attempt to deny judges and lawyers the same prerogative exercised by most Filipino men in actual practice. They also do not believe that having a mistress qualitatively influences the performance of a lawyer or judge.

Arguments in favor of prohibiting judges and lawyers from having mistresses point to the potential relation that can exist between this practice and corruption. Maintaining more than one family can involve a substantial strain on a person's budget. Public officials, including judges and prosecutors, may easily be tempted to engage in corruption in order to cover such costs, particularly when the official's salary is modest.¹⁹ Additionally, it is viewed as incongruous to allow representatives of the legal system to engage in a practice which is still a criminal offense, even though the law regarding this issue is not enforced.

The main reason for the small impact of the Code of Professional Responsibility, however, does not appear to lie in the controversial nature of some of its rules, but rather in the relative indifference of lawyers. The principal author of this Code discovered at a lawyer's conference that many lawyers barely knew the content of the Code.

The second code promulgated by the Supreme Court in September 1989 is the already-mentioned Code of Judicial Conduct. This Code has five canons subdivided into 30 rules.

In addition, several other efforts have been undertaken to address the question of judicial ethics. The issue is a subject in the Supreme Court's programs for judges, and plans exist to give ethics higher priority in the training of future lawyers. Currently, the emphasis on ethics in law schools is rather minimal, ethics having become subordinate to money and success. Some believe that judges and lawyers who have been disciplined for violation of the code should be given training in ethics as an integral part of their penalty. Ethics and values have also been the theme of the annual meeting of the National Committee on Peace and Order which were attended by the representatives of the five pillars of the Criminal Justice System in 1995.

While all these various efforts at raising ethical standards are encouraging, their eventual success is hard to predict. At present, many lawyers and judges use their personal discretion in drawing a clear line between what is still acceptable and what is not. This even applies to relatively idealistic lawyers, who sometimes reluctantly resort to practices that do not go strictly by the book. Observing that the opposing parties tend to gain undue advantage from grossly violating the code of professional responsibility,

these lawyers themselves resort to violations of the code – such as informal lobbying with judges – in order to ‘level the playing field’ for their clients.

The codes of professional conduct have not resulted in a standardization of ethical behavior or internalization of commonly accepted norms in the legal system. Therefore it appears that the most important role of these codes is to serve as objective points of reference in the disciplinary supervision of the bench and the bar.

Supervision and Discipline

In the Philippines, disciplinary supervision over the bench and the bar is mainly the responsibility of the Supreme Court. The Court alone exercises the power to discipline judges. The Executive Judge of a court sala can discipline a court staff member with up to as much as one month’s suspension or loss of one month of salary. More severe disciplinary measures have to be imposed by the Supreme Court. Likewise, the Integrated Bar of the Philippines, of which all lawyers in the country are compulsory members, can take some disciplinary action against erring members. Heavy penalties, such as disbarment or suspension from practice, however, are the responsibility of the Supreme Court.

Complaints about the misconduct of judges and lawyers are primarily referred to the office of the Court Administrator, composed of the Administrator himself, assisted by several deputies. The office of the Court Administrator conducts an inquiry into the complaints, in which the police, the executive judge of the sala to which the judge under investigation belongs and the National Bureau of Investigation may be asked for assistance. Usually an RTC judge plays a leading role in the investigation of a complaint against an MTC judge; a Court of Appeals justice plays this role in the investigation of an RTC judge; and a Supreme Court justice leads the investigation concerning a justice of the Court of Appeals.²⁰ The cases are subsequently referred to the Supreme Court justices. Heavy penalties, particularly disbarment and dismissal, are decided in *en banc* sessions on the basis of majority opinions. Decisions regarding discipline are written by a Supreme Court justice, and referred back to the Court Administrator for resolution.

Res Ipsa Loquitur

In principle, the Supreme Court can discipline lawyers and judges on the basis of the so-called *res ipsa loquitur* rule (‘the matter speaks for itself’). In the case of a *res ipsa loquitur* procedure the Court disciplines on the basis of strong evidence that it has collected, but without applying the basic rules of due process, which consist of the right to a formal investigation by an impartial tribunal and the right of the accused to be heard and present evidence in support of his defense.²¹ The only exception to this policy concerns cases that may result in dismissal or disbarment. These cases are considered penal rather than administrative in character and therefore always must involve the application of the rules of due process of criminal law.

The *res ipsa loquitur* procedure has been the subject of strong objections from members of both the bench and the bar. RTC judge Davidas-Farrales for instance wrote in two articles – aptly called *Justice for Judges* – that all disciplinary cases are criminal

in character, not merely administrative. She further objected to the fact that the Supreme Court in actual practice divided disciplinary cases into three categories, for each of which different criteria of evidence apply. In her opinion, judges should have the same rights to due process in cases involving discipline as normal citizens have in criminal cases. Furthermore, she says judges should be protected against malicious or merely unsubstantiated attacks against their integrity.²² Protests against the *res ipsa loquitur* rule have also come from the legal profession. In a public statement the president and the director of a major voluntary bar organization declared: 'the Philippine Bar Association joins the concerned members of the Bench and the Bar and respectfully submits that this *res ipsa loquitur* rule is violative of due process and the law'.²³

Following these protests, the Court more or less suspended the *res ipsa loquitur* rule, and resorted to the application of the full rules of due process in all disciplinary cases, particularly the right of the accused to explain his side of the issue. In addition, in cases involving gross misconduct, the Supreme Court only conducts a disciplinary investigation if a formal complaint against a judge has been filed.

Apart from the application and retraction of the *res ipsa loquitur* rule, the Supreme Court introduced several important measures to improve its disciplinary supervision over the judiciary. One of these is the appointment of regional coordinators consisting of former judges and justices.²⁴ These coordinators monitor the courts and judges in a particular region, for instance through surprise visits to the courts. Additionally, in 1993 a committee was introduced, consisting of retired bench and bar members, to handle complaints of corruption in the bench and bar. The committee investigates and passes the information it has gathered, as well as its recommendations, to the Supreme Court for further action.

The Supreme Court's Disciplinary Record

Between 1980 and 1992, the Supreme Court undertook 156 disciplinary actions, as well as various investigations. A total of 42 out of these 156 actions were dismissed. Despite the self-imposed restrictions introduced concerning the *res ipsa loquitur* procedure, the Supreme Court has since continued to pursue disciplinary actions. During the first six months of 1993, the Supreme Court penalized 28 judges for various offenses.²⁵ A further 63 disciplinary actions were conducted by the Court between July 1, 1993 and June 1994 at a time when the judiciary was under heavy attack in the media: 13 judges were dismissed, 22 fined, 9 reprimanded, 17 admonished and two given warnings.²⁶ In 1995, 12 judges were dismissed and a further 54 fined or disciplined in some other fashion.²⁷ It is striking, however, that none of these disciplinary actions explicitly concerned corruption or other forms of undue influence on judicial decisions. The disciplinary actions concerned issues such as immorality, gross ignorance of the law and failure to adhere to the instructions of the Supreme Court regarding case management and court administration. As a result, on its disciplinary record, the Supreme Court has been vigorously accused of exercising too much leniency with regards to judicial corruption. Examples of such alleged leniency include: judges accused of corruption being transferred rather than dismissed; judges suspected of corruption being dismissed

on the basis of a lesser charge, such as ignorance of the law; and some erring judges being allowed to retire with benefits rather than being dismissed.

The Criticisms

Staunch critics believe that the Supreme Court is not strict enough on judges because of an 'old boys' mentality, whereas it often is strict with lawyers who are critical of the Court. Some critics also believe that the Court has set wrong priorities in its disciplinary supervision. They argue that the Supreme Court can be very harsh on judges in outlying areas of the country who do not follow the rules and regulations of the Supreme Court strictly, for instance regarding the time frame in which a case should be decided. In their opinion, the Supreme Court does not take the poor working facilities of these judges into account, as well as the poor infrastructure of communication. As a result, some orders from the High Court reach these judges very late, or not at all. The same problem pertains to changes in the law or jurisprudence, of which judges in outlying areas sometimes are not properly informed.

These critics further argue that the requirement to comply with administrative provisions which are unrealistic in their situation also tempts some judges in outlying areas to falsify *certificates of service*, out of fear that they will be disciplined for non-compliance. Each judge is required to complete this certificate, regularly and submit it to the Supreme Court. By the certificate the judge declares, amongst other things, that he has complied with the rules of the Court regarding working hours and mandatory trial periods.²⁸ At the same time, according to these critics, the Supreme Court seems impotent when it comes to fighting corruption in the judiciary.

Another form of criticism of the present disciplinary policies of the Supreme Court is that the procedures of investigation work in favor of corrupt judges. Investigations often take a considerable amount of time. In the meanwhile, the corrupt judges are not suspended and can continue with their corrupting influence on the judiciary. Moreover, the requirement that a formal complaint has to be filed forms an enormous hindrance in fighting corruption. Lawyers are afraid to accuse judges publicly, because this will invite retaliation against these lawyers by the accused judges, or by other judges sympathetic to the accused. The awareness that they can only be disciplined when a formal complaint is filed, and that lawyers have difficulty in filing such a complaint, gives corrupt judges a feeling of invulnerability.

Critics point out that there are cases in which reasonable suspicions should be a sufficient basis for starting a preliminary investigation, if necessary with the help of the National Bureau of Investigation. Such inquiries should be possible when judges display a lifestyle that is conspicuously inconsistent with their level of income, for instance when they have expensive cars or wear suits made of the finest materials. Since the law requires that members of the judiciary state their assets and liabilities with the Office of the Court Administrator upon assumption of their office, and once a year thereafter, it should be possible at least in principle to expose judges who pursue a lifestyle or pattern of spending for which their income and assets cannot properly account.²⁹ The critics believe that the individual rights of judges are never specifically violated simply by investigation in such cases.

Another possible basis for investigation against a judge, according to the critics, should be an unusually high record of issuing or lifting restraining orders or search orders against business people. Temporary restraining orders can be very lucrative in business disputes. Businesses are therefore willing to pay a substantial bribe to have such an order issued against an opponent, or to convince a judge to lift a restraining order that has been issued against their own business. Search orders are easily used to harass businesses and thus to extort money from them.

Another factor inhibiting the filing of formal complaints are persistent rumors in the legal system that even the Supreme Court is not entirely free from corruption. These rumors inhibit lawyers from filing complaints against corrupt judges, since they lack confidence that the Supreme Court – which they perceive as not being entirely clean – will investigate the complaints seriously enough. A lawyer filing a complaint may even fear that his action will be held against him by some members of the Supreme Court, which will inhibit his chances of success in future cases with them. Moreover, these persistent rumors may facilitate corruption amongst lower court judges who, believing these rumors, may regard this perceived corruption within the higher judiciary as a justification to engage in corruption themselves.

Though some critics favor less elaborate due process in disciplinary investigations, others do not believe that the rules of due process themselves are to blame. Instead they assert that the Supreme Court invalidly hides behind the right to due process in order to legitimize passivity and lack of creativity addressing charges of corruption. In their view, the Supreme Court is more lenient toward judges than rules of due process actually require. This leniency has been facilitated by the fact that neither the Supreme Court justices nor the staff of the Office of the Court Administrator have been selected on the basis of their reputation as disciplinarians.

The Position of the Supreme Court

In defense of the Supreme Court, various valid arguments or mitigating circumstances have been or can be raised. A very important argument in this respect is that in applying the full rules of due process in disciplinary cases, the Supreme Court has authoritative international instruments on its side. For instance, Article 17 of the *UN Basic Principles on the Independence of the Judiciary* emphasizes the right of judges to a fair hearing in disciplinary matters, whereas Article 19 states that ‘all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct’.³⁰ These documents do not exempt ‘administrative offenses’ from the requirements of due process. In accordance with international standards due process is also a constitutional right for every citizen of the Philippines. It would be inconsistent to withhold this right from judges accused of grave irregularities.

Others argue that some critics are clearly biased. Disgruntled lawyers criticize the Supreme Court and the judiciary because of personal grievances. Sometimes criticism of the Court in newspapers is expressed by journalists who either have personal axes to grind with the Court, or who write such criticism on behalf of third parties who harbor personal resentment toward the Supreme Court, for instance due to past disciplinary action against them.

Furthermore, complaints about the judiciary frequently come from lawyers who have lost cases. As the result of exaggerated *amor proprio*, many lawyers blame their having lost a case on foul play rather than on the case's lack of merit (or even less on mistakes which they themselves have made), and consequently accuse the presiding judge of corruption. In this context, the rules of due process are necessary to protect judges against false accusations by disgruntled lawyers who have lost cases heard by the judge they accuse.

A powerful illustration of this phenomenon is the report presented by the Vice-President of the Philippines in 1992 about corruption in the judiciary, which received much publicity. The Presidential Anti-Crime Committee, which he presided over, was assigned by the government to investigate judicial corruption. On the basis of this report, the Vice-President concluded that at least 10% of judges were corrupt. The Supreme Court replied that many of the cases on which the report was based involved old complaints that had been dismissed already years before, or accusations that were either anonymous, unspecified or unsubstantiated. Some of the complaints were not even against judges, but against lawyers, prosecutors or members of non-judicial government bodies. If the report were used as a basis for disciplinary action, considerable damage would be done. Judges and justices must certainly be protected against fabricated charges from disgruntled lawyers. Because corruption and the exercise of undue influence are very hard to prove, it makes disciplinary investigation complicated. And because corruption has been a problem in the Philippines for so long, the 'know-how' of engaging in corruption without getting caught is well developed.

Another important mitigating circumstance is that many complainants – generally lawyers and litigants – are vague in their accusations or are not willing to pursue their complaints during investigations. This makes it difficult to act successfully against corrupters. The fight against corruption encounters a problem similar to that experienced in the fight against crime, which has been discussed in chapter 3. Witnesses of corruption are often genuinely afraid of retaliation. Fear, however, is not the only reason for their lack of cooperation. Most witnesses of corruption do not want to face the trouble involved in filing a complaint and in testifying. Instead of participating to promote the quality of justice, witnesses rather count the costs and benefits that such personal involvement would require.

The unwillingness to be specific in complaints became quite evident during the operations of the special *ad hoc* committee consisting of the Chief Justice and two retired Associate Justices which conducted a fact-finding investigation in early 1993 into rumors about judicial corruption. The work of this committee was seriously inhibited by the fact that some lawyers and journalists did not want to reveal the sources of their information on alleged corruption, or refused to cooperate with the *ad hoc* committee at all.

In defense of the Supreme Court's disciplinary policies, it should be noted that the strict application of the rules of due process has been emphatically requested by lawyers and judges themselves. It would be inconsistent for lawyers to request due process for themselves and judges while simultaneously complaining about the lenient discipline that results if these rules are applied.

A further practical factor that complicates strict discipline in the judiciary is the shortage of judges. If one suspends a judge during the period of investigation, no one is available to take his or her place. For the cause of justice, the drawbacks of having a not entirely honest judge in a courtroom may be smaller in the end than those having no judge at all.

Another argument in defense of the Supreme Court is that some corrupt judges are actually dismissed. In cases involving credible suspicions, but not completely watertight evidence, the suspected culprits are often dismissed for gross ignorance of the law. Since the legal knowledge of various judges leaves considerable room for improvement, it has been easier to find a fundamental flaw in a judge's legal reasoning than to prove corruption. In addition, dismissal for gross ignorance of the law produces somewhat less public embarrassment than a dismissal for corruption. A judge who is dismissed loses his retirement benefits and is barred from government service or employment in government-owned companies for the rest of his life. Nevertheless, he or she is not disbarred. This means that he can still practice law. Consequently, a corrupt judge who has been dismissed for gross ignorance of the law may even appear as a lawyer in the same court in which he used to act as a judge. This way a corrupt person still remains part of the legal system.

Some critics believe that mentioning corruption in explicit terms in disciplinary actions sends a far stronger signal to the judiciary and the wider public than referring to corruption indirectly by a euphemism such as 'ignorance of the law'. Though the practice to address corruption through such a euphemism has been criticized, it also has its defenders. They argue that a judge who has been dismissed for gross ignorance of the law remains a marked man. Even though he can still continue to practice law, his status will have been seriously affected, inhibiting his chances of building a successful and lucrative career as a private lawyer.

It should be noted further that many lawyers who complain about inadequate discipline of judges are quite ambivalent about due process in disciplinary matters. It is common among lawyers to play down violations of the ethical codes of conduct by their fellow lawyers, and to play up as excessively harsh the disciplinary actions taken against erring colleagues by the Supreme Court. A concrete example of this is the case of a lawyer and newspaper columnist who is a mortal enemy of the Supreme Court. He was once penalized by the post-EDSA Court, because he had fabricated a non-existing former Supreme Court verdict while defending a case. The perpetrator was not disbarred but rather escaped with a penalty of several months suspension. Nevertheless, he resented this penalty as being unnecessarily harsh, and consequently continued his published hostilities against the Supreme Court.

Discipline by the bar itself has also been very lenient. Disciplinary action, directly or through recommendations to the Supreme Court by the Integrated Bar of the Philippines – of which lawyers are compulsory members – has been minimal, despite the pervasiveness of 'dirty tricks' in the trade and the fact that many of the corruption cases in the judiciary are instigated by lawyers.

It should be acknowledged that the post-EDSA Supreme Court has undertaken a considerable effort to clean the ranks of the judiciary. The disciplinary actions of the Supreme Court have removed corrupt elements from the bench, as well as a number of grossly incompetent judges. These actions have sent strong signals to other judges that the Supreme Court is serious about upholding standards of competence and morality in the judiciary.

Nevertheless, more decisive actions against corruption in the bench are necessary in order to reverse the apparent erosion of the public's faith in the judiciary. The rights of individual judges and lawyers in disciplinary investigations have to be balanced against the right of the citizens to a competent and honest judicial system. A closer monitoring of judges and a more active policy in disciplinary investigations are imperative, especially when indications of corruption are strong, even though no formal complaint has yet been filed. This will also facilitate the necessary confidence on the part of witnesses of judicial corruption to speak out.

It is also necessary to take action in order to raise confidence in the integrity of the higher courts, especially in the context of persistent suspicions that these courts are not entirely free of corruption. A proposal to introduce a special committee of highly-respected retired Supreme Court justices who will investigate complaints against justices in the higher courts may be a first step toward raising this confidence. In the present framework, complaints against Supreme Court justices regarding impeachable offenses can be filed with Congress. But complaints about non-impeachable offenses by Supreme Court justices are investigated by the Court itself, conveying an impression to the general public that such investigations are not impartial.³¹

The Press and Judicial Credibility

Generally speaking, the role of the press in relation to both judicial integrity and the judiciary's respect for human rights is very important. International standards guarantee the individual citizen the right to not only a fair, but also a public hearing. This right is also recognized by Article III, section 14(2) of the 1987 Constitution of the Philippines. The press plays a crucial role with regard to public hearings. The fact that trials are under public scrutiny, with the press as intermediary, acts to limit the danger of dishonest trials and resulting violations of human rights. Furthermore, in a democratic order, any public agency needs to remain publicly accountable – including an independent judiciary. Press attention surrounding specific trials and the judiciary in general ensures this public accountability of the judiciary. Such publicity acts as a check on judicial competence and integrity. Publicity exposes irregularities in the judiciary and puts pressure on the responsible authorities to redress these irregularities. Awareness of the constant vigilance of the press can also prevent such irregularities from occurring in the first place.

Nevertheless, the role of the press as judicial watchdog can also be quite counterproductive. An effective administration of justice requires the public's strong faith in the competence and integrity of the judiciary. By disproportionately informing the public

about specific trials or judicial issues, or by spreading unsubstantiated allegations about corruption and other forms of judicial misconduct, the press can undermine the public's faith in the courts dramatically. Therefore, the role of the press in relation to the judiciary needs to be regulated, for instance through voluntary codes of conduct on the part of the press, and through judicial policies such as contempt of court rulings. These regulators should find an optimal balance between the right and duty of the judiciary to uphold its own independence and integrity and that of the press to act as an independent and critical watchdog on behalf of the general public.³²

During the time of Marcos the Philippine press was under strict censorship, and could not exercise its role of public watchdog appropriately. Already during the final years of the Marcos regime this situation began to change, particularly through the growth of small informally distributed newspapers. Following the EDSA revolt, freedom of the press was entirely restored. Section 4 of Article III of the Bill of Rights in the 1987 Constitution prohibits the passing of any law abridging the freedom of speech, expression, and the press. Though the relationship between the government and segments of the press has been somewhat strained at times, this freedom of the press has been maintained until now.

On the one hand, this freedom has been used in a manner beneficial for the cause of justice. The press has become an important actor in an ongoing judicial transformation. It has exposed cases of inefficiency and corruption in the judiciary and kept vigil over various criminal cases in which perpetrators went, or were about to go free due to corruption, intimidation, influence-peddling or indifference among law enforcers. Particularly extensive publicity is given to heinous crimes in the Philippines, both in the newspapers and on television. One reputable Manila-based newspaper even offered, for a period of time, a daily update on heinous crimes in the country.

A great deal of the coverage in the papers is characterized by sensationalism, but there are also journalists and publishers acting with purer motives. These members of the press believe that the country's justice system is completely rotten due to incompetent and corrupt judges and lawyers, abusive policemen, grandstanding politicians and a general indifference and leniency toward criminals. They charge that many criminals have money and connections to help them escape justice, and are in a much more privileged position than their victims. Constant and emphatic media attention to specific cases becomes an important means of boosting the interests of the victims: it exposes and partly neutralizes the corruption, intimidation and influence-peddling of the perpetrators, as well as the corner-cutting tricks of their lawyers. Extended news coverage pressures lenient and indifferent judges to decisive action; it helps secure moral and sometimes also financial support for the victims so that they can pursue their case in spite of the wiles and unfair tactics of their opponents. The effects of publicity on the question of access to – and its effects on the social distribution of justice - will be discussed in the next chapter.

Publicity concerning heinous crimes and particularly the plight of victims, is aimed at pressuring the authorities – including the government, Congress, and the Supreme Court – to introduce drastic reforms that will change the attitude of law enforcement officers, lawyers, judges and other judicial figures concerning the need for greater

protection of the general public against criminals. In this context, a call for extensive revision of the rules of due process is often voiced.

Yet the new freedom exercised by the press has also created its own set of serious problems. After 14 years of censorship under the Marcos dictatorship, there were not enough good and honest senior journalists to tutor new journalists in the practice of competent and responsible journalism.³³ This has resulted in the publication of many stories which were not properly checked and in trial by publicity. Rectifications are often not published – or are done so only inadequately – since an acknowledgement of mistakes committed violates *amor proprio*, and implies loss of face. Often journalists writing about the judiciary and court cases lack basic knowledge of law and judicial procedures, on the basis of which they draw faulty conclusions which they pass on to their readership. In the 1990s, there have been a number of improvements, including the introduction by some papers of legal columns written by prominent current or retired members of the bar and the bench, in which they inform the public of complicated legal issues and developments. Nevertheless, the problem of misinformation among journalists and the public remains an urgent concern.

This kind of uninformed legal journalism has undermined the confidence of the public in the validity and legitimacy of judicial decisions, degenerating frequently into trial by publicity. News reports have tended to raise an expectation in the general public as to the guilt or innocence of suspects. In cases where a judge renders a decision that deviates from the general expectation, the public is often led to believe that the decision was based on corruption or favoritism, in spite of the legal merits of the judge's decision. In this kind of case, despite being acquitted, the accused person will often continue to be perceived as guilty publicly, with the acquittal attributed to legal machinations on his part or to judicial dishonesty. As a consequence, the reputation of the acquitted may be damaged beyond repair.

Such trial by publicity also influences the independence of judges, since it feeds them with partial information and vocal opinions, and pressures them to decide in line with public opinion. Faith in the judiciary tends to be undermined when a judge rules against the expectations of public opinion which has been fed by dramatic reports and graphic comments in the press. This threat to judicial independence is illustrated by an incident that occurred in 1993, in which a judge allowed herself to be persuaded by a columnist/television presenter to appear on his talk show. During this broadcast, she commented on a decision in which she had passed heavy prison sentences on members of a prestigious university fraternity who killed a fellow member during hazing. Both during this show and in the newspaper coverage that followed, she received compliments for the way she dealt and tried the case with strictness and toughness toward the members of influential families. At the time she appeared on the show, however, she had not yet finished presiding over the trial of several other suspects in the case. Critics of the judge have correctly argued that such a television appearance constituted an unacceptable threat to her independence in the handling of the cases of these other suspects.

