## **CONTRIBUTION FROM THE REPUBLIC OF THE PHILIPPINES**

## **TO THE THEMATIC REPORT ON THE PROTECTION OF LAWYERS IN THE FREE AND INDEPENDENT EXERCISE OF THE LEGAL PROFESSION**

## **(Pursuant to HRC Resolution *44/8)***

In response to the letter dated 3 November 2021 from Ms. Beatriz Balbin, Chief-OHCHR Special Procedures Branch, the Government of the Philippines is pleased to provide its contribution to the thematic report of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego Garcia-Sayan, on to the protection of lawyers in the free and independent exercise of the legal profession.

Guided by the questionnaire provided by the Special Rapporteur, the information has been provided by the Philippine National Police (PNP) and the Philippine Judicial Academy (PHILJA), as follows:

1. ***Taking into consideration the guarantees for the functioning of lawyers, contained in the principles 16-22 of the Basic Principles on the Role of Lawyers, please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favor of their clients in a free and independent manner.***

The independence of the legal profession constitutes an essential guarantee for the promotion and protection of human rights. Taking into consideration the separation of powers between the three branches of the government of the Philippines, the Judicial Branch or the Supreme Court has been accorded the independence to regulate the practice of law or the exercise of the profession. Therefrom, the Supreme Court has enacted and implemented **Rules of Court** which provides procedures for the effective exercise of the legal profession and in some manner protects lawyers and their clients *i.e.* privileged communication between lawyers and client (Section 24, para. b, Rule 130 of the Revised Rules of Court). The Court has the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law[[1]](#footnote-1).

The **1987 Philippine Constitution** not only bestows to the judiciary and/or legal profession the character of being independent but acknowledges the importance of legal profession to society, especially when it comes to the rights of the accused to have an independent counsel, to confer and freely communicate with the counsel. The rights granted under Article III of the 1987 Philippine Constitution are also afforded to lawyers as protection such as freedom of expression, speech and to form an association and/or organization to uphold their interest.

Moreover, under the Rules of Court, Section 24