Another case demonstrates the extent to which trial by publicity can be carried. Public concern over this case appears to have been mainly inspired by genuine interest in the plight of crime victims, and the apparent ease by which people with money and powerful

connections can escape punishment for heinous crimes. The media almost took the trial over from the judiciary, making it almost impossible for the judiciary to maintain both its independence and its public reputation for integrity. In 1991 a teenage girl, her seven year old sister and her mother were found brutally murdered in their house in a wealthy Metro-Manila suburb. The teenage girl turned out to have been raped before her death. Before the criminal investigation began, various pieces of evidence appeared to have been removed from the scene. Soon rumors were spreading that the son of a well-known politician had been involved in this crime. In the course of the investigation, several groups of suspects were arrested, all of whom nevertheless had to be released due to lack of evidence. Rumors continued to spread that powerful protectors of the real perpetrators had undermined the investigation. These rumors were also voiced in a movie that was made about this crime. In 1995, several new developments occurred in the case. The most important of these was the appearance of a new witness, who claimed to have been the former girl friend of a youth gang member allegedly responsible for the rape and murder, committed under the influence of *shabu*, a synthetic drug. She further claimed that she had personally witnessed the politician's son, who was a member of the youth gang, raping the teenage girl. A massive resurgence of publicity about the case occurred. The politician defended his son by showing an American visa and driver's license of the boy to convince the press and the public that his son had been abroad during the time of the murders. The media discussed the credibility of the new witness, as well as allegations that the American visa and driver's license were fraudulent. The public took sides in favor of or against the politician's son. Perhaps the apogee of this trial-by-publicity was the action taken by the famous journalist Teddy Benigno, who both hosts a television talk show and runs a column in a high quality newspaper. He introduced a press version of a fair hearing. In one talk show he discussed the case with the Minister of Justice and the father/husband of the murdered women. He also interviewed the politician's son in the same program in order to let him explain his side. He then published a letter from the boy's mother in his news column.

Whatever motives journalists might have had in this case, the massive publicity has complicated and perhaps compromised efforts to conduct a trial in which the independence of the judiciary, the presumption of innocence and public confidence in the judiciary can all be upheld.

The relation between the press and the judiciary is complicated by the actions of the press itself because it has not remained free from corruption and influence-peddling. The press has become – at times knowingly, at other times unintentionally – a weapon to boost the private interests of various groups or individuals via litigation journalism. This has also negatively affected publicity surrounding other court cases and the judiciary. Companies or private individuals frequently feed information to the press in order to win sympathy for their side in specific disputes. Sometimes these disputes are political, sometimes they involve court cases. Because of the gullibility of some segments of the press in the post-Marcos period, this strategy has a good chance of success.

In some cases information is fed to journalists personally, but in others, it takes the form of printed information. Such information may consist of an explanation of one's

side or of accusations against an opponent. An increasingly popular phenomenon has been the so-called 'white papers'. These consist of documents that are either anonymous or signed with a false name and which discredit specific persons who are apparently on bad terms with the authors of these papers. White papers are sent to journalists and publishers, as well as to private individuals who are believed to have some influence or connections in the judiciary. A mild variant is to send information brochures to the judiciary, particularly to the Supreme Court, hoping that these brochures will influence judges or justices favorably in economic disputes.

In some cases, the unchecked rumors or allegations contained in such papers are published because journalists lack professional competence or are eager to attract a wider readership. But in other cases, journalists are simply bribed to write favorably for a given cause or to broadcast favorably over the radio or television. The aim of such bribery is to use journalists to mobilize public sympathy for a cause and thus influence prosecutors and judges in their handling of the case. In some instances, the objective is simply to strike back at one's opponent by discrediting him though the case has already been lost.

Litigation journalism has also been used to direct attacks against the integrity of individual judges and justices. One well-known example in the Philippines is the second case involving a new competitor to the Philippine Long Distance Telephone Company, which was discussed in the section on 'The Economic and Political Power of the Judiciary' in chapter 4. In this case, the PLDT objected to the license that was granted by the National Telecommunications Commission to a new competitor to operate a cellular mobile phone system. The PLDT filed a suit against the Commission with the Supreme Court. Throughout the judicial procedure of this case, the new competitor was represented by two law firms; a comparatively old, well-established one and a relatively young more recent one. The Supreme Court initially decided to deny this permission to the new competitor, but the lawyers of this company filed a motion for reconsideration. The young law firm accused the justice who had been the *ponente*, or person responsible for writing the decision, of gross dishonesty.³⁴ The firm produced a writing expert who claimed that the decision was actually written by, or copied from, the main lawyer of the PLDT, thus insinuating that the justice had been bribed. Furthermore, the rumor was spread that this justice had lobbied to change the results of the national bar exam on behalf of his son who was trying to pass it. The accusations received a lot of publicity in spite of the fact that the reliability of these accusations was seriously contested.³⁵ The old law firm even withdrew from the case out of protest over these accusations. Yet the accusations proved successful in the sense that the justice retired, not just from the case but from the Supreme Court as well, since he believed that his credibility had suffered from this publicity, though he vigorously denied the accusations.³⁶ Furthermore, the Supreme Court decision was reversed upon reconsideration in 1994. The company thus obtained its permission after all.

The Press and the 'Judicial Crisis' (1992-1993)

Publicity has not only focused on individual judges, but also on the judiciary as a whole, or more specifically an important segment of it, the Supreme Court. In the final quarter of 1992, coinciding with the start of the Ramos administration, a massive press campaign began focusing on the judiciary and on individual judges, denouncing corruption, dishonesty, and gross incompetence. White papers on corruption in the judiciary, as well as accusations against individual judges and against the Supreme Court as a whole began to circulate and found their way to the various media channels, including newspaper columns, investigative reports, etc. Surveys indicated that public trust in the judiciary, including the Supreme Court, had begun to wane.³⁷ This wave of publicity is often referred to as the 'judicial crisis'.

It was particularly surprising that the Supreme Court became a target for this publicity, because it enjoyed high public prestige after the EDSA revolt. In 1990, one weekly newspaper even declared the members of the Supreme Court as men and women of the year because of their efforts to reconstruct the judiciary after the Marcos era.

At the height of the 'judicial crisis' in 1993, certain newspapers reported that public esteem for the judiciary had dropped below that of the Philippine police. This report was perceived as grossly offensive since the police has never had a good public reputation in the Philippines. The report was based on findings of a survey conducted by a previously mentioned research institute. The survey focused, amongst other things, on the general esteem enjoyed by public institutions, and was conducted at the order of the Office of the President.³⁸

Some defenders of the judiciary suspected that the research institute had manipulated its findings on behalf of the Office of the President, which had assigned this institute to conduct various studies regularly. One officer of a judges' organization even issued a contempt order against the director of this institute, requiring him to explain why he should not be held in contempt of court for distributing suggestions that the public holds more faith in the police than in the judiciary. The case was dropped after this director argued that he had not acted out of malice, and that the survey figures were merely reported to the President and not meant to be distributed among the general public.³⁹

This incident caused some Court defenders to call for a ban on surveys on the judiciary. In their opinion, these surveys further undermine the public's trust in the courts, especially because the opinions expressed in these surveys reflect the negative criticism about the judiciary already appearing in the press, as well as a generally poor understanding of legal procedures.⁴⁰

The negative publicity culminated in the call by the Vice-President to all judges and justices to resign. This call for resignation was based on a very tentative and unreliable report, as mentioned in the section on 'Corruption and Supervision' of this chapter. The Vice-President made his dramatic appeal in front of television cameras and news photographers, calling dishonest judges 'hoodlums', or 'rogues in robes'.

The Supreme Court Reaction

The Supreme Court, and the judiciary in general, did not show public signs of panic during the widely published 'crisis', and managed to survive. The Court did not give in to calls for mass resignation, but kept explaining its position cautiously and discretely to sectors of civil society and to the press.⁴¹

The main defense of the Supreme Court was to play down the scale of judicial corruption. It exposed the flimsy basis of the Vice-President's appeal and dismissed much of the publicity as inspired by disgruntled lawyers who wanted to annoy the bench because of lost cases or other grudges. The Supreme Court also argued that many litigants have unrealistic expectations of judges because they are unfamiliar with legal procedures, for instance the time a court case necessarily takes. It further emphasized that the Court was committed to removing corruption from the judiciary, as clearly demonstrated by its record of disciplinary action, but that it could not act on unsubstantiated, unspecified, and often anonymous complaints against judges and justices.

The Supreme Court further argued that critics of the judiciary had not considered the difficult working conditions and low budgets that characterized its operations, nor the rapidly increasing work load. This increase in the work load itself refuted criticism that the public had lost faith in the judiciary. Had this been true, it would have logically followed that the volume of court litigation would substantially decrease, with the public seeking less frequent redress from the judiciary for their complaints. However, the contrary was the case. The volume of litigation before the courts continues to skyrocket. Indeed, this 'litigation explosion', according to the Court and its defenders, further refutes claims that the esteem of the judiciary is lower than that of the police. Whereas people tend to minimize contact with the police out of fear that such contact will only lead to further trouble, there is at least a substantial section of the country's population who do not hesitate to go to court.

Various leading members of the bench further believe that the publicity was to a large extent orchestrated by certain persons to discredit the judiciary. The campaign could have been orchestrated by politicians exploiting discontent about the overall justice system to boost their public popularity. More importantly, various members of the legal sector suggested that the alleged orchestrators could be found amongst politicians and government officials close to the President. The opinion was that these politicians and officials wanted to intimidate the Supreme Court into rigorous restraint in the use of its powers of judicial review, particularly in cases involving economic development, as elaborated earlier in the discussion of judicial review in chapter 4. The supposed goal of this campaign against the judiciary was either to intimidate the Supreme Court, in order to force the justices to refrain from addressing issues that have a bearing on the executive's attempts to modernize the country economically, or to force them to resign, thus paving the way for appointment of a new and more docile Supreme Court.

A counterargument to the suspicion that people close to the President were responsible for the 'judicial crisis' is that President Ramos already wields extensive influence over the composition of the Supreme Court through the regular, formal procedures of appointment. Indeed, he has the opportunity to replace at least two-thirds of the entire Court inherited from the previous administration before the expiration of his term, as the result

of continuing retirements or voluntary resignations. The critics of the government would refute this counterargument, asserting that such replacements occur only gradually over time, making the procedure too long for a government that wants swift economic changes. In addition, the Chief Justice – who is still an Aquino appointee – will reach the age of retirement only after the scheduled presidential elections of 1998. Since the Chief Justice is very influential in the Supreme Court, argue these critics, Ramos supporters wanting to replace the vestiges of the Aquino era on the Court might pressure the incumbent Chief Justice to resign. It is notable in this context that much of the negative publicity has been aimed at him. The Chief Justice has also been a recurrent target of white papers or poison pen letters since 1992.

Another possible goal of this campaign, according to public speculation, was to intimidate the Supreme Court into a favorable ruling in a case concerning the protest filed against President Ramos by the first runner-up in the presidential election in 1992. Following the election this candidate accused President Ramos of cheating, and contested the outcome of the poll before the Supreme Court. In the end, the Court issued a ruling in this politically controversial case only after the senatorial elections in January 1996. However, in its ruling the Court refrained from deciding on the merits of this petition, instead dismissing the election protest on the basis that the complainant had subsequently run for Senator in May 1995, and had reassumed office after being elected. According to the majority of the Supreme Court, the complainant had therefore implicitly abandoned or withdrawn her earlier protest regarding the presidential elections in 1992.

Other Factors Fuelling the Crisis

Although it cannot be ruled out that some persons interested in discrediting the judiciary planned the ‘judicial crisis’ to a significant degree, other factors also contributed to this crisis. The first of these was genuine dissatisfaction with the functioning of the judicial system. Following the EDSA revolt, the Supreme Court had attempted to improve the functioning of the judiciary, but after a few years it became apparent that the judicial reforms introduced had not – or at least had not yet – produced sufficient results, leading to a loss of moral credit for the judiciary among various segments of society. It was only a question of time before this growing discontent found expression in the media.

A second factor facilitating the spread of negative publicity on the judiciary was growing discontent with the Supreme Court’s exercise of judicial review. This too affected the credibility of the Court in some sectors of society.

A third factor leading to growing and increasingly open dissatisfaction with the judiciary was the action by some people – politicians, lawyers, individuals or corporate bodies – in reinforcing this public disgruntlement as a means of pursuing personal grudges against judges or against the present judicial system. The growing discontent with the judiciary provided a favorable climate for disgruntled people to strike back at the judiciary through all sorts of accusations.

The fourth and last factor is the cautious attitude exercised by the Supreme Court. The Court opted for a predominantly defensive strategy rather than a policy active counter-attack to refute the charges against it. The Court used its power to cite critics for contempt very sparingly, even in cases where such criticism was obviously malicious.⁴²

The press could have been restrained from further negative publicity about the judiciary if the Supreme Court had reacted more offensively than it did. As one former leading member of the bench put it: 'this publicity would not have gone so far under the former Chief Justices. They would fight back. They would have cited those critics lambasting the judiciary for contempt. And they would have told that one senator who accused the Court of being a constitutional tyrant: "who are you to lecture us on morality? You have four wives, whereas you are supposed to be a Catholic! And what about your pathetic coup attempt in 1986?" In the Philippines you should not show weakness to your enemies. If you do they will trample on you all the more.'

Defenders of the Supreme Court reasoned that the cautious attitude of the Court in handling criticism was legitimized by the realization that negative publicity does not tend to be remembered very long by the public. News of rumors about corrupt – or allegedly corrupt – judges gives way quickly to other sensational stories. Therefore, disciplinary actions upon publication of such rumors might give the critics more credit than they deserve, and lend their rumors even more publicity. In addition, strict disciplinary action against critics might reinforce the suspicion that the Supreme Court is stricter on outside critics than on misbehaving judges. A counterargument to this view, however, is that mild action against malicious criticism can invite further unfounded criticism and rumors in the future. Also, even if the public quickly forgets a specific rumor voiced against a judge or the judiciary, repetitious publication of such charges will tend to undermine the credibility of the judiciary over the long run.

In June 1993, negative publicity about the judiciary suddenly abated. Supporters attributed this to the defense pursued by the Supreme Court and by its backers in the legal field and in other sectors of society.⁴³ However, there was actually a more decisive factor behind this demise of bad publicity in the press, namely the discovery of the gruesome rape and slaying case, in which the mayor of a small town was accused. This case has been briefly referred to in the section on 'Politicians and Judicial Decisions' in chapter 4. Soon numerous rumors began to be published about killing fields and assassinations of political opponents in the area. The discovery of this incident also shifted the focus of press coverage and public interest to local warlords and the ongoing relation between criminals and law enforcement officers and politicians. The case conquered the public imagination and filled the headlines for weeks. Though stories about problems in the judiciary were still published, such news proved to be less interesting to the general public. The judicial crisis was completely overshadowed by this heinous crime. Also the Vice-President stopped using the judiciary as a main target of his publicity campaigns, shifting his attention to 'hoodlums in other outfits'.

The argument that the dramatic increase in litigation through the courts serves as proof of widespread public trust in the judiciary also needs to be relativized. The most notable rise in court cases concerned criminal incidents, reflecting the law and order problems of the country rather than the prestige of the judiciary. Moreover, the increase in civil cases – and to some extent of criminal cases also – reflects the increasing importance of litigation as a strategy in social and economic disputes. People use the legal system as a resource to settle personal conflicts, independently of their trust in judges. They litigate because their *amor proprio*, strong sense of pride and self-respect, has been

offended; because they want to harass or get even with an opponent; because they believe they can manipulate legal procedures more effectively than their opponents; or simply because they 'just want to give it a shot'. The 'litigation explosion' and its causes will be discussed in the next chapter.

It is noteworthy that the 'judicial crisis' stimulated some positive changes in the judiciary. For instance, immediately following the 'judicial crisis' many judges demonstrated increased strictness in dealing with corner-cutting tactics by lawyers. This underlines the great potential of the Philippine press for playing the role of judicial watchdog positively, despite the dangers and drawbacks involved.

The Press and a Second 'Judicial Crisis' (1996)

The press can be an important factor in generating public scandals about the judiciary, either directly through the exercise of irresponsible journalism, or indirectly by acting as an instrument for parties wishing to discredit the judiciary. But the press is by no means solely responsible for such public scandals. As has been described above in the discussion concerning the 'judicial crisis' of 1993, serious problems in the judicial system itself are also to blame. These include continuing discontent over the strong role exercised by the courts in economic issues and persistent complaints about the quality of the justice system in general, including doubts about the competence and integrity of various members of the bench.

In June 1996, a public scandal arose concerning a court case of acknowledged broad public interest, in which the Supreme Court itself formed the focal point of attention. Though the case received massive publicity, it was clear that the press was by no means responsible for the scandal. The publicity was predominantly caused by a serious problem in the judiciary itself.

The case concerned an investigation into tax evasion involving an estimated 25.6 billion pesos (almost US \$1 billion) by cigarette companies of a former Marcos crony and business tycoon. Because the government suspected this tycoon of wilfully evading tax payments, it started a preliminary criminal investigation into tax fraud. In 1994, the tycoon petitioned a Regional Trial Court to restrain the Department of Justice and the Bureau of Internal Revenue from continuing the criminal investigation. The legal team of the tycoon invoked a wide range of arguments, including alleged bias on the part of the assistant prosecutor involved, jurisdictional problems and violation of fundamental rights including: the right to equal protection under the law, since the tycoon was allegedly singled out for prosecution of tax evasion; the presumption of innocence; and the right to due process. The petition was granted by the RTC. A petition by the government to the Court of Appeals for review of the case, requesting annulment of the decision by the RTC, was dismissed. However a subsequent government petition was filed with the Supreme Court in February 1995, claiming that the Regional Trial Court and the Court of Appeals had committed 'grave abuse of discretion amounting to lack or excess of jurisdiction' in stopping the government from conducting a preliminary criminal investigation against the tycoon.

The case was assigned to the First Division of the Supreme Court, which dismissed the government's petition by a very narrow majority – three against two – with one member of the majority dissenting in part. A crucial element in the argumentation of the majority was that the preliminary criminal investigation was premature because the Bureau of Internal Revenue still had to produce a final assessment of the tax liabilities of the tycoon's cigarette companies. Every aspect of this case was instantly the subject of heated controversy: the deliberations of the Supreme Court before the decision was reached, the legal reasoning, the procedures followed, the nature of the dissent, even the aftermath of the decision.

Before the First Division reached its verdict, anonymous poison letters were distributed accusing the three members of the majority of receiving bribes from the tycoon, and accusing the *ponente* of a high degree of familiarity with the tycoon's main lawyer. Members of the government were suspected of distributing the poison pen letters, because only the government had a clear motive for doing so. The writers of the poison pen letters obviously knew about the opinions of the justices, which showed that the discussions in the First Division had been leaked.

The strong language in which the dissent was articulated added greatly to the controversial nature of the case. The Chairman of the First Division voiced great indignation over this decision. He dramatically stated in his dissent: 'but I will have no part in the shocking process, especially in light of the fact that government cries out that the people have been *cheated* and *defrauded* of their taxes to the tune allegedly of P25,6 billion, and yet it is not given this Court even a beggar's chance to prove it!'⁴⁴ In the dissent of the Division Chairman, three arguments figured with particular prominence. First, with regard to the majority's assertion that the government had violated the right of the tycoon to equal protection under the law, the chairman argued that in Metro-Manila alone, the government had already filed more than one thousand criminal cases for tax evasion. Second, and more importantly, he argued that the majority's decision contradicted an existing Supreme Court ruling that is in line with international jurisprudence, which states that the filing of a criminal complaint for tax evasion even without a previous assessment of the correct tax is proper. In the opinion of the majority, this ruling did not apply, in this specific case, but the Chairman considered this opinion to be erroneous. Third, and perhaps the most importantly, he argued that the majority opinion – and the decisions of the Court of Appeals and the Regional Trial Court – had entirely changed the existing notion of preliminary investigation. A previous Court ruling had stated that 'as a general rule, an injunction will not be granted to restrain a criminal investigation'. In the opinion of the Chairman, the said Court ruling should have applied with even more force in this particular case since the criminal investigation was still preliminary. The proper way for the tycoon to protest against an allegedly improper investigation would have been to file an appeal with the Secretary of Justice against the prosecutor's resolution after the termination of the preliminary investigation. Instead of following this standard procedure, the tycoon requested the courts to order the prosecution to stop the preliminary investigation. The Chairman regarded the reliance on two old Supreme Court rulings to constitute a serious misapplication of these decisions.

The Chairman concluded that the majority's decision would have a crippling effect on the government's campaign against tax evaders, which involves a very pressing point of public interest. Furthermore, he said, the decisions of the courts, including that of the majority of the Supreme Court's First Division, gave the tycoon very preferential treatment by positively exempting him from the standard procedures that normally apply to criminal investigations. In his view, the lower courts did not have the right to interfere in the preliminary investigation of the government's prosecution in this case, since the conducting of such an investigation is, generally speaking, the exclusive prerogative of the prosecution. Therefore these courts had indeed committed a 'grave abuse of discretion amounting to a lack or excess of jurisdiction'.

The nature of the disagreement also implied that at least one of the two sides had grossly misunderstood and misapplied existing jurisprudence, and this casts serious doubts on the legal competence of at least some Supreme Court justices. What made this decision even more problematic was the fact that the dissent of the division chairman strongly suggested that the decision was unconstitutional. A change of existing jurisprudence, according to the Constitution, can only be made by the Supreme Court *en banc*, never by a specific division. The arguments of the dissenting Chairman, however, strongly suggested that this decision of the First Division overturned existing jurisprudence in two respects: by giving the lower courts the authority to stop criminal investigations in cases that do not qualify as exceptional, and by stating that a tax assessment has to be made in order to start a criminal investigation.

The aftermath of the decision added to the controversy. The government expressed great regret and indignation. The Chairman of the Bureau of Internal Revenue called the decision unconstitutional and expressed her intention to file a complaint for impeachment against the justices who had ruled against the government. The government decided to file a motion for reconsideration and urged the Supreme Court to decide on this motion *en banc*. Initially, there was unity in the Supreme Court in defying the poison pen letters that accused the majority of the First Division of bribery in the case. This solidarity included the Chairman of the First Division. But unity soon cracked under the weight of controversy. The justices that made up the majority in the decision of the First Division defended themselves against allegations of corruption, and accused the dissenting chairman of trying to pressure them into signing his draft argumentation favoring the government. The dissenting chairman vigorously denied having used undue pressure, and even appeared in a television program on this case, in which the main lawyer of the tycoon also participated.

Both sides in the controversy were supported in the press. Some journalists wrote that the case against the tycoon was baseless from the beginning; other press articles questioned the competence or integrity of the majority of the First Division, against a back drop of persistent allegations against the tycoon, who was described as believing that everyone can be bought. New anonymous poison letters were distributed; senators aired their views on the matter and the quarrelling justices were called upon to resign. Such was the state of affairs in this case as of 20 June, 1996.

Though publicity concerning this case has not always been constructive or free from hidden agendas and impure motives, the press can not be held solely responsible for the

controversy that has arisen around it. Indeed, this controversy reflects badly on the government, for not having shown sufficient will or the capability to restrain supporters from resorting to the tactic of anonymous poison pen letters. It also demonstrates that the huge inequalities of wealth and power in Philippine society are reproduced to a significant extent in the judicial process. It is extremely unlikely that a small-time alleged tax evader could mobilize such huge resources to fight a major legal battle of this size so intensively and for such an extended period. This issue will be elaborated in chapter 6.

The controversy, however, also negatively impacts the public credibility of the judiciary, including that of the Supreme Court. The important role of the judiciary – and most notably of the Supreme Court – in the post-EDSA order, as well as its high public profile as a consequence of this role, places very high demands on the judiciary in terms of competence and integrity, as well as public perception of this competence and integrity. These demands are further aggravated by various factors including: an assertive and suspicious press; a government eager to facilitate swift economic development; the continuing inadequacy of resources for the public sector; the pervasiveness of corruption; and the unequal distribution of wealth and power in society.

The procedures of decision-making – in which the majority of a division, which is composed of only a small minority of all the members of the Supreme Court, can decide in important cases despite very fundamental objections from their dissenting colleagues – the inadequacy of procedures of supervision over Supreme Court justices and doubts about the adequacy of the procedures of recruiting justices further challenge the credibility of the post-EDSA Supreme Court. In the particular case of this tycoon, the accumulation of all these pressures and challenges to public credibility took the Supreme Court beyond the breaking point.

Summary and Considerations

Personalistic relations have been shown to constitute a considerable threat to judicial independence, impartiality and credibility in the Philippines. Attempts to unduly interfere in the judicial process through informal pressures and lobbying have been quite pervasive, in spite of formal restrictions. These attempts are not by any means necessarily successful, since judges may entertain lobbyists out of mere courtesy. Nevertheless, in the specific Philippine context, the public's faith in the judiciary may be undermined in cases where informal lobbying has not been successful, since this lobbying raises serious suspicions of undue interference in the judicial process, particularly on the part of losing litigants.

Perceptions and allegations of widespread corruption within the Philippine judiciary have strongly intensified in the 1990s. The extent to which these perceptions and allegations are correct is difficult to assess, particularly because corruption is carried out discretely and thus is very difficult to prove. The reasons that have been invoked for corruption are both economic and moral. The moderate salaries of judges inhibits a standard of living in accordance with their perceived social status and with the living

standards of private lawyers. In addition, judicial corruption has been attributed to declining ethical standards, partly because the judicial reorganization of 1986 was not radical enough.

The connection between personalism and corruption has been ambivalent. Good personal relations between judges, lawyers and litigants can facilitate the success and hazards of attempts at corruption. The appointment of close friends and relatives as staff members in the judiciary, further raises suspicions of corruption, but also underlines the need to appoint trusted people to sensitive positions – precisely in order to restrain corrupt practices.

The limited funds of the Filipino government, as well as the general level of economic development in the country, inhibits a substantial raise in judicial salaries. In addition, such a substantial raise might create resentment in other public sectors where even less adequate salaries apply. Instead of raising salaries in the judiciary one could also try to fight corruption by appointing relatively young lawyers and public servants already adjusted to a modest income. The potential results of such a drastic change of policy however remain uncertain. Young lawyers might in the end lack the necessary experience, and might still be affected by favoritism and corruption.

Ethical conduct – to a large extent – is the outcome of deeply engrained values and attitudes and is therefore not subject to easy manipulation. It is thus not surprising that campaigns to raise ethical standards in the bench and the bar have been significantly frustrated. A major reason for this has been the indifference of lawyers towards existing codes of conduct. Nevertheless, current ethical patterns are not an unalterable fact of life and society. These patterns of conduct can be influenced, though it may require painstaking efforts for an extended period of time. In this context, an intensification of the teaching of ethics is imperative, both in the law schools and in the preparation and updating courses for judges, lawyers and prosecutors. Such courses should be obligatory rather than voluntary. However, even the effects of good teaching are necessarily limited.

The availability of sufficiently numerous role models who set a clear and public example of high integrity and professional quality is of utmost importance in raising ethical standards in the legal profession. Unfortunately, many successful lawyers fail to provide such examples. This failure tends to convey the impression that professional integrity and success in the legal sector are mutually exclusive.

The post EDSA Supreme Court has an elaborate record of disciplinary actions. Very few such actions, however, deal with corruption or undue interference by lawyers, litigants or third parties. Various factors explain this comparative inaction in disciplinary cases: corruption and undue interference are difficult to prove; judges have the same right to due process as every other citizen; the reputation of judges must be protected against anonymous and malicious complaints; and lawyers and litigants are sometimes too fearful or too lax to cooperate in the prosecution of corruption or other irregularities.

Nevertheless, the right of judges to due process – as well as their right to be defended against malicious attacks need to be balanced against the right of the public to have access to a truly trustworthy judiciary. Because of the importance of public trust in the judiciary, no shadow of doubt about the integrity of judges or justices should remain. Thus, within the constraints of authoritative international standards regarding disciplinary

procedures against judges and lawyers, the Supreme Court should develop an active policy in its fight against corruption.

One concrete measure would be the adoption of a policy by which information indicating that a judge is pursuing a lifestyle significantly beyond his means – i.e. beyond that afforded by his salaries or other known assets – would constitute sufficient grounds for initiation of a disciplinary investigation. In order to make reliable investigations possible, the requirement of the Code of Conduct and Ethical Standards for Public Officials and Employees that such persons state their assets upon assuming office, and regularly update such information thereafter, should be strictly enforced. The income of the spouse and revenue from family property should also be reported. Even if such an active policy meets with only partial success due to fundamental problems in fighting corruption, it will at least send a clear signal to the judiciary and to society as a whole that the Supreme Court is serious in its fight against corruption. This in itself will boost the public image of the Supreme Court.

The suggestion that an independent committee be introduced to investigate charges of corruption or irregularities in the Supreme Court deserves serious consideration. The legitimacy of the Court may increase if there is a credible body to which complaints against justices for non-impeachable offenses can be filed. In addition, the recommendations of this committee could be the basis for impeachment procedures against justices by Congress, in order to reduce undue politicization of impeachment procedures against justices. One could further add to the mandate of such a committee the investigation of alleged corruption and other irregularities in the *Sandiganbayan* and the Court of Appeals. This suggestion is not intended to question the Court's ability or honesty in dealing with allegations against its own members. But such a committee, consisting of a few highly respected members of the legal sector, including former justices of the Supreme Court, would facilitate the public reputation of the Court. Such a committee would help persuade skeptical groups in society of the Supreme Court's commitment not to cover up irregularities on the part of any of its members.

In the years following the EDSA revolt, the press has taken considerable liberty in playing its role as a watchdog of the judiciary. It has exposed various problems and weaknesses in specific court cases and in the judicial system as a whole. Nevertheless, some sections of the press also played a negative role by publishing inadequate and unsubstantiated rumors and by remaining misinformed – as well as misinforming the public – about the various aspects of the judicial system and the judicial process. Moreover, the press has been subjected to corruption and manipulation as well. Both the positive role as a watchdog and the negative role in unduly undermining judicial credibility were amply demonstrated by the conduct of the press in the 'judicial crises' of 1992-1993 and 1996.

As these 'judicial crises' have underlined, the relationship between the press and the judiciary needs to be further regulated in a way that fully acknowledges the legitimate and important role of the press as a public watchdog. A welcome suggestion has been the proposal by the Integrated Bar of the Philippines to create a special commission, composed of the leaders of the bench and the bar, and representatives of the public sector

who could submit their conclusions and recommendations to the Supreme Court, Congress and the President.⁴⁵

The most useful regulator is an explicit code of conduct voluntarily developed by the press itself, or at least by a major responsible section of the press, after consultation with the Supreme Court. Such a voluntary code developed by the press would be a better guarantee for press freedom than a code imposed by the judiciary, and would also have greater legitimacy with the media as a regulator of reporting on the courts. Furthermore, future jurisprudence regarding contempt of court should seriously take such a voluntary code of conduct into account. This would greatly enhance the legitimacy of disciplinary actions against the press, both within the press itself and among the general public. It is also imperative that the press actively cleanses its own ranks. Clearly, the press has no right to complain about judicial incompetence, indifference and corruption, if it is not willing to act against such forms of misconduct among journalists.

In well-publicized crisis situations, the temptation to implement instant and drastic measures should be resisted because it will be difficult to predict the consequences. For instance, in the scandal involving the case against the cigarette tycoon, as outlined in this chapter, it was risky to ask various justices to resign at the same time. The haste with which the Judicial and Bar Council and the President would have to identify and enlist new candidates to fill those positions would increase the risk of mediocre candidates being appointed. In addition, such a crisis could open the door for the executive to exercise further influence in the appointment of justices. Apart from a decrease of judicial independence, such increase in the influence of the executive would by no means imply greater certainty concerning the quality of appointees. As an illustration of this, it is well known that the policies pursued by President Ramos in the appointment of important public officials have resulted in various controversies. The President has been accused of favoritism toward retired generals, because he has appointed several of them to important public functions. In addition, two ministers were forced to resign in 1995 because of alleged malversations, while in 1996 two other important officials, the Ombudsman and the Chairman of the Commission of Elections, were the subject of heated public controversies.

Nevertheless, the strategy of waiting until publicity on judicial problems dies down and is forgotten by the general public will also not suffice. Publicity may indeed subside, but it can flare up again if underlying problems persist. The pressures and demands on the judiciary, and most notably on the post-EDSA Supreme Court, require constant efforts to maximize judicial legitimacy. In this context the procedures for appointing justices, the scope of the mandate of the Supreme Court, the Court's operating procedures and overall supervision leave much room for improvement.

Notes

1. Feliciano, E.M., *Filipino Values and Our Christian Faith*. Metro-Manila: OMF Publishers 1990: 2.

2. Rule 2.01 states: 'A judge shall not allow family, social or other relationship to influence judicial conduct or judgement. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.' Canon 5 states: 'A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties' (Code of Judicial conduct as published in *The Judges' Journal*, Volume 4&5, 1989-1990: 83-86).
3. My information is largely based on in-depth interviews. During the interviews, I asked people to explain how they have arrived at the estimate they made. My impression is that the people mentioning 10% were influenced by the figure which had been most often mentioned in the press. Those mentioning high numbers either referred to the low salaries which, in their opinion, must produce widespread corruption, or to the lifestyle and possessions of judges beyond what their regular salary can afford. In this case, the fact is somewhat ignored that some judges belong to rich families or have wives with a high income, which allows them to live beyond the means of a judge's salary. People who believed that most of the judges are on the take tended to be influenced by lawyers of big law firms who claim to have all the judges in their pocket. Others had become biased in their opinion because they were involved in organizations receiving predominantly negative reports about judges.
4. *Social Weather Bulletin*, 93-13: 5.
5. *Social Weather Bulletin*, 94-13/14: 5.
6. *Social Weather Bulletin*, 94-13/14, July 1994: 2. This polling agency also conducted surveys among lawyers in 1994 and among judges in early 1995 on the same topics.
7. The use of a go-between is a common strategy in Filipino culture to settle delicate matters and conflicts between people. This use is consistent with the Filipino tendency to deal with delicate personal matters cautiously and indirectly. In this particular case, however, the use of a go-between appears to have been primarily motivated by a pragmatic logic rather than by a cultural one.
8. Rule 5.04 of the Code of Judicial Conduct states: 'a judge or any immediate member of the family shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law'.
9. This compensation and classification system was determined in Republic Act No. 6758, which was signed into law on 21 August, 1989.
10. All the estimated equivalents in dollars in this chapter are based on a calculated exchange rate of 26.5 pesos to one US dollar. After the depreciations of the peso on and after 11 July, 1997, the equivalents in dollar are lower.
11. The same applies to officials of the executive branch, according to Section 7d of the Code of Conduct and Ethical Standards for Public Officials and Employees. *The Judges' Journal*, 4&5, 1989-1990: 93.
12. It should be stressed in this context however, that there are also a lot of private lawyers at the bottom of the hierarchy who have to struggle to survive financially.
13. In the Philippines both husbands and wives work (provided they can get a job). This is necessary for economic reasons. Since there is not so much time left for shopping it is often advantageous to buy some items from colleagues. Moreover, in this context products can be paid in installments, which is often not allowed in shops and markets. Since colleagues meet one another daily, the seller does not need to be afraid that the purchaser will stop appearing before the total price of the purchased product has been paid.
14. Section 1c of Rule V of the Rules Implementing the Code states, amongst other things: 'they (officials and employees) shall not dispense or extend undue favors on account of their office to their relatives, whether by consanguinity or affinity, *except with respect to appointments of such relatives considered strictly confidential or as members of their personal staff whose*

terms are coterminous with theirs' (emphasis added). *The Judges' Journal*, Vols. 4&5, 1989-1990: 95.

15. Rule 3.11 of Canon 3 of the Code of Judicial Conduct states: a judge should appoint commissioners, receivers, trustees, guardians, administrators and others strictly on the basis of merit and qualifications, avoiding nepotism and favoritism. Unless otherwise allowed by law, the same criteria should be observed in recommending appointment of court personnel. Where the payment of compensation is allowed, it should be reasonable and commensurate with the fair value of services rendered. See *The Judges' Journal*, Vols. 4&5, 1989-1990: 84.
16. The 1992-1993 Annual Report of the Supreme Court: 31; Dismissed. Decisions on Judges: 73-84. Office of the Court Administrator, April 1993.
17. There are various reasons why filing a complaint can be an unsurmountable obstacle for the aggrieved party. First, filing such a complaint would publicly expose marital problems which could result in loss of face for all parties concerned. Second, the aggrieved party might feel that imprisonment is too heavy a punishment for the perpetrator, for whom he or she might still feel affection. Third, a conviction might affect the financial and other practical interests of the whole family of the perpetrator. Fourth, the practice of having a mistress has been so pervasive and tenacious in the Philippines that aggrieved wives tend to tolerate it as a sort of inevitable law of nature.
18. The traditional term for a mistress has been the Spanish word *querida*, but nowadays a mistress is usually referred to by the term 'number 2'.
19. See for instance: Lee, C., 'Immorality is one of main causes of government corruption.' *Manila Bulletin*, 19 June, 1993.
20. See for instance 'A Step towards Judicial Reform' by Supreme Court Justice Teodoro Padilla, *Manila Bulletin*, 22 July, 1993.
21. Article III, Section 1 of the 1994 supplement to the 1987 Constitution says: the essence of due process is a hearing before conviction and before an impartial and disinterested tribunal but due process as a constitutional precept does not always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Padilla, A.B., *Supplement to the 1987 Constitution of the Republic of the Philippines with Comments and Cases, containing Recent Supreme Court Decisions on Articles 1 to V*. Vol. I, Metro-Manila: Philippine Graphic Arts, 1994: 9.
22. *The Judges' Journal*, Volume III, No.4, 1988: 1-6, and *The Judges' Journal*, Volume 4&5, 1989-1990: 37-60.
23. As quoted in *The Judges' Journal*, Vol. III, No 3, 1988: 62.
24. These teams were introduced by former Chief Justice Fernan as an experiment. They were temporarily abolished because of lack of funds, but later reintroduced.
25. 1992-1993 Annual Report of the Supreme Court: 16. Vicente B. Foz, *The Manila Bulletin*, 6 July 1993.
26. *The 1993-1994 Annual Report of the Supreme Court*: 89.
27. Source: Annual Report of the Office of the Court Administrator, 21 January, 1996.
28. Dadivas-Farrales, 'Justice for Judges. The Need for Systematic Guidelines and Implementing Rules.' *The Judges' Journal*, Vol 4&5, 1989-1990: 39.
29. Section 8 requires that assets and liabilities have to be filed 30 days after assumption of office; on or before 30 April of every year thereafter, and within thirty days after separation from the service. This requirement also applies to judges and justices. *The Judges' Journal*, Vols. 4 & 5, 1989-1990: 90.

The requirement that liabilities and assets be stated, however, has been massively violated,

- including by ministers and members of Congress. How strictly this requirement has been adhered to by the judiciary is not known to me.
30. The Independence of Judges and Lawyers: A Compilation of Standards. *CIJL Bulletin*, 25-26, 1990: 20-21. See also Article 28 of the Singhvi Declaration, *CIJL Bulletin*, 25-26, 1990: 45.
 31. One of the proponents of such a committee has been a member of the Supreme Court: Justice Teodoro Padilla, 'A Step towards Judicial Reform.' *Manila Bulletin*, 22 July, 1993.
 32. This discussion has been inspired by the CIJL Yearbook, December 1995, which is called *The Media and the Judiciary*. Particularly relevant for my purpose were the contributions from Mona Rishmawi, Peter Wilborn and Cynthia Belcher; from Justice P.N. Bhagwati; and from Rainer von Schiller.
 33. Mrs. Maribel Ongpin, as quoted by Beth Day Romulo in the *Manila Bulletin*, 26 July, 1993.
 34. Remarkably, the Justice who acted as *ponente* in this case had dissented in the earlier case involving the monopoly of the PLDT in 1990. He had objected to the majority's decision to grant permission to a new competitor to operate a telephone system.
 35. Arguments in defense of the integrity of this justice have been put forward as well. The findings of the alleged expert on writing were refuted by more reputable experts. Furthermore, the justice was known as an honest man by various lawyers close to him, and as a man with a simple lifestyle. He preferred modest means of living as a law professor and justice, whereas he could have made considerable money as a private lawyer easily. Apart from that, cheating in the bar exam has become extremely difficult in the Philippines. Following a notorious incident some years ago the monitoring procedures have been very strict. And the son was known to be quite a good law student who would not need cheating to produce a good score in the bar exam.
 36. About a year later, the Supreme Court, acting on a motion for reconsideration, reversed its initial decision and granted this license.
 37. *Social Weather Bulletin*, 93-13. See note 4.
 38. *The Philippine Daily Inquirer* of 17 June, 1993. *Social Weather Bulletin*, 93: 19/20: 7. According to the survey figures the Supreme Court had a 'net performance rating' of +18 in April 1993 and of +23 in July 1993. The figures for the local courts were +12 in April and +16 in July. The figures for the local police were +32 and +29, and for the Philippine National Police +17 and +19.
- After the 'judicial crisis' the relations between this research institute and the judiciary improved. Survey materials from this institute are now even used in the seminars to update the knowledge of judges.
39. Despite the fact that the case was dropped, the director of the institute filed a suit with the Supreme Court against this judge for alleged grave abuse of power and gross ignorance of the law. The main argument was that contempt can only exist in relation to a pending case. Since there was no pending case against the institute, the judge did not have the authority to issue a contempt order. The Supreme Court, however, stated that contempt is not necessarily related to a pending case, but may concern any issue in which the integrity of the court appears to be undermined ('SC rules on media reports.' Vincente B. Foz in the *Manila Bulletin*, 14 December, 1993).
 40. Vincente Foz in the *Manila Bulletin*, 15 November, 1993.
 41. See for instance the speeches of Chief Justice Narvasa in: *Faith and Trust. The Bedrock of the Justice System* (Supreme Court Press, 1993); *Reflections on Law and Justice* (Supreme Court Press, 1992).
 42. According to the law on contempt, criticism of judicial decisions – and even derogatory statements that are made in good faith – are permissible (L.P. Reyes, *The Law on Contempt*, 1993: 44-45).

43. See *1992-1993 Annual Report of the Supreme Court*: 13.
44. From the dissent of Justice Padilla, as published in the *Philippine Star*, page 15, 10 June, 1996.
45. 'Vizconde and Hysteria', Editor's Corner of the *BAR Briefs*, June-July 1995.

Fair and Speedy Justice for all Citizens

Backlog and Court Delay

'Justice delayed is justice denied'. This common dictum underlines the right to speedy justice as a fundamental human right. In line with authoritative international instruments the 1987 Constitution guarantees this right explicitly. Article III, section 16 of the Bill of Rights of the 1987 Constitution says: 'all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies'. Nevertheless, as in many other countries, court delays prove to be a major and very tenacious problem in the Philippines. In spite of new rules regulating the maximum time for processing court cases, currently cases can still take up to several years. Furthermore, old cases dating to before the judicial reorganization in 1986, which the courts have inherited, still remain unsettled. It has become a normal experience for new judges in the Philippines to deal with cases that have been left by their predecessors, and that has been on going for decades.

Backlog is a phenomenal problem as well, as the following statistics illustrate (the figures cover pending or unresolved cases in all of the different courts, not including the Supreme Court):¹

Courts	31/12/92 Pending or Unresolved	31/12/93 Pending or Unresolved	31/12/94 Pending or Unresolved	31/12/95 Pending or Unresolved
Court of Appeals	13,400	14,024	15,094	15,325
Regional Trial Courts	175,185	230,305	216,607	194,939
Metropolitan Trial Courts, Metropolitan Trial Courts in Cities and Municipal Circuit Trial Courts	99,473	117,485	219,926	279,470
Total (All Courts)	292,094	366,349	456,057	493,028

Apart from the fact that court delays and backlog in effect deny justice to citizens for long periods, they also reinforce other problems. When a case is pending for an extended period, files can disappear and witnesses lose interest or withdraw their cooperation. Court delays also facilitate dirty tactics: lawyers and clients or members of their networks have greater opportunity to intimidate witnesses, dispose of vital evidence, elaborate strategies for bribery and influence-peddling, or even win cases as the result of sheer exhaustion on the part of judges or opponents.

Backlog also threatens the quality of decisions by judges: the resulting heavy work load often prevents them from thinking cases through thoroughly. As a consequence,

judges may succumb to the temptation of uncritically accepting any argument advanced by a lawyer, prosecutor or litigant that sounds convincing at face value.

Causes of Backlog and Court Delay

Resources and Infrastructure

There are a number of factors that facilitate court delay and backlog. One of these pertains to problems related to the country's infrastructure. Witnesses may have to travel long distances to appear in court – or distances involving extensive travel time and complicated connections. Court orders may arrive late – or not at all – to the people to whom they were addressed, requiring new orders to be sent, resulting in further delay.

Another factor concerns the poor facilities of the courts: old mechanical typewriters, no photocopy machines, no books available for studying cases, insufficient staff, telephones that do not function well, etc. Though some improvements have been made over the last few decades, many court salas are still in a deplorable condition: the buildings dilapidated, the rooms crammed and noisy, the roofs leaking, etc, all of which hardly provides a stimulating working environment. Problems connected with the facilities and infrastructure may be further aggravated by incidental disasters: typhoons that make roads inaccessible, lack of electricity that causes power cuts of up to several hours daily, etc.

Case loads

Another important factor is the heavy case load of judges, particularly as concerns criminal cases, which outnumber civil cases by two to one. There have been frequent complaints that there are simply not enough judges, and that additionally their case loads are not well distributed. For instance, the highest case load in the RTCs as of March 31, 1995 was 943, while the lightest was only six. Judges in the urban areas tend to have a heavier case load than their colleagues in the countryside. The heavy case loads and the huge difference in the number of cases handled by individual judges greatly facilitate the growth of a backlog. The significant variation from one case load to another is related to the country's difficult geography. In the Philippines, there are many outlying areas which are thinly populated and not easily accessible. Since it would be unfair to require the local people of these thinly-populated areas to spend time and money travelling to a distant court, many of these areas have their own court. Understandably, the case load of judges who work in these thinly-populated areas is much smaller than that of their colleagues in big cities. However, even courts within the same city may have highly uneven case loads. In one metropolitan area, one RTC judge had a case load of 664 on March 31, 1995, whereas another colleague had only 32 cases, which suggests at the very least that in some instances the efficiency of the distribution of cases among the various judges leaves room for improvement.

The lack of balance in the distribution of the case load over the various courts has been reinforced by the ambitions of local or regional politicians. There is an inclination among politicians to want to leave a tangible legacy, such as buildings and works of infrastructure, in order to win support and to be remembered by their constituency. As a conse-

quence, various politicians have lobbied for the building of court salas in areas which did not really need them.

Lack of Defense Lawyers

An additional factor contributing to backlog is a lack of defense lawyers, in spite of the popularity of the law profession. In the Philippines, one hears the complaint that the country has too many lawyers and at the same time the opposite complaint that there are not enough defense lawyers in circulation. The paradox can be explained by the fact that the Philippines has more than 40,000 lawyers, but less than 5,000 of these are involved in litigation on a regular basis.² This lack is most urgent in the countryside. In some areas, there are more judges than practicing lawyers. In the latter case, in planning his sessions, a judge may have to wait until a lawyer is available, and this leads to considerable delay. Indeed the shortage of lawyers can lead to remarkable situations. One judge gave an example from his former post in an outlying region. The only two lawyers who worked in that area were a married couple. This implied that in a law suit one party had to resort to the husband and the opposing party to the wife. Consequently husband and wife were fighting one another in court continuously!

Legal and Judicial Requirements

Another element causing delay relates to some of the requirements of judicial decisions. In the Philippines, every judge is required to repeat all of the facts as stated in a case. When the case is elevated to a higher court, the same requirement still applies, even in the Supreme Court. Fully-penned decisions of the Court often run to as much as 35 pages, with a written decision in any court occasionally requiring up to 100 pages, which of course, demands considerable time and effort.

The linguistic fragmentation of the country is also a source of delay. Decisions of the court are published in English, but court hearings and interrogations may be conducted in various languages and dialects, depending on the linguistic proficiency of litigants, lawyers, witnesses, and even the judges themselves. Translations are frequently required, which slows down the judicial process, and where such translations are erroneous this can be a source of misunderstanding or even of serious errors in judicial decisions.

Another important, but unavoidable factor facilitating delay is the time that a judge needs to properly assess the merits of a case, so that he can make a well-balanced decision. In other words, there is often an intrinsic tension between the quality of a judicial decision and the speed in which a judge reaches this decision. The need for a judge to study a case thoroughly in order to reach a well-founded decision acts as both a legitimate and necessary break on the pace of judicial procedures.

Nevertheless, this tension between a sound, thorough decision on the one hand, and the need to reach a quick decision on the other hand, may be exaggerated. In various cases, this tension appears to be reinforced by an underlying belief that procedural slowness automatically equals thorough decision-making and that rapidity of action equals superficiality on the part of a judge. One leading member of the bench expressed this line of thinking as follows: 'justice is like cooking. We Filipinos like it to be carefully prepared and subjected to slow simmering. That's why we don't like fast food. Of course

we could choose to act like Iran where people are sentenced and executed already four hours after they have been arrested. You need to take time to avoid painful mistakes.’ The danger with this line of thinking is that the need to think through the merits of a case thoroughly may serve as an excuse to take more time than strictly necessary in reaching a decision.

The ‘Litigation Explosion’

A frequently cited major factor for backlog and delay is the tendency of Filipinos to litigate at the slightest hint of conflict. In this context the term ‘litigation explosion’ is sometimes applied.³ The following figures illustrate the evolution of total case inflow in courts lower than the Supreme Court between 1985 the last year of the Marcos regime, and 1995.⁴

Year	Total Case Inflow	Newly Filed Cases
1985 ⁵	323,282	--
1992	356,286	--
1993	457,383	409,820
1994	521,368	459,491
1995	523,158	467,416

Metro-Manila accounted for most of the increase. *Amor proprio*, a strong sense of pride and self-respect, has been cited as a major reason why people litigate rather than opt for amicable settlements, even if the financial risks of litigation in civil cases are far greater than the potential benefits.

A judicial body that is also strongly affected by this ‘litigation explosion’ is the Office of the Solicitor-General, who acts as lawyer for the Philippine Republic and for its public officials. Whereas this office disposed of 10,766 pending cases between June 1992 and June 1993, it received a total of 18,742 new cases. In his annual report of 1993, the Solicitor-General has stated: ‘the flood of cases is a yearly occurrence occasioned in some measure by the predilection of Filipinos to go to court for the most mundane reasons.’⁶ All this implies that litigation itself has become both a cultural trait and an institutionalized socio-political strategy in the Philippines.

The drive to avoid defeat also inhibits the occurrence of plea-bargaining in criminal cases. Plea-bargaining implies acknowledgement of guilt, which would result in loss of face. The unpopularity of plea-bargaining contributes to the backlog of cases as well. Rather than confess guilt in exchange for a lesser sentence and thus a shortening of the trial, accused persons tend to continue pleading their innocence to the very end, thus prolonging the trial period.

It is curious in this context however that there are also cases in which court delay can be beneficial, both for the litigants and for the judicial process as a whole. This applies to cases in which *amor proprio* is the main reason for a plaintiff’s decision to go to court, for instance in libel suits. Once the intensity of the sense of offended pride has subsided,

rational calculations of financial costs and benefits may take over as the engine of the plaintiff's actions. Realizing that his case is hopeless and that his *amor proprio* may only cost him money, he decides to drop the case and thereby helps to unclog the courts.

Individuals or organizations may also initiate a court case in order to get even with or to harass an enemy. The litigation as harassment strategy is popular in business disagreements. Even a temporary restraining order issued at a crucial moment may already be useful for delaying the plans of an economic rival.⁷ This strategy is particularly promising if one has reason to believe that he can manipulate judicial procedures more effectively than his opponent, even though without this reason the strategy might still be worth trying. Litigation as harassment strategy, however, is also applied in relatively simple disputes. Civil complaints can be even manipulated into criminal charges. The advantage of a criminal charge over a civil one is that it is processed more quickly and may involve a higher compensation for damages.

An example of this phenomenon was a simple car accident in which an American Protestant missionary and a Filipino government employee were involved. The missionary, whose car approached from the right, bumped the car of the government employee, who had failed to yield him the right of way. The government employee however discovered that unlike herself, the missionary had a comprehensive car insurance, which meant that the damage to both her car and his would be compensated by the missionary's insurance company, provided he would be willing to take the blame. The missionary refused, since he considered himself not guilty. Policemen who had arrived at the scene of the incident supported the missionary's position. Nevertheless, after the parties had left the scene the woman's husband, who was a lawyer and was not present during the accident, persuaded the police and a fiscal agent to file criminal charges against the missionary for reckless driving. The missionary was arrested early one afternoon and was told to pay bail in court. At the police precinct, however, the police told the missionary that it was too late to pay bail and that he therefore would have to spend the night in the precinct's cell, together with two other prisoners who were, as the missionary was told, suspected of murder. However if he was willing to pay *lagay* (a bribe), they would release him immediately. Under the circumstances, the missionary decided to consent to this arrangement, on the condition that the police would provide him with a receipt. Fortunately for the missionary, a court official who was present intervened in the end, stating that it would be difficult for the police to provide such a receipt, and that perhaps there might still be a chance that the bail could be paid in court. The police then decided to release the missionary without his having paid any *lagay*, and directed him to proceed to the courthouse with the official where he could pay the bail. It was further claimed by the other driver and her husband that she had had to spend a considerable sum for treatment in the hospital as a result of the accident. The husband told the missionary that all charges would be dropped if he would accept blame for the accident, and make his insurance company pay for the damage to the woman's car. This demonstrated that the suit was primarily a harassment action. The missionary refused, following which the lawyer-husband applied delay tactics, particularly after the policemen who reported the accident confirmed upon cross-examination that the accident really had been the lady's fault. The case was subjected to at least 11 postponements, which forced the missionary

to make many unnecessary trips to the court house, and to spend considerable money on lawyer's fees. The action was finally dismissed by a new judge who took the case over upon the retirement of the initial judge. Though the woman and her husband had not received compensation for the damages to their car, they had been able at least to make the missionary suffer for his unwillingness to accommodate.

In the context of the 'litigation explosion', the complaint is often voiced that both fiscals and judges allow too many cases to be brought before the courts that should have been dismissed outright, either because of undue influence on the judges from lawyers or litigants, or simply out of sheer indifference on their part. The opposite complaint however is also commonly raised that fiscals and judges drop cases too easily, also as the result of indifference or undue influence from opponents. These two contrasting complaints both have a kernel of truth but may also be exaggerated by lawyers and litigants bearing a grudge over the way prosecutors or judges have handled their cases.

The predilection to go to court, however, applies mainly to those Filipinos who can afford it financially, or who have effective access to the judicial system in other ways. It is striking that the 'litigation explosion' has increased during the post-EDSA era, though the country experienced neither substantial economic growth nor significant redistribution of income in the period between 1986 and 1996. This strongly suggests that the 'litigation explosion' is facilitated by the democratic space created by the EDSA revolt. Although access to justice is still an immense problem for many Filipinos, as will be elaborated later in this chapter, it appears that an increasing number of persons are claiming what they perceive to be their legal rights.

Lawyers and Court Delay

As has already been implied in the previous section of this chapter, the conduct of lawyers is a major factor facilitating backlog and court delay. Requests for postponement are quite popular among lawyers. In a number of cases this is due to *force majeure*, for instance when a vital witness falls ill. Court delay is also facilitated by the incompetence of both lawyers and prosecutors. Some lawyers are very slow in getting to the point in their interrogations or speeches. It is difficult for a judge to interrupt these lawyers or cut them short, because he might be accused of bias against their case. Incompetent lawyers may also object about leading questions from their opponents out of an excessive anxiety about the undue influence of such questions.

However a more serious factor behind backlog and court delays is the deliberate delay tactics of certain lawyers, particularly unnecessary requests for postponement. Such tactics have various causes, an important one of which is that lawyers are predominantly paid according to the number of their appearances in court. Though they are paid a lump sum for each case they handle, they nevertheless also charge an amount per individual appearance in court. This implies that it is in the lawyer's interest to delay the case as much as possible. The greater the number of court sessions a case requires, the more frequently the lawyer must appear in court, and thus the more money he can subsequently charge to his clients.

Another important cause of deliberate delay tactics has to do with the chances of winning a case. The longer a case takes, the more likely it is that key witnesses of the opponent will give up or lose interest, and the more opportunity is generated to apply dirty tricks successfully, such as attempts to unduly influence a judge or pressure a witness.

Delay tactics and time-consuming lawyering practices can also be based on a desire to impress clients and build up a reputation as a tough and resourceful lawyer, which will consequently help draw prospective new clients. Delay tactics are also facilitated by the reportedly strong inclination of Filipino lawyers to avoid defeat at nearly all costs, due to fear of loss of face and *amor propio*. Even if delay tactics do not ensure victory in a particular case they at least postpone a painful defeat until a moment in the future.

There is an extensive repertoire of delay tactics, which vary in sophistication.⁸ The most frequent of these include the following:

1. *To appeal even minor cases to the appellate courts – or even to the Supreme Court itself – with the claim that these cases involve issues of law.* This not only delays the total time a case requires but also contributes to the clogging of the higher courts.
2. *To file numerous petitions, with the chief aim of delaying the case.* These petitions may be requests to the judge to disqualify himself due to alleged bias; for transfer of the case to another court for alleged lack of jurisdiction; for postponement of the proceedings on various grounds; etc. If the petition is denied, a petition for reconsideration is then filed, and then again for another reconsideration, though according to the formal rules the latter kind of petition can only be filed in exceptional circumstances. If a petition is denied, the lawyer can file a motion to an appellate court, and can further ask the appellate court to restrain the judge from continuing with the trial until this appellate court has decided on the motion.
3. *To inform the judge that one is ill, or that one's client is, or a key supporting witness.* In the Philippines, it is not hard to purchase false medical documents stating that one is ill. Or the lawyer/client may fabricate other reasons why he cannot appear in court at a certain time, for instance necessary travel abroad broad for urgent medical treatment either for himself or for a relative. In some cases, clients or witnesses become indisposed during the trial, such as through hyperventilation or even collapsing on the floor. Since no judge wants to be responsible for the death of a witness or a litigant in his or her court, he or she will postpone the case, even if he suspects foul play.
4. *To appeal directly to the judge's sense of pity.* If the client is lagging behind in his payments to the lawyer, the lawyer may discretely convey this problem to the judge through a special gesture of his hand while he is asking for a delay. Or the lawyer may indicate that it is difficult for his client to appear regularly because he is but a poor government servant.
5. *To present witnesses and evidence in a piecemeal fashion.* Rather than calling all of the witnesses to a single session, these are presented one at a time, over the course of an extended period.

6. *To arrive late or not at all and blame this delay on 'heavy traffic' or on one's car breaking down.* This inspired a judge to joke that Philippine lawyers surely possess the most poorly maintained cars in the country.
7. *To have a third party officially receive the postal delivery of the court order requiring a client or witness to appear in court.* The client or witness can therefore declare that he has not personally received this court order, and that it was not given to him, which will legitimize his assertion that he did not appear as ordered for reasons of good faith.
8. *To purposely protract the cross-examination of witnesses.*
9. *To report that one is prevented from appearing in court because one is urgently and unexpectedly needed in another court case.* The judge will often feel forced to postpone the court session.
10. *To raise a large number of factual and legal issues presented as relevant to the case, and to invoke numerous former Supreme Court decisions.* This strategy may not necessarily be deliberate nor aimed at delaying the court proceedings but rather simply reflect the lawyer's eagerness to win the case. It is sometimes also used to intimidate an opponent into giving up or the judge into ruling in the lawyer's favor by suggesting that the lawyer is a legal giant who will certainly win the case before a higher court upon appeal. Nevertheless, this strategy can also facilitate delay, because the increase in the number of issues raised prolongs the pleadings, and forces the judge to spend more time reviewing the additional issues.

'Forum or Judge Shopping'

In addition to these strategies, a further delay tactic deserves special attention: the practice known as 'forum shopping' (or 'judge shopping'). This practice refers to the search for and selection of a judge likely to be most sympathetic to one's case. This practice has several variants. One of these is to file the same case in different courts. In the Philippines, a case can be filed officially in one of two or three different places: in the locality of the plaintiff, the locality of the opponent, or the location where a key document relevant to the case has been issued, such as a marriage certificate in divorce cases. One can also address certain petitions to both the Court of Appeals and the Supreme Court, since their respective jurisdictions are partially overlapping. Moreover various forms of civil cases are filed both in regular courts and in quasi-judicial bodies and executive agencies such as regional boards and municipal councils.

When different judges or quasi-judicial bodies are studying the same case, the plaintiff's lawyer will assess which of these judges or forums may be most advantageous to his client. This judge or forum will then be selected, and the different versions of the same case filed in other courts or agencies will be dropped. A lawyer might even file the same case again with another lower court, after a decision has already been made by the first judge chosen. If the second decision turns out to be more favorable than the first, the lawyer will press for the execution of that decision made by the second judge.

Another variant of forum shopping consists of filing a motion for 'inhibition'. A lawyer is entitled to file such a motion if he sincerely believes that the judge is no longer impartial toward his client. If the motion is granted, another judge takes over the case.

Lawyers, however, also sometimes use this motion if they expect to lose the case in the course of the trial. Hoping that the judge may be fed up with the case and will gladly withdraw from it, they gamble on securing better odds with another judge called to take over the case.

Forum shopping is quite risky, since it can lead to serious disciplinary measures such as contempt of court if it is discovered. Yet victims of forum shopping are not always able to take appropriate action against it, because they are not informed in time. It has thus been a successful practice in a number of cases.

Forum shopping itself is not directly aimed at delaying cases. Apart from finding and selecting the most favorable judge, forum shopping is primarily intended to intimidate and confuse the opponent by opening various fronts on the legal battlefield. Nevertheless, forum shopping also adds to court clogging and delay, since several judges are required to spend time on the same case.⁹

A Supreme Court circular issued in April 1994, which revises the instructions of an earlier circular from 1991, has made forum shopping more difficult. Now any party filing a case has to sign a attestation certifying that the case has not been, nor will be, filed in any other court or quasi-judicial body or administrative agency.¹⁰ If he or she fails to sign such a certification, the demand will be automatically dismissed. Nevertheless, the new circular has not put a complete stop to forum shopping.

Philippine judges are quite familiar with all of these delay tactics. A strict judge is usually capable of restraining their application. He may deny petitions outright and threaten to decide the case if the lawyer continues using them. If he suspects malice he can cite the lawyer for contempt due to obstruction of justice. Partly as a result of pressure from negative publicity, the general trend among judges is toward greater strictness in this area. For instance, it is becoming increasingly difficult for a lawyer to appear in court unprepared and to be granted an automatic adjournment.

But there are reasons why judges may not be so strict at times. For instance, it is often hard to prove that a certain action is really a delay tactic. Some judges may send a government doctor to check whether a witness is really sick, but this is expensive, time-consuming and not always conclusive.

In addition, a lawyer may take the strict conduct of a judge as a personal insult. This may result in retaliatory actions, such as an official accusation of bias or even corruption, and the filing of a complaint with the Supreme Court. Even if the charges against the judge are clearly unfounded, they nevertheless create embarrassment and unwanted hassles. Therefore a judge may choose not to be very strict in order to avoid unwanted difficulties. Leniency on the part of the judge can also be influenced by *tayo tayo* – special in-group sentiments – because of a shared network and professional field.

Finally, delay tactics are sometimes rewarded by judges with postponement, because this is convenient not only for the lawyer, but for the judge as well. Postponements can provide a judge some temporary relief in his or her working schedule.

Measures to Reduce Backlog

Time Limits

The reduction of the backlog of court cases – and of the time such cases are allowed to take – has been the object of numerous measures, plans and proposals. These have been offered both by the government and Congress and by bodies and organizations within the judicial system itself. Following the judicial reorganization in 1987, the Philippine Supreme Court addressed this problem by introducing time-limits and the principle of ‘mandatory continuous trial’. Lower courts were fixed an overall time-limit of six months from the start of the trial to the final decision. The trial itself should take no longer than 90 days – except in extraordinary circumstances – and the writing of the decision, a maximum of six additional months. Appellate courts could spend a maximum of one year on a case, and the Supreme Court a maximum of two years.¹¹

The Department of Justice introduced a similar regulation for prosecutors, requiring them to finish their preliminary investigations and file an official charge within 90 days or drop the case. Later this period was reduced to 60 days. Prosecutors are subject to disciplinary action if they violate this rule.

‘Continuous Trial’

In the Philippines, ‘continuous trial’ means that a case should not be tried in a piecemeal fashion, distributed over a long period of time, but rather continuously within a limited time frame and according to a fixed schedule. Judges are further instructed to schedule a maximum of only three cases a day; a violation of this deadline without good reason can lead to disciplinary action such as a reduction of salary. It should be noted, however, that even though the procedure introduced here was called ‘continuous trial’, in actual fact it represents a synthesis of the ‘piecemeal trial’ and ‘continuous trial’ approaches. In a purely ‘continuous trial’ system, a judge tries only one case at a time and decides on it before beginning a new one. In the Philippines, however, the only trials conducted in purely continuous fashion are special types of cases, such as the criminal cases exclusively assigned to the 56 Regional Trial Courts specializing in ‘heinous crimes’.

One reported advantage of the ‘continuous trial’ approach is that litigants do not have to wait long for the final decision to be issued, once the case has reached the trial stage. Another advantage is that it allows judges to work more efficiently. If a case is tried in a piecemeal fashion, the judge may forget many details of the case and have to spend time reviewing these details repeatedly. This problem will not occur when a case is tried continuously, allowing the judge to save precious time.

The introduction of ‘continuous trial’ met substantial resistance from the judges. An investigation by the Supreme Court showed that the mandatory trial system only works when a judge’s case load does not exceed 200 cases annually. Many Philippine judges however had a much heavier case load, so the requirements were reduced.

Some informants have raised another objection to the ‘continuous trial’ system. In their opinion this system ignores an important difference between the Filipino legal system and that of the United States from which ‘continuous trial’ has been inspired. In the American system, the jury makes a significant contribution in deciding guilt. In the case

of the Philippines, however, there is no jury system, so the judge has to decide on the issue of guilt solely by himself. According to some informants, Philippine judges therefore need more time to think through the merits of a case than do his American counterparts.¹²

Another problem of the 'continuous trial' is that it may simply shift the delay and backlog from the trial and post-trial stages to the pre-trial stage. If a judge can deal with a maximum of only three cases daily, and has to render decisions within a specific period from the beginning of the trial, he will consequently postpone the beginning of the trial stage of cases for a longer period. So though 'continuous trial' may speed up treatment of cases once they have reached the trial stage, it tends to slow down cases in the pre-trial phase. Consequently, the overall net gain in time of the 'continuous trial' system – calculated from the moment that cases have been filed in court through to the execution of the decision – is limited.

'Continuous trial' further poses a serious problem of a very different nature. In a 'piecemeal' trial system, a litigant has to pay only relatively small amounts over a long period, both for his lawyers, who are paid predominantly by appearance and for the other costs of litigation. In a 'continuous trial' system however, litigants have to pay the total sum in a much shorter period. Many litigants with modest incomes experience considerable difficulty in raising such sums in so short a time.

Special Teams

The appointment of special teams of judges, dealing with cases that were tried but never decided or executed, was also introduced by the Supreme Court to decrease the backlog. Judges who retire, resign or are transferred, leave unfinished cases behind. Some pending cases have to be continued by their successors. In other cases the trial period has finished but the decisions were simply never written. Since it is difficult for a judge to write a decision based on the work of his predecessor without knowing much of the case, this kind of case tends to get shelved. The Supreme Court appointed special teams of judges who were temporarily relieved from their regular post in order to complete the writing of decisions collected from all over the country. These special teams of judges do not try these shelved cases again, but base their decisions on the entire transcripts of the court case.

There have also been efforts to improve the management skills of the judges, as well as to upgrade their legal knowledge. These efforts have been undertaken in special seminars organized by the Supreme Court in cooperation with a reputable academic organization.¹³ The computerization of the courts is intended to be a major tool in the improvement of these management skills. Similar programs for lawyers have also been organized by the Law Center of the University of the Philippines in collaboration with the Supreme Court and the Integrated Bar of the Philippines.

The reaction to these seminars has been mixed. There has been a positive response from the bench, but critics argue that the seminars and similar training efforts are grossly insufficient for improving the competence of incumbent judges substantially. The training sessions for lawyers have generally been appreciated by participants, but there is also

strong resistance in the bar against making these special seminars compulsory for all members.

The Supreme Court, together with the two houses of Congress, have extended efforts to upgrade both the management and the legal skills of judges and justices by integrating the existing programs into a judicial academy. The introduction of such an academy was delayed for a time due to lack of synchronization between the plans of the Supreme Court and similar proposals from Congress. In 1996 however, the judicial academy finally began operations, financed from the judiciary's share of the military bases conversion fund. A similar academy for prosecutors will also be instituted. One possible problem for the judicial academy is the comparatively moderate compensation for lecturers which could discouraging top lawyers from delivering lectures in this academy.

Budget Proposal

Another proposal has been to raise the present budget of the judiciary to at least 2.5% of the annual government budget. Such a budgetary increase is necessary to improve the working conditions of judges, such as increases in staff, introduction of computers, more modern typewriters, more adequate buildings, etc. The executive government, the Senate and the House of Representatives are again being requested to devote more serious attention to ensuring the fiscal autonomy of the judiciary as provided for in the Constitution.

Concerning the delay caused by linguistic diversity and varying levels of linguistic competence, the Supreme Court has recommended that the English language curriculum, at all levels of education, should be strengthened and reviewed.¹⁴ The Supreme Court has further been urged by many members of the legal system to strictly enforce the existing rules regarding the maximum trial period; to exercise discipline against judges who violate these; and to call on judges to prohibit delay tactics by lawyers and litigants.

Another measure to reduce the backlog was the creation of 220 new salas in 1987. However, as mentioned in the section on "The Appointment of Judges and Justices" in chapter 4, the majority of these salas have not yet been filled by new judges, due both to budgetary constraints and to a lack of adequate candidates for the bench. A proposal that might help reduce the backlog has been to change the geographical scope of salas. Some of the case load of heavily loaded salas would be transferred to others with a lighter case load according to this proposal.

Amicable Settlements

The Supreme Court, together with the executive and legislative branches, has devised a central strategy to reduce court delay, consisting of measures to decrease the overall number of court cases. The key to this strategy is amicable settlements. In outlining the new emphasis the Supreme Court, as well as other protagonists, explicitly refer to a Filipino cultural trait involving a penchant for social harmony and smooth interpersonal relations. By emphasizing this indigenous Filipino trait, as a counterbalance to the *amor propio* concept introduced by the Spanish and the love for litigation introduced by the Americans, many court cases could be avoided and thus the clogging of the courts substantially reduced. Toward this end, the Supreme Court has reinforced pre-trial

devices. Every judge is now compelled to organize a pre-trial conference in civil cases, in which he or she attempts mediation toward an amicable settlement between litigants. Pre-trial techniques are also being taught in the special training seminars for the judiciary.

The most important mechanism to achieve amicable settlement has been the *Katarungang Pambarangay* system, or simply the *barangay* justice system. The designation of the *barangay* as the smallest political unit at the level of the small village or neighborhood, which was an important element of Marcos' political ideology, has survived the EDSA revolt. The Local Government Code of 1991 has even strengthened the powers of the *barangay* in judicial matters. The administrative supervision over the *barangay* courts falls under the responsibility of the Department of Justice. As of 1 January, 1992 the jurisdiction of the *barangay* justice system includes civil cases between residents of the same city or municipality, as well as offenses punishable by imprisonment not exceeding one year or by a fine not exceeding 5,000 pesos.¹⁵

These small cases are obligatorily brought to the *barangay* captain for amicable settlement, and if this fails, are further brought before a panel of three members whom the disputants themselves can select from a larger board of ten to twenty members. Only after a case has been brought before such a panel, and if one of the disputants has explicitly repudiated its decision, can the case be elevated to the courts.¹⁶ Furthermore, the courts may refer cases back to the *barangay* justice system for amicable settlement.¹⁷

Proponents of the *barangay* justice system point to the following potential advantages of this system: first, it will help unclog the courts by settling many small disputes amicably. Second, the system will save parties in a dispute from spending great sums of money on lawyers and for other costs involved in litigation before the courts. Third, the system will keep disputing parties out of the hands of lawyers, who – apart from imposing high costs on the litigants – often tend to complicate the conflict rather than simplify or solve it.

Along with this strengthening of the formal judicial powers of the *barangay*, the Supreme Court, together with the Department of Justice, also initiated a campaign to provide paralegal training to *barangay* officials to help them perform their new duties. A recent survey suggested that only about one third of Filipinos of voting age had ever seen the *barangay* justice system operate. But of those who have had some exposure to it, 74% expressed satisfaction (72% in the Metro-Manila area).¹⁸

Records from the Department of the Interior and Local Government claim a high success rate for the *barangay* justice system, despite the inadequate training and supervision of *barangay* officials due to a shortage of staff and an excessively heavy work load. These records showed that in 1994 the *barangay* justice system had a case inflow of 113,330 cases and settled 104,211, which implies a success rate of over 90%. This report also claims that the high success rate of the *barangay* justice system saved the government 364,738,500 pesos.¹⁹

Nevertheless, there have been also more pessimistic estimates of this system. One Court of Appeals justice, for instance, believes that the actual success rate of *barangay* settlements has been only 10%.²⁰ Major limitations of this system include: that this form of amicable settlement necessarily only applies to residents of the same city or municipal-

ity; that the *barangay* courts cannot settle the issue if one of the parties is not willing to reconcile; and that the system applies predominantly to civil cases. The backlog of criminal cases in the courts, however, is much more serious than the backlog of civil cases. Another problem is that the shortage of resources and manpower makes it difficult to give effective training and legal advice to the officials of the *barangay* justice system nationwide.

However the most serious problem faced by the *barangay* justice system, is the credibility of the *barangay* as a political unit, particularly in urban areas. In rural areas the *barangay* tends to be an organic unit, in which the captain enjoys a degree of respect. But in many urban areas, where the backlog of court cases is most serious, the *barangay* framework is still insignificant. Many urban residents, including judges, do not have the faintest idea who their *barangay* captain is. The credibility of *barangay* officials may also leave much to be desired. *Barangay* captains may use their position to flaunt their importance, or may be part of the political machine of more powerful politicians, which may undermine their credibility with at least part of the neighborhood. In some cases the *barangay* captain may even be a neighborhood bully or an outright crook, who was elected through machinations, intimidation, and support from powerful individuals, or because of indifference on the part of other neighborhood voters. Moreover, corruption is also a major problem. Citizens may need to pay bribes to *barangay* officials to obtain various clearances or to speed up a case in the *barangay* court. It is very questionable whether the teaching of paralegal skills to *barangay* officials would be sufficient to raise their public credibility.

Whatever the real success rate of the *barangay* justice system may have been, it has not stopped the ongoing 'litigation explosion'. The *barangay* system runs the danger of only delaying justice further by being merely an additional stage which litigants have to go through in the judicial process – and a corrupt additional stage at that. Given the limited resources available to the judicial system, the question needs to be asked as to which element priority should be given in the investment of conciliatory mechanisms: to improvement of the pre-trial skills of judges or to improvement of the *barangay* system? Though the judiciary may also have a public credibility problem, at least judges are recognized as professionals in legal disputes.

With regard to the potential for amicable pre-trial settlement, it is beneficial for a judge to work in the region where he comes from: the degree of trust he enjoys depends significantly on whether the local population regards him as one of their own. Yet the disadvantage of working in one's home region is the danger of strongly identifying with specific vested interests or with a given local faction.

Jurisdictional Changes

A very important change introduced in March 1994 through a congressional bill²¹ involved the widening of the jurisdiction of the lowest courts – the Municipal and Metropolitan Trial courts – at the expense of the Regional Trial Courts. The jurisdiction of the MTCs in civil cases was broadened from covering claims involving a maximum of 20,000 pesos to those involving a maximum of 100,000 pesos (200,000 pesos in Metro-Manila). Moreover, in the future, the jurisdiction of the MTCs will automatically

be widened in order to keep up with inflation: five years after the congressional bill takes effect, the MTCs will deal with demands involving amounts of up to 200,000 pesos (300,000 in Metro-Manila), and five years after that this ceiling will rise to 300,000 pesos (400,000 in Metro-Manila).

Furthermore, claims involving title to or possession of real estate, or an interest therein, has also been included in the jurisdiction of the MTCs. The latter claims concern cases involving a maximum amount of 20,000 pesos (50,000 in Metro-Manila). Also, the jurisdiction of the MTCs in criminal cases has been broadened from cases involving a maximum penalty of four years and two months imprisonment, to cases with a maximum penalty of six years imprisonment. Finally, the maximum amount of 4,000 pesos that the MTCs could impose as a fine has been abolished.

An important argument in favor of this adjustment is that the jurisdiction of the MTCs had not been adjusted for decades. The 1987 Constitution adopted the jurisdiction criteria of the MTCs from the 1973 Constitution. This meant that before the recent change, no civil cases could be brought before an MTC involving demands equivalent to more than 20,000 pesos, in spite of the considerable inflation that had occurred over the years. Nor was the maximum fine that the MTC could impose for criminal offenses changed. This meant that the continuing inflation also affected an increasing number of cases that would have been filed with the MTCs in 1973, but had to be filed with the RTCs instead. Consequently, the comparative case load of the MTCs continued to diminish at the expense of the comparative case load of the RTCs.

Partly as a consequence of the factors outlined here, the RTCs were much more overburdened with case loads than the MTCs. In many instances, RTCs had twice as great a case load as MTCs in the same area. The change of jurisdictions introduced in 1994 facilitated a more even distribution of case load to the judges of the various courts of first instance. Since there are more MTC judges than RTC judges, the increase of the case load per MTC judge was smaller than the decrease per RTC judge. Thus the portion of the work load transferred from the RTCs was distributed among a greater number of MTC judges.

Although the change has facilitated a more even distribution of case load among the judges, it contributed significantly to an increase in the case load and backlog of the MTC. It is not certain that the MTC judges can effectively handle this increase. As has been mentioned already in the section on 'Backlog and Court Delay' of this chapter, by the end of 1994 – the year in which the change of jurisdiction took effect – the number of pending cases before the MTCs had increased to 219,926, compared to 117,485 pending cases at the end of 1993. By the end of 1995, the first full year in which the revised jurisdiction was applied, the number of pending cases before the MTCs had increased dramatically to 279,470. Moreover, the change of jurisdiction puts extra demands on the legal qualities of the incumbent MTC judges, because they will have to deal with more complex and extensive cases. How well many of the incumbent MTC judges can cope with these higher demands remains an open question.

For the RTC judges, the reduction of jurisdiction brought a measure of relief, as demonstrated by the slight reduction of pending cases from 230,305 at the end of 1993 to 216,607 by the end of 1994. By the end of 1995, after a year's application of the

change, the number of pending cases had gone decreased to 194,939. But considering the ongoing 'litigation explosion', this relief may not be permanent. Indeed extrapolating from the increase in litigation during the last few years, it appears that the case load of RTC judges will increase again soon.

The 'Star' and 'Space' Systems

Proposals to solve or reduce the problems of backlog and court delay have not only come from the Supreme Court, the Department of Justice and the two houses of Congress, but also from members of the bench and from representatives of other sectors of the judicial system. The most radical proposals were made in the mid-1980s by an RTC judge who was subsequently appointed to the Court of Appeals in 1993. He created the STAR system and the SPACE system. The STAR system concerns criminal cases, which the author claims can often be decided in a single day of trial. It proposes a meticulously planned schedule for the trial day. Following final consultation with the defense lawyers and prosecutor in the late afternoon, the judge already reaches a decision. The SPACE system works along similar lines. A pre-trial is set during which both parties are explicitly asked to settle. If they cannot, they will at least be required to agree on issues and procedures which will not be contested before the court any further.

The author of this plan does not agree with the popular notion that lawyers will necessarily obstruct swift judicial procedures because such procedures will affect their financial interests negatively. Since there are not enough lawyers actually involved in litigation, lawyers can find enough cases to guarantee their income. When he was assigned to the countryside, this judge was indeed able to decide various cases in a single day, but in the city this turned out to be more difficult.

Though the author of these systems was widely respected for his intense zeal, the STAR and SPACE initiatives met mostly with skepticism in the judiciary. These systems require an enormous effort which very few judges and lawyers would be capable or willing to undertake. They also require court rooms to be open long before and after formal office hours. Moreover, the speed with which a judge is required to make decisions in this system is criticized. Opponents emphasize that a judge needs ample time to make a responsible decision.

A more recent and moderate plan has been the Speedy and Inexpensive Trial System proposed by the Philippine Judges Association and adopted in August 1993.²² After it had been tried out in the Metro-Manila area, it was adopted by the Supreme Court for general introduction in 1995.

The Speedy and Inexpensive Trial System

The Speedy and Inexpensive Trial System includes, amongst other things, the following elements: first, court sessions should follow uniform, consistent, and punctual hours, from 8.30 to 12.00 and from 2.00 to 5.00 o'clock, Monday to Friday. Tardiness or absence of lawyers, witnesses and litigants should be subjected to disciplinary sanctions, ranging from fines to the dismissal of the case. Second, only limited extensions of time to file responsive pleadings should be allowed. A first extension shall be limited to ten days, and a second one, if granted, to five days. No more extensions after that shall be allowed.

Third, judges shall make optimal use of a pre-trial conference. A judge shall do his or her best to make parties reconcile. If this turns out to be impossible, he should insist at least on a partial settlement between the parties on non-controversial issues. Fourth, there shall be a manageable court calendar. The calendar has to be restricted to two cases in the pre-trial stage, and four cases in the trial stage. There is no restriction to the number of motions to be addressed on one particular day. Fifth, there shall be a limited postponement of cases. 'Scheduled trial dates, hearings and other incidents agreed upon by the parties shall not be canceled or postponed, except for compelling reasons'.²³ Adjournments must be restricted to 30 days, whereas the available dates of the court prevail in cases of conflicts of schedule between the court and the trial lawyer and his client. Sixth, there shall be an active involvement of lawyers in writing the decisions: each party writes a decision in its favor; the judge will adopt one of these, either with or without corrections.

A fundamental problem of this system is that it involves more work for lawyers, who will not be willing to do this without extra pay. This will result in more fees for the clients, whereas one of the objectives of this system is to be make litigation less expensive. It is also an open question if the judges will impose the discipline that this system requires over a longer period of time. One judge commented just after the introduction of this system: 'we should not take all these requirements so literally. I start my court session at 9 o'clock. Given all these traffic jams and the problems with public transport, you cannot expect litigants and witnesses to be in the court house at 8.30.' Moreover, some judges lack punctuality themselves, and may not arrive before 10 o'clock.

Other Proposals

Another proposal has been to abolish the requirement that judges and justices repeat all the facts of a case in a decision. Still another proposal involves permitting lawyers to be assisted by public attorneys in individual cases. If the lawyer cannot appear, the public attorney can take over temporarily so that the case does not have to be postponed. However the sense of hierarchy among lawyers militates against the feasibility of this idea, because public attorneys are considered to be beneath lawyers in this hierarchy. The introduction of temporary stand-by judges has also been proposed. Specially selected private lawyers could act as judges from time to time to reduce the worst backlog. The comparatively low salary offered for this service might pose a problem, though lawyers might be willing to make such a sacrifice if it were only temporary.

Another proposal has been to change the payment framework for lawyers: instead of being partially paid per court appearance, lawyers could be paid on a lump sum basis per case. This way lawyers would no longer be tempted to delay a case for financial reasons. On the other hand, this framework might cause major difficulty for litigants who cannot afford to pay a large sum of money at once.

Finally, pleas for a drastic revision of the rules of court have been recurrent. One such plea concerns a limitation on the possibilities available to lawyers to file motions, since these possibilities can be abused for delay purposes. For instance the total number of motions for postponement could be restricted to three, whatever the reason behind the motion (currently one may file these motions indefinitely). One could also reduce the

number of motions by denying lawyers the right to file motions for reconsideration after the first motion has been denied by the judge. Another proposal to reduce the delaying effects of motions is to deny any possibility of appealing an interlocutory order to a higher court during the trial period. Under this proposal, such an appeal could still be filed, but not separately – only as an integrated part of the appeal of the entire case, after the lower court has decided the case.

The Work Load of the Supreme Court

When the reorganized Supreme Court assumed office following the EDSA revolt in 1986, it inherited a backlog of approximately 6,000 cases from the Supreme Court under Marcos.²⁴ However it managed to solve most of its backlog gradually over the years. Nevertheless, there are several factors that still contribute to backlogs and delay in the work of the Supreme Court. The first of these is the heavy case load of the Court, as illustrated by the following chart detailing the evolution of the Court's overall case inflow and the number of cases resolved according to various decision mechanisms:²⁵

Year	Total Inflow	No. of Cases Disposed of	Minute Resolutions	Fully-penned Resolutions	No. of cases decided <i>en</i>
1992	5,148	4,196	3,824	1,092	721
Jan-June 1993	2,552	2,302	--	--	--
July 1993-June 1994	5,341	4,342	3,483	859	--
1995	4,886	4,427	3,621	806	563

The extensive administrative duties of the Supreme Court pose an extra burden in terms of time and energy expended. This extra burden further facilitates delay in the review of cases by the Court. There appears to be wide agreement in Filipino society, including within the Supreme Court, that a reduction of the responsibilities of the Court is imperative in order to reduce its work load. Various proposals have been articulated in this respect, including those of incumbent or retired justices of the Supreme Court.

In 1995, the right to appeal cases directly to the Supreme Court from the Civil Service Commission and the Central Board of Assessment Appeals was already abolished through expansion of the jurisdiction of the Court of Appeals. The 1987 Constitution, however, adopted the provisions concerning direct appeal by some quasi-judicial bodies, notably the Civil Service Commission and the National Labor Relations Commission, from the Marcos era. Yet these provisions under Marcos were primarily based on political considerations, and lacked a compelling judicial logic. Though the implementation of the 1995 revision has decreased some of the responsibilities of the Court, the revision may not have gone far enough. One retired justice estimated that approximately 30% of the *en banc* sessions of the Supreme Court concerned labor cases. The proposal to abolish the right of the National Labor Relations Committee to appeal cases directly to the

Supreme Court is widely supported. This proposal has not yet been adopted by the legislature, partly because of opposition from organized labor.

Another proposal to lighten the work load of the Supreme Court is to shift supervision of the material facilities of the lower courts to the Department of Justice.

Other proposals are more extensive. One recommends transferring supervision over the courts to the Department of Justice, including disciplinary supervision, and limiting the work of the Supreme Court to questions involving the Constitution and the law. A variant of this proposal goes one step further. It suggests that like the American Supreme Court, the Philippine Supreme Court should not deal with just any issue of law, but rather focus on landmark cases involving novel issues of jurisprudence. A reduction of the powers of judicial review in some cases has also been proposed.

Apart from recommendations on reducing the work load, there have also been proposals to improve the efficiency of the administrative work of the Supreme Court. Some of these proposals involve the provision of additional funds and staff for the Office to the Court Administrator. Other proposals concern a drastic reorganization of the Supreme Court itself. For instance administrative cases could be relegated to a purely administrative division staffed by justices who are mainly recruited for their administrative and management skills, and headed by a chief administrator. Such a division could act autonomously vis-à-vis the other Supreme Court divisions, and perhaps the Chief Justice as well.

An increase in the number of Supreme Court justices has been proposed to solve the problem of the Court's excessive work load. By contrast, a reduction in the number of justices has also been proposed for the same purpose. A retired justice has remarked that when the number of Supreme Court justices was increased to its present level of 15, this resulted in an increase rather than a drop in the work load of individual justices. According to this former justice, in addition to being involved in administrative matters, the justices of the Supreme Court spend considerable time addressing unimportant cases, for instance discussing at length why certain petitions that were clearly without merit should be dismissed, rather than simply dismissing them outright. Such deliberation might be an understandable act of courtesy toward lawyers and litigants, who would be quite frustrated if their lengthy petition is instantly dismissed without much consideration. But an elaborate deliberation of petitions without merit prevents the justices from investing time and effort in more important cases. In his opinion the Supreme Court should be reduced to nine members again. This would force the justices to set clear priorities.

The same retired justice further proposed abolishing the divisions. Such abolition, he said, would increase the consistency of decision-making in the Court. According to him, there are actually four distinct Supreme Courts in the present set-up – three divisions plus the Court *en banc* – and all may rule differently on similar cases. In the framework he has proposed, all Supreme Court decisions would have to be made *en banc*.²⁶ He said this structure has worked well in the United States Supreme Court and also functioned effectively in the Philippines from 1917 until 1932. Of course a change of this nature assumes a drastic reduction of the Court's responsibilities.

The debate concerning the reduction of the work load of the Supreme Court is not solely a discussion about pragmatic administrative issues. Consideration of this question

cannot be separated from the more fundamental debate about the role of the Supreme Court in Philippine society. On one hand, certain critics believe that the role of the Court in the post-EDSA order is excessively prominent. These critics tend not to be surprised that the Supreme Court faces many difficulties in dealing with its varied duties and heavy work load, and indeed regard these difficulties as a vindication of their fundamental objection to the central role played by the Supreme Court in the life of the nation. Such critics favor a reduction in the work load of the Supreme Court through restrictions on fundamental elements such as judicial review and complete autonomy of the bar. Furthermore, members of executive agencies, particularly of the Department of Justice, naturally tend to favor a substantial reduction of the duties of the Supreme Court, because a complete transfer of the supervision back to this Department will give it more power and importance.

On the other hand, there are those who, like the drafters of the 1987 Constitution, favor granting the Supreme Court a much larger role and status in Filipino society. They regard the Court as both the keeper and symbol of judicial independence and integrity, and view it as the main check on possible new authoritarianism on the part of the executive. Consequently, they would like the Supreme Court to maintain its powers and to act according to this role and status. For them the difficulties it has in carrying out its heavy work load predominantly demonstrates that the Supreme Court needs more resources and manpower. They may endorse a reduction of the Court's powers and duties in some areas, but object to limiting important powers such as judicial review and disciplinary administration over the judiciary.

A reduction of the jurisdiction of the Supreme Court usually implies a transfer of some of its duties to the Court of Appeals. As a consequence, the work load of this body would increase. A Congressional Bill that will raise the number of justices in the Court of Appeals from 51 to 63, distributed over 21 divisions is currently awaiting a decision by Congress. This Bill also aims at regionalizing part of the Court of Appeals, as well as some of the *Sandiganbayan*, in order to increase the access to these courts for citizens who do not live in or near Metro-Manila. According to this Bill, only 15 divisions, each containing three justices of the Court of Appeals, would be located in Metro-Manila, whereas six divisions of three justices each, would be located in various other parts of the country. Moreover, divisions that are located in Metro-Manila may be temporarily assigned to work in other places.

An important aspect of the transfer of jurisdiction from the Supreme Court to the Court of Appeals is that such a transfer would not only increase the work load of the Court of Appeals in quantitative terms, but also requires a higher quality of work from these justices. This would particularly apply if the Supreme Court only concentrates on novel issues of law and delegated regular legal issues of law entirely to the Court of Appeals. This implies that the procedures and requirements for the appointment of justices to the Court of Appeals would have to be strengthened to guarantee high quality in terms of competence, integrity and credibility.

A major impediment to the implementation of most of the proposals to change the Supreme Court's responsibilities and its size and division of labor, is that such changes would require constitutional amendments. In the long run, at least some amendment to

the 1987 Constitution regarding the role of the Supreme Court seems inevitable. But in the political climate of the mid-1990s in the Philippines, proposing constitutional amendments is rather risky. It might encourage special interest groups to rally in favor of other constitutional amendments that are highly controversial.

Social Distribution of Justice

In line with international authoritative instruments, the 1987 Constitution guarantees an even distribution of justice among its citizens. Article III, section 1 of the Bill of Rights says, amongst other things: '... nor shall any person be denied the equal protection of the laws.' Special provisions to protect the poor are mentioned in the Bill of Rights as well. Section 11 of article III says: 'Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty,' whereas section 12(1) of Article III specifies: 'if the person cannot afford the services of counsel, he must be provided with one.'

In spite of the provisions in the Bill of Rights, there is a pervasive perception in the Philippines that justice exists exclusively for the rich and powerful. In this perception, those without money or connections are forced to rot in jail regardless of their guilt or innocence, while wealthy or connected persons can commit crimes with virtual impunity. Though there may be a degree of hyperbole in this perception, the access of the poor and underprivileged to fair and effective justice is clearly a paramount problem in the Philippines. The following story may be regarded as typical in this context. A lawyer visiting a police precinct noticed by chance a girl in the jail who had been there for some weeks already without being officially charged. It turned out that the girl had come from an outlying locality in the provinces and had moved to Metro-Manila to find work as a domestic. She was hired by a family, but after a few months employment was accused of theft by the mistress of the household, and was subsequently arrested and locked up in the precinct jail. Since she had no relatives in Metro-Manila, and had not stayed long enough there to make friends, nobody had really enquired about her. Her mistress didn't care, because she was angry about the alleged theft, whereas the parents of the girl lived far away and had not even been informed about her arrest. If it were not for her accidental meeting with this lawyer, her fate would have been extremely uncertain.

A number of factors strongly inhibit the fair distribution of justice. But prior to discussing these factors, it needs to be stressed that the unequitable and unfair distribution of justice is by no means solely caused by the courts. The entire penal system, which includes the police, the prosecution, the defense lawyers, the correctional officers and the courts, bears responsibility for the current state of affairs. This uneven distribution is further reinforced by undue interference of police investigations, by the actions of powerful or resourceful persons, and by the inappropriate application of leniency in the judicial process.

The first factor facilitating the unfair distribution of justice is the status hierarchy. One's social status is decisive for the way one is treated in the penal and judicial system. People with higher status run less risk of being locked up for minor offenses or beaten

or intimidated by the police, and if incarcerated, they receive more privileges in jail. This difference in treatment also applies to politically-inspired human rights violations. There is a consensus in the Philippine human rights movement that by far, the majority of victims of human rights violations – politically-inspired or otherwise – come from the poor and the underprivileged in the social hierarchy.

A second, and indeed even more important factor facilitating the unfair distribution of justice is the gap between rich and poor. Money improves a person's chances in numerous ways. Persons with money can post bail upon arrest, whereas many poor Filipinos charged with bailable offenses linger in jail because they cannot afford the bail set for them. Moreover, the rich can afford to hire the services of a good lawyer, whereas the poor have to resort to public attorneys who, generally speaking, tend to have less experience and come from what are considered the lower quality law schools.²⁷

Apart from the public attorneys, there are other lawyers or organizations involved in providing free litigation, for instance, the free legal department of the Integrated Bar of the Philippines, and certain NGOs. However the number of cases requiring such assistance are simply too many for such organizations to handle. Even successful private lawyers tend to engage in free litigation. It is not uncommon for lawyers to assist the poor relatives of staff members without charge. This shows that even among the poor, there is a distinction between the poor with connections and the poor without connections. But there is also a clear limit to the number of free cases these lawyers handle, as well as to the time they are ready to spend on each of these cases.

The advantages of a good lawyer are that he or she has more knowledge of law and jurisprudence than the client, cross-examines more cleverly, presents his/her arguments more convincingly, can trace technical irregularities in the procedure of arrest and investigation more easily, and is more skillful in bargaining for a reduction of sentence in case of a conviction. Also, the reputation of a good lawyer is in itself a very important resource in legal procedures. The hierarchical nature of the legal system – as in Philippine society in general – accounts for the fact that a lawyer with a famous reputation, or who works for a well-known law firm, is simply taken more seriously than less reputable lawyers, regardless of the quality of their respective legal arguments.

A very serious handicap for the public attorneys, is that they tend to get involved in a criminal case when the prosecutor has already pressed charges. Therefore, unlike private attorneys they cannot influence the charges anymore, which works to the disadvantage of their impoverished clients. Obviously it makes a considerable difference if one can convince a prosecutor to change the charge of first degree murder to third degree homicide. Because the poor also have a very inadequate understanding of legal procedures, they miss serious opportunities for increasing their chances of winning during the preliminary investigation when they are unassisted by a lawyer. A clever lawyer can further promote his or her client's interests by various delay tactics and other tricks.

Another clear advantage of wealth is that one can bribe oneself out of trouble, with or without the help of a lawyer. The officials in the penal and judicial system most vulnerable to bribery are the police and jail guards. These are very low-paid employees and have a notorious reputation in the Philippines. In exchange for money, the police may obstruct an arrest, destroy vital pieces of evidence, harass witnesses against a rich

suspect, or hire people willing to give fabricated testimonies for the defense. Jail guards may grant privileges to convicts or those held in preliminary detention for a non-bailable offense. Such privileges could be a private cell, permission to receive any visitors at any time, permission to receive food, television sets, airconditioners and other materials from outside, etc. Jail guards can actively help people escape detention or simply allow them to leave jail while maintaining their official registration as inmates. A convict may be transferred to a jail that is less inconvenient than the prison to which he or she was sentenced, through bribing key people. In some areas of the Philippines, it is even possible for a convict to hire a stand-in to purge his sentence for him, falsely registered in his name. Criminals may escape conviction by successfully bribing policemen, witnesses, jail guards, and certain judges and prosecutors.

The costs involved in crossing geographical distances to the courts also acts as an inhibiting factor for poor litigants, particularly when they live in outlying areas. This problem is reinforced by the fact that many courts in outlying areas are vacant. It may therefore be expensive and time-consuming for a litigant to travel to the nearest court that has a judge. The problem of travel costs is particularly pressing in the case of the *Sandiganbayan*, the court that tries cases involving alleged crimes committed by public officials in the line of duty. The *Sandiganbayan* is located in Manila. If a case is filed against a public official from the other side of the Philippines, it will be virtually impossible for this official to travel and stay in Manila, and bring a lawyer and witnesses along, unless the public official has access to a considerable amount of money from other sources.²⁸ Consequently, his interests may scarcely be represented in the case. As mentioned in the section on 'The Work Load of the Supreme Court' of this chapter, a Congressional Bill has been filed to regionalize the *Sandiganbayan*, as well as the Court of Appeals, in order to redress this problem.

Apart from money and status, powerful connections and access to violence also inhibit a fair and equal distribution of justice. The power of the gun has been frequently used to physically harass, threaten, intimidate, or even kill complainants, witnesses, prosecutors, judges and lawyers. The use of powerful connections by litigants who can make or break the careers of judges, prosecutors, or witnesses has a very intimidating effect as well. These practices favor the powerful and influential over the powerless and unconnected litigants. Moreover, even to the extent that judges withstand pressures from these powerful elements, such practices still inhibit a fair distribution of justice by encouraging the perception among the poor and defenseless that it is useless to fight powerful or influential people in court, even if the merits of their case are very strong.

Lawyers who defend poor litigants must be creative and resourceful in order to compensate the disadvantages that they and their clients face in the litigation process. They may have to resort to personally befriending police officers in order to persuade them to testify in court or to show diligence and sympathy in the criminal investigation. They may also informally follow up the case with the prosecutors and judges in order to win favor for their poor client. A good illustration of resourcefulness on the part of defenders of the poor in courts are the paralegals of the Catholic relief organization CARITAS in Manila. They themselves form the bottom of the legal hierarchy, since they are not – or not yet fully – lawyers. Furthermore, they support prisoners who are at the

bottom of the social hierarchy in general. But the paralegals make sure that in all of their paperwork they use pages with the letterhead of the Archdiocese of Manila, under whose authority CARITAS operates. This way the reputation of the Archdiocese, and of the very well-known Archbishop of Manila, reflects on the paralegals and their impoverished clients.

Just as the rich and powerful have a clear edge in escaping conviction, they also have more opportunity to ensure the conviction of a person suspected of a crime committed against them. In the Philippines, it is possible for victims in a criminal case, or their families, to hire a private lawyer to assist the prosecutor. This is possible because the criminal aspect and civil aspect are integrated in the procedure of a criminal case.²⁹ In actual practice however, the work of the victim's lawyer – called the private prosecutor – is not restricted to the civil aspect alone. The private prosecutor may conduct research and can even undertake important pleadings in court regarding the criminal aspect of the case, though formally speaking, final responsibility for the criminal aspect still rests with the public prosecutor. Many public prosecutors do not seem to mind this interference by private lawyers in the prosecution of their cases, since it lightens their work load. In cases where a private prosecutor is actively involved, the prosecution of crimes is conducted with more zeal and depth, which increases the probability that the accused will be convicted. Moreover, a private prosecutor can be an important asset to his or her client in filing an appeal if the public prosecutor drops the case. The procedure involved in filing such an appeal is rather complicated and laborious, and needs to be completed within 15 days.

Nevertheless, it should be stressed that, *ceteris paribus*, perpetrators of crimes have a clear edge over their victims. Though the poor and the underprivileged are at a special disadvantage in getting redress, this fate is by no means restricted to them. Even rich and well-connected victims of crimes tend to have serious difficulty securing legal redress. Naturally, obtaining such redress becomes all the more difficult if the perpetrator has access to wealth, violence and power.

Law Enforcers and Jail Guards

A very important reason why some perpetrators of crime have an edge over their victims in the justice system, can be attributed to the poor performance of the police and jail guards. As mentioned in chapter 3 and above, policemen have even developed a reputation for being crooks in uniforms. In the Philippines, current and former army personnel, as well as policemen, are widely suspected of involvement in crimes and crime syndicates such as the kidnap-for-ransom and armed robbery rings. In fact victims of a crime often suspect that they will only make matters worse for themselves by going to the police. Moreover, people no longer expect that the police will protect them from criminals who may retaliate because of their complaint.

The public distrust of the police results in barely a handful of complaints, whereas the sloppy work of underpaid, incompetent and indifferent policemen makes it very hard for criminal cases to 'stick'. These problems explain why sometimes official crime statistics in the Philippines are lower in comparison to the crime statistics in Singapore which has

a reputation of being a very safe place.³⁰ Though the police force has been subjected to various reorganizations since the EDSA revolt, and though it has reported a steady decrease in the crime rate since 1992, its reputation has not significantly improved.³¹

The following two cases illustrate the difficulties mentioned above which even wealthy and/or well-connected victims experience in attempting to obtain redress. In both of these cases, however, the perpetrators were eventually put behind bars.

The first case concerned a businessman who had shot a college student after an argument over a traffic violation in 1991. The businessman had a successful construction enterprise. Apart from being rich, he was also politically well-connected, having been involved in many government projects. He was arrested and charged with murder, after witnesses had identified him as the perpetrator. The parents of the victim were rather well-to-do themselves and hired a private lawyer to assist the prosecutor. They were further supported by widespread publicity in the papers. In the press, the case became identified as a test case for the Philippine penal and judicial system. Unfortunately, the system failed: the case dragged on for more than two years; the defense filed 49 motions and petitions of a different nature; the businessman changed his defense lawyer at least twice, which led to further delay. During this time, the family of the victim received death threats. While in jail, the businessman enjoyed various special privileges. Not only did he receive visits and presents from the outside, but he was allowed to leave from time to time, for instance to attend a concert. Just before the decision of the judge was to be issued, the general public's expectations were confirmed: the jail guards allowed the businessman to escape without a trace. The businessman was sentenced to lifelong imprisonment, but he was no longer in custody to serve out his term. The aftermath was equally dramatic. The lawyer and family of the businessman immediately sent out signals indicating that the convict was willing to surrender. The reaction of the government was divided. The Minister of Interior Affairs issued an order that the man be captured dead or alive. However the Minister of Justice managed to stop the manhunt in order to allow the businessman to surrender. He even promised to protect the convict with his own body. But when the deadline for surrender expired, the convict did not appear. Just before the decision was issued, the lawyer of the convict had petitioned the judge to 'inhibit' himself from the case for alleged bias. After the decision was published, the lawyer asked for a new trial. The judge fell ill at about the time the businessman escaped from jail, fearing severe retaliation. His decision was actually read out in court by an assistant. The judge further reported that he had been offered a bribe by the businessman earlier in the trial period. The bribe allegedly had come via a private lawyer who had been instrumental in the judge's appointment to the bench. Given the debt of gratitude the judge felt toward the lawyer who he accused of attempting the bribe, it would have been difficult for him to have declined the offer. Yet the judge turned it down, though he decided not to report the incident, apparently because of this debt of gratitude. The private lawyer concerned vigorously denied the charge. In turn, the lawyer defending the businessman later accused the parents of the victim of bribing the judge. Both the judge and the victim's parents denied the accusations. A few years later, the whereabouts of the businessman were accidentally discovered, and he was subsequently arrested to serve his sentence.

The second case concerned the Minister of the Interior and Local Government who served under President Aquino. This Minister was shot dead by a notorious criminal in 1988. Though the case appeared to be a clear example of a 'contract job', the killer was merely charged with second degree murder. Initially he was sentenced to 30 years, but during the procedure of appeal, a petition for bail was granted, and he was consequently released from jail. Following his release, he was able to get an officially authorized gun license, which was not revoked even after he openly harassed a public transport driver with a gun and shot at his vehicle. During the time he was supposed to be in jail, he received various privileges. The jail guards often let him out, providing him with a golden opportunity to resume his old trade of burglarizing rich homes, while having the perfect alibi since officially he was in jail. After massive publicity concerning this situation, the Minister of Justice petitioned for withdrawal of the right to bail, and acted to ensure the convict would really be kept in jail. In late November 1993 he was finally arrested. Considering his previous status as untouchable, newspaper columnists have already expressed public cynicism as to whether he actually can be kept in jail, once the publicity on this case has died down.

The Use of Pity

As has been mentioned in earlier chapters, leniency is an important characteristic of the Filipino socio-cultural system. This applies also to the judiciary. One leading member of the bench even remarked in this context that the 'Filipino inclination to leniency is integrated into the judicial system'. A popular strategy for obtaining leniency is to personalize the relationship with the judge or law enforcers, and thus create sympathy which facilitates leniency.

A favorite and efficient tactic for obtaining lenient treatment is to appeal to feelings of pity. A lawyer can appeal to pity on the part of the judge to obtain another postponement if his client has not yet paid him, or if the client claims to have developed hypertension from the trial, or if a witness cannot appear in court because he is unable to take leave from his job, etc. An office worker may escape criminal charges for theft if he claims that he stole because he had to pay the medical bill of a sick relative. And a convict or a suspect may succeed in using poor health, the death of a relative, the notion of his being misunderstood, etc., to obtain leniency.

In principle, pity could be a mechanism facilitating the distribution of justice in favor of the poor and underprivileged. In actual practice, however, pity is not only extended to the poor and the underprivileged, but to the rich and powerful as well. The case of Imelda Marcos illustrates this phenomenon. After she was finally convicted on several charges of graft in 1993, and sentenced to 18 years in jail, a leading bench member commented: 'of course she will never go to jail. No doubt with all the appeals the case will still last for another eight years before the Supreme Court finally settles it. Then she will be 72 years old. You do not jail a 72 year old woman in the Philippines.'

The paradox that the rich and powerful can also successfully appeal to pity can be partially attributed to the fact that pity is generally open to everyone. The term *habag* refers to showing pity or mercy directly to an individual or a group who has sought pity diligently and who believes that the one appealed to is receptive to such an appeal.

Almost anyone can make use of this appeal to pity: rich or poor, perpetrators of crimes or victims. In the Catholicized Philippines, 'works of mercy' facilitate one's access to heaven. The one who extends compassion or clemency may or may not be conscious that he is performing a work of mercy. One who appeals to mercy builds up his case and becomes an object of pity by efficiently persuading others that he is pitiable. This explains why the perpetrators of crimes may receive the same amount of sympathy and pity from law enforcers and influence-peddlers as do their victims.³²

All this implies that the tactics of pity may serve both as an instrument for the weak and underprivileged to increase their chances of attaining justice, and an instrument for the already rich and powerful to further increase their advantage in the justice system. It also means that victims of crime are forced to engage actively in the 'pity game' to neutralize the efforts of law enforcers and influence-peddlers on behalf of the perpetrators. The issue of pity also plays a role in the disciplining of judges and lawyers. Lawyers who are disbarred for gross irregularities can often apply for the decision to be revoked because of economic necessity. An example is a former prosecutor of cases of government corruption who was disbarred after he accused the Supreme Court of irregularities during a disciplinary action against him in 1985. But pity can also play a role in the initial application of disciplinary measures. As one retired former justice recalled: 'there was a judge who was a clear candidate for immediate dismissal. He was close to his retirement and had become lazy and inefficient. He accumulated a huge pile of undecided cases. However they did not dismiss him, but instead allowed him to retire with benefits. They apparently thought he was going to leave anyway, so why deprive him of his benefits. But in this way you never set a clear example.'

The Use of the Press

The press has become another important mechanism for distributing justice. It has served as an important forum for victims where they can complain about the ineptitude of the various pillars of the justice system in handling their grievances. Some journalists actively campaign on behalf of crime victims. They believe that the present judicial system gives a decisive edge to the rich and powerful to escape justice at the expense of mostly defenseless victims. As a public watchdog the press considers that one of the central elements of the role of the media is to expose irregularities and inertia in the judicial process at the expense of these victims. By this logic, law enforcers, prosecutors, and judges will be more diligent and honest in their handling of crimes if they are closely and constantly watched by the press. By constant and elaborate publicity, these representatives of the media thus hope to compensate for the disadvantages that these victims naturally experience compared with the advantages enjoyed by rich and influential criminals. In other words, in various cases, the media has become an explicit tool for the distribution of justice in favor of the poor and underprivileged.

In its coverage of heinous crimes, the media actively generates pity on behalf of the victims by creating a sense of interpersonal relationship between the victims and the readers. One well-known columnist and television presentator for instance, elaborately discusses his meetings with victims of crime. He describes the details of their moods, financial difficulties, fears and expectations for the future. He holds their hands in the

court room during the trial of the perpetrators, or hugs them afterwards. Printed photographs visually underline and reinforce the construction of a personal relationship between victims, press members, and the general public, which keeps interest and pity for the victims alive.³³

In playing this role, the press has claimed several successes. Many attribute the conviction of the son of a former Supreme Court justice, who had killed the daughter of a Swedish-Filipino couple in 1988, to the constant attention the newspapers gave to the case. The prosecution and ultimate conviction in 1994 of a small-town mayor in a brutal case of the rape and murder of two students was also facilitated by widespread publicity. The two convicts mentioned as examples in the previous section of this chapter, who finally landed behind bars after years of judicial setbacks, were finally brought to justice primarily as the result of the immense publicity these cases received in the press. The actual positive effects of this kind of publicity are difficult to measure. It is obvious that the victims of crimes appreciate this attention. The parents of the college student who was murdered by the Chinese businessman published a letter following the trial, in which they expressed their deep gratitude toward a newspaper columnist and his publisher who had been very active in their support. Moreover, there seems to be a substantial degree of consensus even within the judicial system that some judges need emphatic pressure, such as publicity in the press, to do their job properly. It is further likely that such emphatic media pressure has contributed to greater strictness on the part of the judiciary, including the Supreme Court, in dealing with the corner-cutting tactics of lawyers and litigants.

But the dangers of publicity over legal cases are also quite obvious. The first of these is that success in finding redress for victims increasingly depends on their ability to get media attention. This implies that access to justice in part becomes a matter of access to the media. The risk exists that victims of bizarre and sensational crimes will be able to obtain access to the media more easily than victims of rather commonplace crimes. Moreover, the interest of the media for specific cases inevitably gives way to other news items after a while, sometimes before the victims have secured redress. In addition, the accused party might feel tempted to start a media campaign on his own behalf, and cunningly discredit the victims in the eyes of the general public.

Another drawback of litigation journalism and trial by publicity is that it can facilitate new forms of injustice. Because of public pressure, the police and the prosecution will try to satisfy public opinion, even by accusing innocent people of the crime, consciously or unconsciously, on the basis of flimsy evidence. Publicity is also used by law-enforcement officers or politicians for the purpose of grandstanding. For example, suspects are shown to the public on television though there is no sufficient evidence against them. In this way, the police boost their public image as tough crime fighters and defenders of the poor.

Wide publicity about cases, while likely increasing the victims' chances of winning, also encourages the lawyers of the victims' opponents to grandstand and use delay tactics or other tricks. In this way, these lawyers attempt to build a public image of toughness and smartness so as to attract more wealthy clients. As a result, the publicity surrounding the case also acts against its speedy resolution.

Access to Justice for Religious and Ethnic Minorities

The Muslim Community

The degree of integration of the Muslim community in wider Filipino society has traditionally been limited, dating from the time of the Spanish occupation. The grip of the national government over Muslim areas has consequently been limited as well. The central government has always had to compete with powerful local clans and factions for effective control over such areas. This also applies to the judicial system, which has had to compete with informal mechanisms of justice and with religiously-inspired norms and values.

A high degree of animosity and suspicion still exists between large sections of the Catholicized majority and the Muslim minority. Both in the distant and more recent past there have occurred bloody incidents related to this antagonism, such as the massive fighting in Davao City in 1974, and the massacre by unidentified gunmen in Ipil in southern Mindanao in 1995, for which Muslims have been accused. There have been recurrent peace talks between the Filipino national government and powerful Muslim leaders, including under the present administration of President Ramos, which finally resulted in a settlement with dominant Muslim factions in September 1996. However, the relations between the government and the Muslims have been negatively affected by controversy over the Abu Sayaf group. This radical segregationist Islamic group has been suspected of various kidnappings, murders and other acts of violence. In 1995, gross suspicions were raised that this group had become an integral part of an international Muslim fundamentalist terrorist network, which, amongst other things, was accused of plotting acts of terrorism in Metro-Manila. Furthermore, the peace settlement itself has been somewhat controversial, both among certain Muslim factions and various parts of the non-Muslim population.

The *Shari'a* Courts have served as part of the effort to integrate the Muslim community into the Filipino nation-state. These Courts deal predominantly with Muslim personal law, referred to as *Shari'a* law, as a source of law that applies only to Muslims, concerning matters such as matrimony, divorce, and inheritance.³⁴ The philosophy behind this use of Muslim personal law is – at least according to one dominant interpretation – that only personal law is truly universal for Muslims: other civil as well as criminal laws systems vary from country to country. Special *Shari'a* laws and Courts have been created to express and apply Muslim personal law. The *Shari'a* Courts also include a mechanism for amicable settlement: the Agama Arbitration Council. This is an *ad hoc* body that deals with cases like divorce and subsequent marriage and with disputes regarding customary law.³⁵

For various reasons, however, the *Shari'a* laws and Courts have until now been grossly ineffective in integrating the Muslim community into the Philippine legal system. First of all, the number of vacancies in the *Shari'a* Courts is extremely high, which limits the access of the Muslim community to these Courts. In July 1995, 44 out of 56 *Shari'a* Courts were still vacant, though by April 30, 1996 this number had decreased to 32.³⁶ Second, the *Shari'a* Courts have received very few funds. As a consequence, these Courts do not have permanent facilities, but are dependent on local leaders to provide them

space for court sessions. Third, the quality of the judges is low: *Shari'a* judges do not need to be law graduates, and they receive only six weeks of formal training.

Fourth, there are no effective mechanisms of appeal. Decisions of the *Shari'a* courts can only be appealed to the Supreme Court in cases of gross indiscretion on the part of the judges. Fifth, the *Shari'a* courts are still quite unfamiliar to a great number of Muslims, since the system has been introduced rather recently. Therefore, some Muslims may have even more faith in the regular courts than in the *Shari'a* courts. The Muslims tend to resort to the *Shari'a* courts only after other mechanisms of dispute settlement have failed. Consequently, the dockets of the *Shari'a* are not very full, though both case inflow and case outflow have been improving, as the following statistics demonstrate:³⁷

Year	Total Case Inflow	Newly Filed Cases	Case Outflow	Cases Decided	Cases Pending at end of Year
1992	--	--	--	--	344
1993	241	222	274	234	311
1994	305	287	289	260	327
1995	317	256	316	226	328

Sixth, many Muslims regard *Shari'a* law as much broader than family law, and include other civil and criminal issues as part of the *Shari'a*. They further regard Muslim law as more authoritative than national laws. In cases involving adultery, family honor and perceived threat to life, the death penalty may apply, in defiance of national criminal and civil laws.

Tribal Minorities

Customary law, as it is traditionally applied in tribal minorities, is accepted as a valid source of law in the Philippines, as long as it is not in contradiction with national civil and criminal laws. In the case of Muslim groups, the Code of Muslim Personal Laws contains provisions regarding communal property and customary contracts.³⁸ There are, however, serious gaps between the legal perception of tribal minorities and of the Catholicized majority. The classic example concerns rights to land. Tribal groups tend to acknowledge collective rights over wide territories, whereas the Catholicized majority tends to recognize private ownership, based on an officially registered title. In the past, frontier settlers, or rich and powerful families have generally claimed ownership to land that was not yet registered as owned by others. Tribal people, however, often regarded this land as theirs, but had no understanding of or access to the process of acquiring official titles. Because the position of tribal minorities has been extremely marginal traditionally, and since they have been subjected to gross discrimination, their interests were not taken into account.

Traditionally, it was impossible in actual practice for tribal minorities to seek redress in the courts. They did not have enough resources to go to court in the first place, and furthermore were psychologically inhibited because the courts represented an alien world

with legal rules they did not acknowledge, and because they were not taken seriously by the wider society.

During the last decade, sensitivity concerning the needs and interests of tribal minorities has increased. Various legal NGOs support tribal minorities in collective litigation and through legal training. Nevertheless, tribal minorities still constitute a grossly disadvantaged group in the Filipino legal system. In some cases, even judges violate their constitutional rights, as illustrated by the following incident. A lawyer who specializes in legal assistance for minorities came to the aid of a member of a tribal group in an outlying area of the Philippines. The member of the tribal minority owed an amount of money to a landowner which he could not repay. The landowner brought the case to a lower court judge who happened to be a landowner himself. The judge wanted to impose an out-of-court settlement according to which the member of the tribal minority group was to repay his creditor through two months of forced labor. The lawyer, learning of this imposed settlement, was obliged to remind the judge that this settlement contradicted Article III, section 1 of the 1987 Constitution which states that 'no involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted'. The lawyer also noted that it was in clear conflict with the purpose of Article III, section 20 of the Constitution which states that 'No person shall be imprisoned for debt or non-payment of a poll tax'.

Summary and Considerations

Backlog and court delay are pressing issues in the Philippines. These problems are facilitated by the inadequate working conditions of the courts and general infrastructure in the country; an inadequate number of judges; uneven distribution of case loads over the courts; incompetence of some judges and lawyers; delay tactics by lawyers; and a 'litigation explosion'. Both this 'litigation explosion' and the lawyers' delay tactics are facilitated by widespread *amor propio*, a strong sense of pride and self-respect that does not want to face defeat. Apart from being a major problem in itself, backlog and court delay also facilitate the chances of undue interference in the judicial process, such as influence-peddling, corruption and the harassment of witnesses.

Improvement of the working conditions of judges, as well as an increase in their number, has been inhibited by inadequate funds. This has also prevented a substantial raise of salaries, which could attract outstanding candidates for the judiciary. Though the existing backlog and court delay cannot entirely be explained by lack of funds, it is clear that it contributes considerably to the backlog. A substantial increase in the budget of the judiciary is inhibited by the inadequacy of the overall budget of the government, as well as by the fact that the judiciary has to compete with other important public sectors for scarce resources. Nevertheless, pervasive discontent about the speed of the judicial process underscores the need for a higher budget for the judiciary. Neither the government, Congress nor the general public have the right to complain about slow justice if they are not willing to pay the price to reduce the backlog.³⁹

There have been various initiatives to speed up judicial procedures, of which the mandatory 'continuous trial' has been the most prominent. The heavy case load of judges, as well as their desire to administer judicial affairs in their own way, however, have acted as pressures on the Supreme Court to soften the requirements regarding the time-limits of judicial procedures. The success of the mandatory 'continuous trial' is also inhibited by financial problems and interests on the part of litigants and lawyers. The organizational, attitudinal and financial problems that inhibit the success of the imposition of mandatory 'continuous trial' also affect other plans to impose time constraints on judges. However, violations of time-limits have been a major source of disciplinary actions against judges by the Supreme Court.

A revision of the rules of court has been repeatedly considered in order to reduce delay tactics. To what extent a change in the rules of court, and of the rules of due process in general, will effect a decrease in delay tactics – and thus result in swifter and fairer justice – remains an open question. One lawyer perceptively remarked in this context: 'corner-cutting lawyers will always find a way. You may alter the rules of the game in any manner you wish, but lawyers will still find and exploit the loopholes that are there.'

Training courses to upgrade judicial skills have been organized both for judges and for lawyers. Generally speaking, these courses appear to have been appreciated by the target groups. Because of their non-compulsory nature, the impact of these courses has been limited. Another problem is that the training may not have gone far enough to upgrade the knowledge and skills of those members of the bench and the bar, whose quality has been grossly inadequate. A judicial academy to prepare new recruits for the bench has been introduced, which hopefully will serve to remedy this problem.

There have been various plans to reduce the 'litigation explosion' through amicable settlements. The most important of these has been the *Katarungang Pambarangay*, or *barangay* justice system. In spite of the claimed success rate, this introduction has failed to reverse the 'litigation explosion'. Given the limited resources allocated to the judiciary, it remains an open question if the *barangay* justice system would be the most effective mechanism for reducing litigation. With due respect for all the efforts of various sectors of the legal system, the problems and actual success rate of the *barangay* justice system needs to be reviewed through a comprehensive study by an independent research organization.

It is imperative that the scope of responsibilities of the Supreme Court be reduced. Apart from addressing delay in the Supreme Court, such reduction is necessary to give the Court more time to study and discuss really important cases. Given the statements in the *UN Basic Principles on the Role of Lawyers* concerning the autonomy of bar organizations, it is recommendable that the Supreme Court prepare a shift of administrative responsibility over the Bar to the Integrated Bar of the Philippines. Moreover, the Court needs to introduce further specialization in its work in order to deal effectively with the administrative responsibilities that it would keep. The creation of a specialized administrative division which can act with a great degree of autonomy, in conjunction with an extension of the resources of the Office of the Court Administrator, could be the core of such internal specialization. The members of this division should be recruited predominantly on the basis of their administrative skills and experience.

However, the debate on the extent and scope of the Supreme Court's responsibilities cannot be separated from the controversy over its precise role in Filipino society. This debate is also influenced by an existing rivalry between the Supreme Court and the Department of Justice concerning their respective powers over the judicial system. As long as there is no consensus over the role of the Supreme Court, the extent of its duties will also remain controversial. If the Court of Appeals receives increased jurisdiction as the final arbiter in questions of law, there would be a need for additional guarantees regarding the competence and integrity of candidates to this appellate court. As has been recommended already in chapter 4, the candidates for the Court of Appeals as nominated by the Judicial and Bar Council should be approved by the Supreme Court *en banc*, whereas the final appointee should also be approved by the congressional Commission of Appointments. More active policies to attract top-rate candidates to the Court of Appeals, including from academia and the law profession, should be introduced.

The causes of backlog and court delay cannot be reduced to financial and organizational problems. Attitudes and ethical standards also play an important role. Examples are the influence of *amor proprio* in the adoption of delay tactics and the 'litigation explosion', and the issue of leniency toward ineffective judges and corner-cutting lawyers. Such attitudes are factors that are manipulable only to a limited degree. Positive role models and training courses on ethics are certainly important, as are cautious screening of new candidates and the appointment of effective disciplinarians to key positions in the bench and bar. Nevertheless, a change in attitudes may involve a long and arduous process with no guarantee of ultimate success.

The distribution of justice in the Philippines is quite unequal. Broad social differences in status, wealth and access to connections are reproduced in the judicial process. Citizens with high status, money and powerful connections have better access to good lawyers, who are an invaluable asset in the legal process in the Philippines. Moreover, such persons have greater opportunity to apply forms of undue interference at either the pre-trial or trial levels, in order to gain an advantage over their opponents. However, all other things being equal, perpetrators of crime have a substantial edge over their victims, due to a structural crisis in the various pillars of the justice system. Because the judiciary tends to be regarded as the symbol of the justice system as a whole, the judiciary is easily blamed for flaws arising in the other pillars of the system, for which strictly speaking it cannot be held responsible.

An extension and strengthening of free legal aid programs in all sectors of the legal system is imperative. Free legal assistance for poor individuals who are either victims or suspected perpetrators of non-politically-inspired human rights violations also appears to be an important niche in the work of legal and human rights NGOs. Nevertheless, as many of these NGOs rightly point out, the need for a change in the current social distribution of justice cannot be separated from major social and economic reforms in Filipino society at large.

Pity serves as a mechanism for the distribution of justice. Victims of crime, as well as the poor and the underprivileged can potentially benefit from the generation of pity towards them on the part of representatives of the justice system. However, pity can also increase the inequality of justice even further. Pity is actively generated, particularly

through face to face encounters. Paradoxically, perpetrators of crime, as well as the rich and powerful, may in actual practice be more successful than victims or the poor and underprivileged in raising pity among representatives of the justice system.

The press has acted as an important mechanism for the social distribution of justice in favor of the poor and underprivileged. In various cases it has actively rallied support on behalf of the victims of powerful, wealthy and connected groups or individuals, and has exposed or diminished their machinations in the legal process. Nevertheless, the role of the press with regards to the social distribution of justice has also been counterproductive. At times it has been abused by rich and influential people to raise sympathy for their cause. Wide publicity has also tempted lawyers, politicians and law enforcers to engage in grandstanding at the expense of the rights of citizens. In addition, it has introduced a new form of inequality: uneven access of citizens to the media.

Attempts to improve the integration of the Muslim community into the Philippine legal system through the *Shari'a* Courts have not yet been very successful. Some recent improvement of case inflow and case outflow notwithstanding, the gross lack of funds and facilities, the number of vacancies and the inadequate training and possibilities for appeal all account for the marginal place of these Courts in the judicial system. The *Shari'a* Courts have limited credibility, even within the Muslim community itself. If the government, the Houses of Congress and the Supreme Court are serious about the *Shari'a* system, they have the obligation to provide the *Shari'a* Courts with appropriate means and jurisdiction. Otherwise, the *Shari'a* system will underline rather than reduce the marginal position of Muslims in the Filipino socio-political system.

Tribal minorities have remained a disadvantaged and legally underprivileged category in the Philippines, despite some recent improvements and special interest in their cause on the part of certain legal NGOs.

Finally, there is striking paradox in the relation between even distribution of justice and backlog and court delay. The 'litigation explosion' in the Philippines appears to be facilitated by the democratic space of the post-EDSA political order. People tend to know their rights better, and – whether or not the motives behind their actions are laudable – an increasingly large number of people are claiming their rights before the courts. This makes it probable that a more even distribution of justice, in which an increasing number of people have effective access to the courts, will result in even more litigation. This improvement in access to justice will in turn generate more and more court cases, both civil and criminal, thus facilitating further backlog and court delay.

Notes

1. *1992-1993 Annual Report of the Supreme Court*: 18.
2. Narvasa, A.R., *Faith and Trust. The Bedrock of the Justice System*. Metro-Manila: Supreme Court Press 1993: 32.
3. Benipayo, A.L., 'Delays in the Disposition of Cases and some Suggested Remedies.' *The Judges' Journal*, December 1987: 11.
4. *1992-1993 Annual Report of the Supreme Court*: 77.
5. Statistics, Office of the Court Administrator, as quoted in Benipayo. *Supra*, at note 3: 77.

6. Office of the Solicitor-General; *Annual Report 1992-1993*.
7. See for instance the column of Jarius Bondoc in the *Manila Times*, 27 September, 1993.
8. For my inventory of delay tricks, I owe gratitude to the columns and reports of Atty. Raul Palabrica in the *Philippine Daily Inquirer*.
9. 'Forum shopping' is particularly attractive in cases where there is little or no jurisprudence, and in which the verdicts of different judges may be expected to vary considerably. A good example involves the annulment of marriages. Because of the strength of the Catholic Church, there is no law permitting divorce in the Philippines, only legal separation. Yet in some cases a marriage can be annulled. The revolutionary government of President Aquino expanded the possibilities for marriage annulment as a compromise between the position of the Catholic Church, which exercised a strong influence on her government, and advocates of a divorce law. The expansion mainly concerned the inclusion of psychological incapacity as a ground for annulment. The absence of case law between 1986 and 1995 left it to the individual judges to define psychological incapacity, resulting in quite diverging interpretations and verdicts in annulment cases. Some judges, for instance those who are devout Catholics, may define the concept very strictly, others much less so.
On 4 January, 1995, the Supreme Court provided some case law regarding the interpretation of psychological incapacity (in *Leonel Santos v. CA and Julia Rosario Bedia Santos*, G.R. No. 112019). The Supreme Court decision, made by the first division, had one strong dissenting vote which found the interpretation of the concurring majority too strict. This case law, however, proved inadequate as a guideline for judges and lawyers. On 14 February, 1997, the Supreme Court issued eight explicit guidelines on the interpretation of psychological incapacity in an unanimous *en banc* decision, though three justices wrote separate concurring statements.
10. Administrative Circular No. 04-94.
11. However, in practice, cases may take considerably longer than two years. Such may be when an old case is being transferred to a newly appointed justice. This justice will be granted two years to finish the case, even if it has been pending before the Supreme Court for some time already.
12. This objection ignores the fact that the process of selecting, instructing and supervising juries demands considerable time and effort from American judges.
13. The Institute of Judicial Administration of the University of the Philippines.
14. By this recommendation, the Supreme Court takes a position in a delicate social controversy. This controversy concerns the status of Filipino, a variant of Tagalog, the dominant regional language. Many proponents of Filipino prefer it to replace English as the medium of the courts, and of education. They partially blame the pervasive use of a foreign language for the lack of national cohesion in the Philippines. Others believe that English is an important asset in the Philippines, and that abolishing it would amount to discarding one of the few comparative advantages the Philippines still have (*1992-1993 Annual Report of the Supreme Court: 69-70*).
15. Exceptions are: cases in which one party is the government, or any subdivision for instrumentality thereof; and cases in which one party is a public officer or employee, and the dispute relates to the performance of his official function. The description of the *barangay* justice system can be found in a pamphlet called 'The Revised Katarungung Pambarangay Law & The Board of Claims (R.A. No. 7309) with Implementing Rules and Regulations', published by the Department of Justice. The Local Government Code of 1991 also has a provision allowing the President to enlarge the jurisdiction of the *barangay* justice system without parliamentary approval.

16. The parties may go directly to court in the following instances: where the accused is under detention; where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings; where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support *pendente lite*; where the action may otherwise be barred by the statute of limitation.
17. Parties residing in adjacent *barangays* that are located in different cities of municipalities may voluntarily take a dispute to the justice system of a different *barangay*. In cases in which the parties do not reside in the same *barangay*, the respondent is entitled to choose the *barangay* of venue.
18. *Social Weather Bulletin*, 94-13/14: 9. The total sample population was 1,200 Filipinos of voting age nationwide.
19. I obtained these records through the courtesy of Atty. Dujua, Assistant Secretary of the Department of Justice.
20. The vast difference in the estimated of the success rate of the *barangay* justice system is related to the fact that it is difficult to collect reliable statistics on this success rate. Officials of the *barangay* may not be capable or interested to gather statistics systematically. Moreover, they may report a higher success rate than they have actually achieved, in order to impress higher authorities. Pessimists may use the difficulty to obtain reliable statistics as an argument to play down the success rate as claimed in official statistics.
21. Republic Act No. 7691, 23 March, 1994.
22. Resolution No. 055, S. 1993.
23. Resolution No. 055, S. 1993: 2.
24. Retired Associate Justice of the Supreme Court Isagani Cruz in his column in the *Philippine Daily Inquirer* of 9 April, 1995.
25. The 1992-1993 *Annual Report of the Supreme Court*: 17; The 1993-1994 Annual Report of the Court Administrator. Statistics of the office of the Court Administrator. Courtesy of Atty. T.C. Bahia.
26. Sarmiento, A.F., 'Valedictory Speech, on the Occasion of his retirement from the Supreme Court.' 1991: 5.
27. Within the judicial system there seems to be a disagreement as to the extent to which public attorneys are of lower quality than other private lawyers. Most certainly quality varies from lawyer to lawyer, regardless if he or she is a public attorney or a private lawyer. It is striking that several judges I spoke with were quite positive about the public attorneys. Perhaps this can be explained by the fact that public attorneys tend to make life easier for judges than other lawyers. Since public attorneys have a fixed salary, they do not need to ask for postponements or resort to other tricks to boost their income.
28. See for instance, Aquilino Pimentel, *Manila Times*, 23 October 1993.
29. This implies that no separate civil complaint can be filed anymore.
30. *Manila Bulletin*, 19 September, 1993
31. See for instance: Editorial of the *Philippine Daily Inquirer*, 3 August, 1993; Raul Palabrica in the *Philippine Daily Inquirer*, 1 November, 1993; Ermin Garcia in the *Manila Times*, 18 November, 1993; Ricardo Puno in the *Philippine Star*, 14 November, 1993.
32. There is also a concept in the Philippines which states that generally everyone can appeal to pity, whatever one's state of being. As it is said: *tayo ay tao lamang*, meaning 'after all, we are only people'.
33. This journalist is Teodoro Benigno who is the uncrowned champion of this form of journalism. He has championed the cause of, amongst others, the family of the earlier mentioned college student who was shot by a Chinese businessman, and the family of a student who was

- beaten to death in a fraternity hazing incident. He has also championed the cause of a widow whose twin sons were shot by the gunmen of a mayor after they resisted the mayor's intrusion on their property.
34. Contrary to the laws of the Filipino majority, Muslim law tolerates bigamy and divorce, though on specified grounds. This has resulted in various pragmatic conversions to Islam by members of the Filipino majority who run the risk of charges of bigamy, or who want to get rid of their spouses. These pragmatic conversions are often not recognized by reputable Muslims.
 35. Rasul, J.D., *Commentaries on Special Rules of Procedure in Sharia Courts*. Metro-Manila: Central Publishing Co, 1984: 66; Bautista, E.B., 'Scope and Application of the Code of Muslim Personal Laws.' *Judges' Journal*, Vol III, No.2, 1988: 36-7.
 36. Source: Statistics Division of the Office of the Court Administrator of the Supreme Court.
 37. Source: Statistics Division of the Office of the Court Administrator of the Supreme Court.
 38. Bautista, E.B.. *Supra*, at note 35: 31.
 39. I would like to reiterate that such an increase should be integrated into the annual budget for the judiciary which has to be released automatically. It should not be allocated as a special lump sum payment which might act as a major political spoil for which specific politicians can claim credit.

Main Conclusions

Introduction

In the years following the EDSA revolt, the Filipino judicial system has been confronted with various major issues and problems: a huge backlog of cases and court delays; the existence of corruption and undue political and personalistic pressures on judges and prosecutors; inadequate access of the poor and the underprivileged to justice; rampant human rights violations, either politically-inspired or not, both by state agents and by members of civil society; gross inefficiency and corruption among law enforcers; the manipulation of rules of due process by corner-cutting lawyers and litigants; increasing occurrence of litigation journalism and trial by publicity; public controversy over the judiciary and over its constitutional duties, including the extent of judicial review.

Since 1986 the Philippine government, as well as the judiciary, have made serious and intelligent efforts to improve the fairness and efficiency of the Philippine judicial system, including the independence and impartiality of judges and lawyers. An expression of this was the 1987 Constitution which increased the formal autonomy of the judiciary, and further extended the Philippine Supreme Court's right of judicial review. These efforts continue up to the present day but have also experienced serious frustrations and setbacks.

In the following sections, the main conclusions will be summarized in relation to human rights, and to economic, organizational, political and socio-cultural factors. A number of recommendations that might facilitate the improvement of the judicial system will be also offered or restated here.

Human Rights Problems and Issues Following the EDSA Revolt

Following the EDSA revolt in 1986, the Aquino administration made a number of honest efforts to improve the human rights situation in the country. The emphasis on human rights in the 1987 Constitution, including the role of the judiciary as the guardian of people's rights, are expressions of these efforts. In actual practice however, the Aquino administration also made various compromises in this area, one of which was the introduction of the controversial CAFGUS units. Generally speaking, the Aquino administration was not successful in stopping politically-inspired human rights violations.

The first reason for this lack of success was the difficulty with which the Aquino administration had to fight against the legacy of the military monster it had inherited from the Marcos era, and over which it exercised only very partial control. A second reason was the balance it sought between promoting and upholding human rights on the one hand, and ensuring its own political survival on the other, all of which was carried out against the backdrop of rightist coup attempts, a continuing leftist insurgency, and

nervousness in the army. The compromises made by the Aquino administration in upholding human rights, for the sake of the political survival of the post-EDSA order, was reproduced by the Supreme Court in important decisions involving human rights, of which *Umil v. Ramos* became the most controversial.

However, following the EDSA revolt, politically-inspired human rights violations progressively diminished, particularly under President Ramos. This was the result of the marginalization of the extreme left and of increasing political stability. However, the resurgence of leftist urban terrorism, the perception of a threat of Muslim fundamentalist terrorism and the resulting proposals for new anti-terrorism laws all underline the remaining importance of politically-inspired human rights violations as an issue of concern in the post-EDSA order.

New concerns compete for priority status on the human rights agenda. One such major concern is human rights violations conducted in the context of projects for economic development, sometimes termed 'development aggression'. These violations include forced resettlement of people whose houses have to give way to infrastructural projects, shopping centers and industrial sites; harassment of people who protest against environmental pollution and poor working conditions; etc.

The most important source of human rights violations in the period since the EDSA revolt, however, is activities conducted within the context of crime-fighting. In the Philippines, various critics have blamed the problem of crime on provisions specifying the right to due process as well as various other fundamental rights of suspects, which these critics regard as too strict. These rules allegedly protect the interests of criminals at the expense of the wider community.

It is certainly necessary to review how realistic are certain practical rules regarding the rights of suspects in the present Philippine context. Yet extreme care should be taken in limiting the rights of suspects. For many Filipinos the existing rules that specify such fundamental rights are already too narrow, for instance for those who cannot afford to pay bail. A great number of prisoners linger in jail without trial, whereas others have been convicted on the basis of fabricated evidence.

Moreover, a number of other important factors influencing the effectiveness of crime-fighting need to be addressed, such as the quality and commitment of law enforcers and the willingness of the public to testify in individual cases. In this context a persistent, consistent, and drastic reorganization of the police forces, the military and the jails should have priority over a review of the rights of suspects. Clearly, due process cannot be blamed if jail guards allow suspected or convicted murderers to leave custody to attend concerts, if they engage in drinking sessions with them or even facilitate their escape, or if the police forces botch investigations involving heinous crimes. Unfortunately, the numerous reorganizations of the police forces already undertaken have been grossly inadequate, partly because the pervasiveness of political and 'old boys' loyalties inhibits the application of competence and integrity as the main criteria in such reorganizations.

A further limitation of the formal rights of suspects may easily facilitate increased human rights violations by law enforcers and jail guards, either politically-inspired or otherwise. Moreover, to fight crime effectively would require the active cooperation of the general public. Such cooperation is possible only if law enforcers respect the rights

and liberties of citizens. It is encouraging that the Supreme Court, as well as the Senate committees, have emphasized the importance of due process and the rights of suspects. It is also worth bearing in mind that the tension between effective crime-fighting and the rights of suspects is universal, and that in an imperfect world this tension is likely to remain with us.

Nevertheless, the poor image that due process appears to have amongst sections of the general public, and even amongst law enforcers and some politicians, is a sociological fact that needs to be honestly addressed. The Department of Justice, academia, legal NGOs, the Philippine bar organizations and the press should systematically and persistently inform the public about the drawbacks of a limitation to the rights of suspects.

Collective lawyering for underprivileged collectivities, and redress of human rights violations committed in the context of economic development projects, have grown increasingly important as a focus of activity for legal and human rights NGOs. Nevertheless, politically-inspired human rights violations committed by state agents have remained a central concern of such organizations throughout most of the post-EDSA period. The influence of Marxist analytical frameworks in various human rights NGOs has acted as an inhibiting factor for a timely and adequate readjustment of their focus. In order to avoid further marginalization in society, it is imperative that these human rights NGOs shake off outdated ideological habits. Legal aid for underprivileged individuals accused of common crimes is an obvious new priority for these groups.

The Commission on Human Rights which was instituted on the basis of the 1987 Constitution has retained a credibility problem, in spite of the fact that various commissioners and employees have taken a bold stand on a number of specific issues. Nevertheless, the Commission has not fully shaken off its reputation of docility toward the army – and the other powers that be – despite the fact that many army members have been implicated in human rights violations. Public confidence in the Commission can only be completely won if the government is willing to exclusively and consistently appoint commissioners and other influential staff whose independence is beyond the shadow of a doubt, and if it allocates adequate funds to this Commission.

Judicial Problems and Economic Factors

The inadequacy of financial resources on the part of the government and the judiciary has inhibited the successful reorganization of the judicial system. Though more salas have been created, many positions in the court have remained vacant. The heavy case load of judges calls for a further increase in the number of judges, which the judicial budget does not allow. In spite of the fact that judicial facilities have improved, inadequate and overcrowded court buildings and facilities are still quite pervasive, including in some parts of the Metro-Manila area. The inadequate facilities and heavy case load inhibits swift and effective justice.

As a result of the restricted budget for the judiciary, it is not possible to bring the salaries of judges to a level comparable with the income of relatively successful private lawyers, even though in line with the revised classification and compensations system

of the civil service the salaries of judges and justices are gradually being augmented. This factor inhibits the judicial recruitment of lawyers of a higher calibre, as well as for some staff positions, such as legal researchers. This level of salary, and the low salaries of court staff, further facilitates corruption. The problem is also a factor in the recruitment of justices for the higher courts, including the Supreme Court. Moreover, financial constraints act to inhibit the introduction of various innovations in the judicial system, such as computerization of the courts.

The problems of budget and salary in the judiciary however are very much part of a general problem, and are difficult to solve under the present economic conditions. Low salaries characterize the Philippine public sector in general, and the government simply lacks the resources to give a further substantial raise to employees and officials in the public sector. On the other hand, the government and the general public need to remain aware that justice also has its price. Since 1992, much public discontent has been expressed about the judiciary. It is not fair to blame the judiciary for the shortcomings of the country's judicial system, if neither the government nor the general public is willing to assign a higher financial priority to the financing of the judiciary. The financial constraints of the public sector notwithstanding, a substantial increase in budget for the judiciary is recommendable. A larger budget is all the more imperative, since improvement of access to justice for increasing numbers of Filipinos will probably facilitate a further 'litigation explosion'. The consequent increase of the judiciary's work load will also therefore require even greater resources.

The proportional allocation of funds generated by the conversion and sale of military land has resulted in an incidental raise in the budget of the judiciary, though there has been some confusion about the exact amount and terms of its release. Every increase in the judiciary's budget is extremely welcome. Special lump sums however should not be used by politicians to promote their personal interests. In a country such as the Philippines, with a history of political patronage, an increase in the appropriation of funds for the judiciary – particularly an increase of salaries and benefits – could be used to generate a debt of gratitude. Powerful politicians may seek to cash these debts of gratitude later, for instance in the form of favorable decisions or docility towards the powers that be. For politicians, the financing of the cause of justice should be a matter of duty, not of particularistic favors. Furthermore, the allocation of special lump sums should not be deducted from regular, adequate and automatic appropriations. Article 7 of the *United Nations Basic Principles on the Independence of the Judiciary* states: 'it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.' Moreover, the only valid *utang ng loob* (debt of gratitude) judges should maintain is towards the rights of the Filipino people, not toward the power bases of politicians.

Apart from raising the budget of the judiciary, a more efficient use of available resources needs to be effected to remedy the financial problems of the justice system. It might be worth considering exerting greater effort to recruit lawyers for the lower courts who can more easily adapt to the existing level of salaries for judges. Talented and promising lawyers from alternative law, human rights, and free legal assistance groups, as well as promising young civil servants, should be encouraged to take positions

in the lower courts. Programs to upgrade the skills of incumbent judges, such as seminars and the creation of a judicial academy, or tutoring by Regional Monitoring Teams may be more effective and efficient if directed to judges who are young and still relatively open and flexible rather than to those who are already very set in their ways. Moreover, lawyers from alternative law, free legal assistance, and human rights groups are comparatively idealistic, and may therefore be particularly able to resist corruption and other undue pressures. They have further displayed a special concern for the poor and the underprivileged.

There are certainly risks in the appointment of relatively young and inexperienced lawyers to the bench. But considering that the competence and credibility of many incumbent judges is also not beyond controversy, one could imagine that a well-planned, gradual introduction of young and inexperienced lawyers would significantly improve the quality of the lower judiciary. Moreover, the quality of young applicants could be screened quite strictly through admission exams and through restriction of candidates to graduates from high quality law schools. A major impediment to this suggestion, however, is that law schools with a good reputation tend to inculcate a money-making orientation rather than a service orientation in their students.

Though free legal aid is not a panacea for the problems of the poor in the justice system, a strengthening of free legal programs to increase the access of the poor to justice is imperative. This recommendation has been made by various bodies and organizations, such as the National Unification Commission.¹ The high costs of litigation and of bail, as well as the limited number of public attorneys and free legal assistance lawyers, are major factors facilitating inadequate access to justice for the poor and underprivileged. Moreover, for many litigants who can afford the expense of litigation, these costs nevertheless represent a major strain on their budgets.

Both the government, the judiciary and the bar associations should allocate a fixed minimum budget to free legal assistance activities. Lawyers should no longer be paid by appearance but by case. The fact that many litigants can only afford to pay the costs of litigation in a piecemeal fashion could be partly resolved by allowing them to pay their lawyers in installments, which after all is a very normal practice in many areas of Filipino social life. It might further be useful if the Integrated Bar of the Philippines would articulate and publish guidelines for lawyers and litigants as to the maximum fees that can be charged for various categories of cases.

Both the Integrated Bar of the Philippines and the voluntary bar organizations should increase their efforts to raise financial resources for free legal assistance.² Extra money for legal aid programs could come from raising the fees for membership in lawyers' associations. Another option would be a progressive tax on lawyers' fees in civil cases. The revenue could be allocated to legal aid programs for the poor.

Judicial Problems and Organizational Factors

Of all the major variables, organizational factors are the easiest to manipulate. Many measures and plans have been developed to improve these factors in the Philippine

judiciary. Organizational reforms are of course very important for an overall improvement of the quality of the justice system. However, the fact that such factors are the easiest variables to manipulate does not necessarily mean that they are the most important ones. Political and socio-cultural changes, which to a significant extent elude manipulation through specific plans and measures, may be at least as important in determining the quality of the justice system as organizational factors. In considering judicial reforms – or any other reform for that matter – one should guard against the illusion that fundamental problems can be solved with mere organizational improvements.

Reduction of backlog and court delay has been a prominent goal of various plans and measures. At the center of these plans has been the ‘continuous trial’ method, in which court cases have to be tried and finished within specified periods. However, this introduction has also created its own set of problems, for instance, by shifting backlog and court delay partially from the trial and post-trial stages to the pre-trial stage.

One major problem is that plans for reorganization tend to be subjected to constant revision. On the one hand, it is laudable that such plans are revised as a result of practical experience. On the other hand, these constant changes ignore the fact that novel plans need to be applied with consistency over a period of time before they can start producing the anticipated results. Recurrent changes in planning may inhibit successful results and facilitate skepticism (‘another new plan!’) among judges, thus reducing enthusiasm and commitment to their implementation.³

Attempts to reduce litigation through amicable settlements have been sympathetically received. However, it remains an open question how useful the *barangay* justice system is in this context. In spite of the high success rate claimed by the records of the Department of the Interior and Local Government, the *barangay* system has not been able to slow the ongoing ‘litigation explosion’. The effectiveness and efficiency of the *barangay* courts partly depends on the credibility of the *barangay* itself as an institution. In urban areas, where the backlog of cases is most serious, this credibility is problematic. An attempt at settlement in the *barangay* justice system may become just another stage in the litigation process, thus prolonging rather than shortening this process; it may also introduce a source of corruption in the justice system. More productive might be to redirect the efforts and financial resources allocated to the *barangay* justice system toward the improvement of the pre-trial performance of the regular courts. Before more of the limited resources available to the judiciary are channeled into this *barangay* system, it would be advisable to conduct additional research into the actual effectiveness of this system, and not merely into the way the system is being perceived by samples of the general public.

Changes in the rules of court have been introduced regularly over the years. Yet the need for more drastic changes seems imperative. A strict maximum ceiling could be set, for instance, on the number of petitions and motions allowed to be filed in any given case. One could also forbid lawyers from appealing motions and petitions to a higher court before the final verdict of the judge. In this event, denial of a motion could be evaluated by a higher court in combination with the appeal of the case as a whole.

The requirement that the judge restate all the facts of a case in the text of his decision should be abolished for the appellate courts. Since the appellate courts normally do not

engage in investigations of their own but merely review the facts as constructed by the lower courts, there seems to be no compelling need for them to restate all of these facts. Consequently the appellate justices could save precious time by writing reviews that are considerably shorter.

Though the jurisdiction of the RTCs and the MTCs has been adjusted, the overall effect of this adjustment on backlog and court delay has been very limited. The adjustment has somewhat lightened the burden of the RTCs, but has resulted in a huge increase in the case load and backlog of the MTCs. Moreover, it is to be expected that the ongoing 'litigation explosion' will soon reverse the decrease in the case load of the RTCs.

Training for judges as well as for lawyers has been on the agenda of the Supreme Court and the Integrated Bar of the Philippines in co-ordination with the University of the Philippines. Implementation of initiative to introduce a judicial academy only started in 1996, however, because of disagreement over the inclusion of public prosecutors in such an academy. It is still premature to assess the adequacy of the training judges will receive from the judicial academy.

Training of judges cannot be separated moreover from an improvement in recruitment. A significant change of recruitment policies, however, faces various constraints as well, such as the level of salaries in the judiciary and the inadequate encouragement given to law graduates to pursue a career in the judiciary.

The Supreme Court has demonstrated diligence in applying disciplinary measures in the areas of gross incompetence and failure to obey administrative instructions. Nevertheless, this diligence has not fully restored the faith of the public in the judiciary. Some criticism levelled against the disciplinary policies of the Supreme Court has been inspired by individuals with grudges against the Court or with other hidden agendas, or by persons having insufficient knowledge of legal principles and procedures to make a reliable assessment of the Court's practices. Nevertheless, serious criticism has also come from knowledgeable, sincere and reputable insiders.

The main shortcoming in the disciplinary efforts concerns cases of corruption or other forms of undue influence. It must be acknowledged that discipline in such cases is very difficult to apply because corruption is so difficult to prove. Moreover, corruption charges need to be scrutinized carefully, since judges are entitled to due process just as any other citizen. Since many spurious corruption charges have been filed against judges, even more caution is required. In addition, some judges who have been suspected of corruption have been punished, with penalties ranging from mere transfer to dismissal on the basis of gross ignorance of the law. Nevertheless, a more active and transparent policy regarding suspicions of corruption appears to be necessary to restore the public's faith in the integrity of the judiciary. The right of a judge to due process needs to be counter-balanced by the right of citizens to an honest judiciary. It is recommended that the fight against judicial corruption be conducted with the utmost vigor, and not merely during periods of wide negative publicity about the judiciary.

Investigations into suspicions of judicial corruption should not be limited to cases in which formal complaints have been filed. There are other cases that merit at least a preliminary investigation. In this context unexplained wealth of judges should be

investigated. This kind of investigation is also in the interest of judges who are both wealthy and honest: their wealth may be an object of gossip and suspicion, even if the source of the wealth is perfectly legitimate. Thus their reputation will be cleared if the legitimate source of their wealth is exposed. Another reason for launching an investigation might be the issuing by a judge of an exceptionally high number of orders known to be a potential source of corruption, such as temporary restraining orders in commercial disputes and search orders against businesses.

A very special and important organizational issue in the Philippines has been the extensive responsibilities of the Supreme Court. In the 1973 Constitution, the administrative supervision over the lower courts was shifted from the Department of Justice to the Supreme Court, and the Office of the Court Administrator was introduced. The 1987 Constitution adopted these provisions regarding supervision of the courts. In addition, until 1995 cases heard in the Civil Service Commission, the Central Board of Assessment Appeals and the Labor Relations Court could be directly elevated to the Supreme Court, with the Supreme Court also supervising the Integrated Bar of the Philippines.

A reduction of the administrative responsibilities of the Supreme Court is inevitable, though the extent of this reduction is subject to considerable controversy. In 1995, the burden of the Supreme Court was already lightened through a broadening of the jurisdiction of the Court of Appeals and *Sandiganbayan*. However, this reduction of the Court's work load has not gone far enough. For instance, labor cases still take a considerable amount of the Supreme Court's time and efforts.

In addition to a needed reduction in responsibilities, the division of labor within the Supreme Court leaves room for improvement. The Office of the Court Administrator was explicitly created to manage supervision over the lower courts. But administrative matters are still discussed in the full meetings of the Supreme Court itself. Moreover, justices are seldom appointed on the basis of their administrative skills and experience. It would be recommendable to delegate administrative matters entirely to a special branch of the Supreme Court, in conjunction with the Office of the Court Administrator. The members of this branch should be particularly selected for their administrative and managerial skills, training and experience. This administrative branch could also specialize in the organization, training and supervision of the regional monitoring teams, consisting of retired judges and justices. The mandate of these regional teams is to investigate the competence, integrity and working conditions of courts and judges, and to report their findings to the Supreme Court.

Apart from such an administrative branch, the suggestion to abolish the various divisions of the Supreme Court needs serious consideration, since it would increase the consistency, and therefore the legitimacy, of Supreme Court decisions. Moreover majority decisions with a very narrow margin should be minimized in order to increase the credibility of the Supreme Court's decisions.

A drastic reduction of the work load of the Supreme Court faces two major obstacles. The first of these is that such a reorganization would require constitutional amendments. Though some amendment of the 1987 Constitution appears to be inevitable in the long run, the political climate of the mid-1990s in the Philippines makes the proposal of any

constitutional amendment somewhat risky, since it may encourage other parties to propose and rally for constitutional amendments for more self-serving purposes. The second obstacle is that a drastic reduction of the work load of the Supreme Court would require more work and a higher level of competence on the part of the Court of Appeals and, to some extent, of the *Sandiganbayan*. It is not so difficult to compensate for this higher work load by increasing the number of justices in these two courts. However, if some of the duties from the Supreme Court are transferred to the Court of Appeals and the *Sandiganbayan*, then a tighter screening of candidates seeking positions in these courts will be required. An active policy to attract candidates with a higher level of competence will be needed. It is recommended to combine the procedures of the Judicial and Bar Council with a confirmation of the final appointees for high court positions by the Congressional Commission of Appointments, in order to increase guarantees that high level appointees will be chosen for these courts.

The law enforcement and penal systems most need to be drastically overhauled, since these are major inhibiting factors for a fair and effective justice system. However, this is first and foremost the responsibility of executive agencies. Recommendations regarding the law enforcement and penal systems moreover go beyond the scope of this study.

Judicial Problems and Political Factors

According to the 1987 Constitution, the Philippine judiciary has quite a substantial amount of independence. The introduction of the Judicial and Bar Council has put some formal constraints on the executive in appointing judges and justices, whereas the Supreme Court has the prerogative to supervise and discipline its own ranks, as well as the bar. Moreover, the judiciary has extensive powers of judicial review.

The introduction of the Judicial and Bar Council – which restricts the liberty of the President in appointing judges and justices to choosing from among three to five specified candidates – has not entirely abolished the President's freedom in this area. The introduction of the JBC has not prevented politicians from lobbying for judicial appointments, nor the candidates themselves from lobbying on their own behalf. Nevertheless, the impact of this lobbying has been somewhat counterbalanced by the fact that the JBC has increasingly applied a policy of giving preference to senior career judges for appointment in the higher courts. With regard to the lower courts, the impact of political lobbying has been restrained by the fact that there tends to be a relatively small number of available appropriate candidates.

Lobbying by politicians on judicial decisions has remained a common practice in the post-EDSA period. It is difficult to assess how successful this lobbying has been in actual practice however. Whatever the case, the persistence of such lobbying has acted as a further factor discrediting the reputation of the judiciary as a truly independent branch.

There are also sources of friction between the judiciary and the executive and legislative branches. The power of judicial review, and a tendency that developed during the administration of President Aquino toward judicial activism in the area of economic issues by the Supreme Court, came in conflict with the ambitions of the Ramos regime

to modernize the economy quickly. These ambitions do not leave room for a Supreme Court that can overrule policies or slow their execution as well as decide in economic controversies that have a direct impact on plans for economic modernization.

The tension arising from this conflict may generate violations of the independence of the judiciary. Individual judges and justices may be subjected to pressure to decide cases in line with the ambitions of the executive. Or the executive may initiate amendments to the Constitution that will reduce the powers of the judiciary, and particularly of the Supreme Court.

Indeed the powers of judicial review assigned to the Supreme Court by the 1987 Constitution – as well as the 1987 Constitution itself in general – have been the subject of much criticism. Yet this right represents an important formal check on potential authoritarian tendencies in the executive branch. This certainly also applies to the provision in Article VIII, section 1, which assigns the courts, and most notably the Supreme Court, the duty of determining whether or not there has been ‘a grave abuse of discretion amounting to a lack or excess of jurisdiction on the part of any branch or instrumentality of the government’.

However, the formulation of this provision has facilitated the filing of cases in the courts for which this provision was not primarily intended when it was drafted.⁴ Not only does this unnecessarily add to the burden of the courts, and, particularly of the Supreme Court, but it may also unnecessarily draw the judiciary into political and economic controversies, and thus undermine its reputation as neutral arbiter.

It is therefore recommended to sharpen the focus of this provision on judicial review. This need however should not be used as a pretext for the abolishment of the judiciary’s right and duty to act as an effective check on executive power. Given the need to sharpen the focus of judicial review with great care, and to avoid such abuse, constitutional amendments regarding judicial review should be postponed until after the presidential elections of 1998. Moreover, the judiciary should use this right to check executive power with discretion and restraint, and should respect sincere efforts on the part of government agencies to promote social and economic progress.

Nevertheless, the judiciary also has the obligation to boldly perform its duty of ensuring that the constitutionally demandable and enforceable rights of the people are truly respected, in practice as well as on paper. The Supreme Court should also assert in the face of serious criticism the important role assigned to it by the 1987 Constitution, rather than apologize for it, which could be interpreted as an open invitation to reduce its powers of review substantially.

The judiciary should remain independent in cleansing its own ranks. The Supreme Court understands the specific predicaments of courts and justices better than do other branches of the public sector, and as the highest arbiter of formal controversies, it is best suited to render judgment in disciplinary cases involving the bench and the bar. Like in any other sector, the exercise of discipline by the Supreme Court could potentially be influenced by *tayo-tayo* relations, or friendship networks. A transfer of disciplinary supervision over the courts however will not necessarily reduce favoritism. Individual members of the executive agencies also have personal affiliations with individual members of the bench and the bar, for instance because they belong to the same fraterni-

ty. It should further be noted that historically the transfer of the disciplinary supervision from the Department of Justice to the Supreme Court was inspired by discontent over the danger of favoritism by the Judicial Superintendent, the official of the Department of Justice who was primarily responsible for disciplinary supervision over the courts before 1973.

The steps that the Supreme Court has taken to improve the discipline of the bench and the bar have been only partially successful so far. However this is not a sufficient argument for transferring disciplinary supervision over the courts to the executive branches again. The enormous problems involved in reorganizing the police and imposing discipline on law enforcement agencies and the military, as well as the pervasive corruption and nepotism in the executive and among legislators, demonstrate that the executive branch is not likely to be more successful than the Supreme Court in disciplining the bench and the bar. It is to be recommended that the executive branches of the government fully concentrate on restructuring law enforcement and the penal system, the flaws and failures of which are often wrongly attributed to the judiciary by the general public, and that they leave the disciplinary supervision over the judiciary to the Supreme Court.

A final drawback of transferring disciplinary power over the bench and the bar to the executive branches is that such a move could also politicize the process of discipline in the judiciary, which would constitute a tremendous attack on judicial independence and integrity.

Nevertheless, as has been already stated, a change of internal organization of the Supreme Court is advisable in order to enable it to execute its administrative and supervisory responsibilities more effectively and efficiently. Serious consideration should be given to the proposal to appoint a special committee of retired justices and other reputable members of the legal system to investigate complaints against Supreme Court Justices. Such a committee would not amount to a public relations panacea for the Supreme Court, because it could also be accused of favoritism by critics. Nevertheless, the introduction of such a committee would send a clear signal to the general public that the Supreme Court Justices are also willing to be held accountable, which in itself would contribute to improved public credibility for the Court.

In the Philippines the Bar has not been independent either in disciplinary supervision nor in the administration of its affairs. A number of factors have served to strengthen arguments against the establishment of an independent bar. The disciplinary record of the IBP to date has been rather poor. In addition, there was the notorious problem of the former IBP president disciplined by the Supreme Court in 1992 for malversation of funds and gross mismanagement of human resources, plus irregularities in a preceding election. Moreover, the interest of lawyers in the affairs of the Integrated Bar of the Philippines has been rather small; a completely independent bar might suffer from factionalist politics. Specific law fraternities and sororities, as well as certain of the larger law offices might begin dominating an independent bar, undermining the legitimacy of measures taken by it. This problem particularly applies to disciplinary supervision. The bar leadership might easily be accused of prejudice in disciplinary actions against lawyers who are not part of the dominant factions in the IBP.

Nevertheless, there are enough lawyers of competence, high integrity and commitment to the cause of justice in the Philippines to make a fully independent bar possible. Such independence would not only bring the Philippines in line with authoritative international standards regarding the independence of the judiciary and the bar, but would also produce a welcome reduction of the work load of the Supreme Court.

Finally, judicial independence should never be taken for granted, but always be guarded carefully. It may be relevant to invoke the comments of a well-known lawyer and former public official concerning the ‘judicial crisis’ discussed in chapter 5 a stated in an interview with the author: ‘the question of whether powerful political actors have orchestrated all the bad publicity on the Supreme Court and the other segments of the judiciary, in order to subjugate the judiciary, is not so relevant. If the judiciary has its house in proper order, it will be able to withstand attacks from any corner.’

Judicial Problems and Socio-Cultural Factors

There are various socio-cultural factors in the Philippines that in principle could facilitate a fair and efficient judicial system. Often there is a genuine sense of pity and compassion for the underprivileged, even though such sentiments may also be manipulated by perpetrators of brutal crimes. This sense of pity is expressed by the term *habag*, which refers to showing pity or mercy directly to an individual or group who has sought it diligently and who believes that the one appealed to is receptive to such an appeal. Such pity and compassion could form fertile ground for various campaigns and reforms that would improve access to justice for the poor and the underprivileged. In a number of cases, the press has successfully mobilized public support for victims of crimes and their causes, by appealing to the public’s sense of pity and compassion. There is also a penchant for ensuring ‘smooth interpersonal relations’, i.e. a tendency toward harmony at least on the surface level of perceptible interaction. This penchant could be appealed to in the promotion of amicable settlements, which might reduce the volume of litigation and thus help unlog the courts and avoid unnecessary expenses.

On the other hand, various other socio-cultural factors have been invoked by informants – including reputable members of the judiciary – which appear to act in a counter-productive fashion. For example, a strong sense of personalism may facilitate a commitment of lawyers, litigants and law enforcers to particularistic interests rather than to general values and concerns such as fair and effective justice for all. This may be reinforced by the *kanya-kanya* syndrome, which refers to a tendency for each person to attend to his own affairs to the exclusion of others. Strong personalism may further facilitate undue interference in the judicial process through the manipulation of personal loyalties.

These dangers may be amplified by the *lusot* mentality, which leads to the cutting of corners in order to serve one’s personal interest. Similarly, a very important factor acting to inhibit a fair and effective justice system is the particular form of pride called *amor propio*, which aims at preventing loss of face at all costs and in any manner possible. The combination of *amor propio* and *lusot* accounts for a large share of the manipulation

of the rules of due process and litigation journalism. Furthermore, though pity and leniency may be positive factors in some contexts, they may also inhibit the strict enforcement of rules, procedures and disciplinary measures in cases in which fair and effective justice require such strict enforcement.

Utang ng loob has been mentioned already in the previous section in relation to politicians. However, debts of gratitude can also be exploited by lawyers and litigants, for instance by cashing in on favors performed on behalf of a judge or one of his family members in the past, in order to exercise undue influence in specific court cases. Apart from *utang ng loob*, personal relations, such as *tayo-tayo* – special in-group networks – and other powerful connections, could be exploited in a fashion similar to debts of gratitude.

Socio-cultural factors are difficult to manipulate, since they are products of complex historical processes. It is therefore also very difficult to implement recommendations for a change of these factors. Nevertheless, socio-cultural factors are not static. They do change as a result of the individual choices of people in the long run. Moreover, even though some socio-cultural factors remain unchanged, their impact on the judicial process can be somewhat restrained by certain organizational changes. An example of the latter may be the Judicial and Bar Council. Though the introduction of the JBC has not eradicated manipulation of personal networks and debts of gratitude in the judicial process, it has somewhat restrained and regulated the influence of these elements. Recommendations about socio-cultural factors may therefore still be useful.

An important such recommendation concerns the need to clarify ambiguity regarding what practices are acceptable in the justice system. This issue of ambiguity affects the sometimes thin line that separate practices permissible under the written and unwritten codes of conduct for judges and lawyers, and those allowed according to the wider socio-cultural norms. Two important examples have been mentioned in this study. One concerns the donation of small gifts to judges and court staff. According to the codes of conduct for judges and for public servants these gifts are not allowed, because of their corrupting potential. But from a wider socio-cultural perspective, these gifts may be acceptable in order to show personal appreciation, or as an expression of sympathy for somebody's hard work and as a compensation for low wages.

Another example is the codes governing the socializing of judges and justices, and informal contacts between members of the judiciary and lawyers and litigants. From the perspective of the judicial system, judges and justices are expected to minimize socializing, as well as to avoid informal contacts with lawyers and litigants – unless perhaps both parties in a conflict are represented – in order to avoid raising suspicions of partiality. But in a personalistic culture like that of the Philippines, it may be rude or improper to decline invitations by friends or to social events. Moreover, a judge who minimizes socializing does not build the network that is necessary for advancement of his or her career.

Two opposite approaches exist to removing inconsistencies between rules of conduct in the justice system and wider socio-cultural codes. One way involves adjusting the former to the latter, by making the rules of judicial conduct less strict. The other way

is to promote and enforce these judicial rules more rigorously, and to explicitly renounce socio-cultural acceptability as a ground for violation of these rules.

In the Philippines, there are proponents of both options. Some informants argued that certain formal rules for judicial conduct are too strict from a cultural perspective. They favor certain readjustments in this respect, particularly of the codes regulating the socializing of judges and justices and informal contacts with litigants and their lawyers. Other persons objected to the introduction of more lenient rules, since this would imply a lowering of moral standards. Both sides may be partially right and partially wrong. On the one hand, it is self-evident that maintenance of a certain number of clear moral standards remains imperative in order to protect the integrity of the justice system. On the other hand, certain specific rules may not be necessary for this purpose, or may be so alien to the wider socio-cultural system that they cannot be enforced in actual practice. The existence of rules that nobody respects may undermine the credibility of all rules of judicial conduct, even the most essential ones.

In order to erase existing inconsistencies between rules of conduct in the justice system and those of wider socio-cultural codes in fashion, it is recommended that the bar and bench organizations review the written and unwritten codes of conduct for judges, lawyers and litigants. These organizations should further forge a clear consensus as to which specific rules are absolutely imperative for upholding the integrity of the bench and the bar, and which other ones can be dropped. Once this consensus is reached, the rules agreed upon should be enforced strictly. Furthermore, the logic of these rules should be explained to the general public more clearly, particularly in instances where such rules conflict in some fashion with wider socio-cultural factors. A major problem in this regard, however, is the fact that ethics do not appear to be a high priority for large sections of the legal profession.

The strict enforcement of rules, including disciplinary measures, presents a paradox. On the one hand, many Filipinos express the need for such enforcement in order to restrain the *lusot* mentality. In public debate, there is a clear weariness of the effects of pervasive corner-cutting and lack of discipline in the country, including in the justice system. On the other hand however, the strict and consistent enforcement of rules runs counter to a dominant tendency in the socio-cultural system itself, that of leniency. The powers in charge of discipline may be influenced by this tendency toward leniency, which can inhibit a consistently strict enforcement of rules and punishments in cases which require such strict enforcement.

Nevertheless, Filipino society also has its share of effective disciplinarians, though they are not necessarily appointed to positions where strict enforcement of rules matters most. It seems imperative therefore that the ability and courage to exercise impartial and consistent discipline, would be a necessary criterion for appointment of persons to strategic positions in the judiciary, such as members of the Supreme Court, the chairman of the IBP, and the executive judges in the trial courts. Needless to say, exemplary integrity also needs to be an essential criterion in such appointments. This last criterion is all the more important since the potential for persons in such positions to influence the conduct of other judges and lawyers – either for the better or for the worse – through their function as role models, is particularly high.

Final Comments

Efforts to improve the independence of the judiciary and the quality of the justice system have been an integral part of the wider economic, political and socio-cultural development of the country. Though this development has been advancing, it will probably still take quite some time before sufficient resources are allocated to improve the judicial system. Moreover, higher salaries in the judiciary do not automatically eradicate corruption in the judicial system. Moral campaigns will require patience and endurance before producing a measure of success.

Economic development furthermore does not necessarily imply greater independence of the judiciary. Such independence may even be interpreted as a hindrance to economic progress 'Asian style'. In addition, economic development has not succeeded in reducing the poverty of great sections of the Filipino population. The uneven distribution of wealth remains reflected in uneven access to justice.

The country continues to experience fundamental law and order problems, even though the concrete forms these problems take may change. In the meantime, such law and order problems are easily used to legitimize a reduction of citizens' rights. They may even give the concepts of due process and human rights a bad reputation among sections of the wider public.

Political threats to judicial independence also exist. In spite of the fact that the EDSA revolt created a significant space for democratic development, the democratic system has revealed itself to be tenaciously and fundamentally flawed. One such flaw is that political candidates can still successfully cheat their way into office without risking disqualification or other forms of punishment from either the executive or the judiciary. As the 1995 elections have demonstrated, this possibility of effective cheating also applies to election to important posts such as the office of Senator. Another indication of the immaturity of the present system is the high success rate of former movie or sport stars, who are elected on the basis of their cultural popularity rather than their political qualities and experience.

The immaturity of the political system has a negative impact on judicial independence, human rights and due process. For instance, it is quite possible that a new President in 1998 might persuade his or her voters that due process itself is to blame for many social evils. Not only might the President condone the bypassing of judicial procedures by law enforcers, but actually facilitate a lenient or careless attitude among the judiciary concerning the way law enforcers and prosecutors handle the rights of suspects. This could be done by appointing candidates who are critical of due process to strategic positions in the judiciary. Furthermore, some judges might be tempted to demonstrate their toughness toward suspects – at the expense of these persons' rights – in order to qualify for promotion. A possible variation of this would be a subtle new authoritarianism, brought about either by overhauling the present presidential and legislative system or by abolishing restrictions on the terms of elective officials and by reducing checks of presidential power, as has been discussed in chapter 2. Such authoritarianism could lead to a tighter control of the executive over the judiciary. As the presidential elections

of 1998 approach, the controversies over the future of the Filipino political order become increasingly intense.

Nevertheless, there are also promising developments. Recent proposals regarding the anti-terrorism law have met with widespread resistance, not merely in the civil society, but also in Congress. Furthermore, there is a genuine and tenacious vigilance about the resurgence of authoritarianism in various sections of society, even though this vigilance is sometimes distorted by partisan interests or selfish motives. This demonstrates that the spirit of EDSA, which ousted a dictator, is by no means dead. In addition, the Philippines have displayed – and continue to display – enormous potential in terms of human resources, whether in the NGO field, academia, the judiciary, government or business. Though efforts to improve the quality of the justice system have met with many frustrations, the system's problems have been widely discussed, and partly addressed as well. And though the improving economic conditions may not automatically produce improvements in the legal system, they nonetheless facilitate the introduction of more successful, practical judicial reforms.

The challenges and problems of the Philippine justice system, as outlined in this study, will take consistent and persistent effort to resolve. But though there is ample reason for caution in expecting substantial improvements, there is ample reason for hope as well.

Notes

1. 'Report on the Pursuit of a Comprehensive Peace Process.' 1993, Quezon City, National Unification Commission: 40.
2. Some organizations, like FLAG, have warned about one possible negative drawback of free legal aid when implemented without economic reform. This concerns the fact that such aid may make people more dependent rather than provide them the opportunity to become self-reliant and thus rise from their situation of dependency and economic misery. This concern is quite valid. Nevertheless, the problem of the costs of litigation for the poor is so pressing, that it needs to be addressed even while the process of socio-economic reform is lagging behind (Diokno, M.S.I. and Sanidad, A.V. 'Justice and the Rule of Law', Paper presented before the Solidarity Seminar on Justice, Metro-Manila: Philippines 1990: 17).
3. In this context, various informants remarked that traditionally Filipinos are very good at developing new plans, but that the implementation of plans tends to be the 'achilles heel'.
4. On the basis of the records of the Constitutional Commission, Ricardo J. Romulo has convincingly argued that the powers of judicial review were primarily and predominantly intended to protect the fundamental rights of the citizens against government abuses (Romulo, R.J., 'A Plea for Judicial Abstinence.' *Philippine Law Journal*, 1993, Vol 67.3: 349-51).

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In this study, dr. Jan Willem Bakker analyzes and evaluates the quality and development of the justice system in the Philippines. The independence and impartiality of the judiciary, the independence and integrity of lawyers, the protection and promotion of human rights and the access to swift and fair justice for all citizens have been key issues in his analysis. Dr. Bakker concentrates particularly on the period between 1986 when the late President Marcos was ousted by the popular EDSA revolt, and 1997.

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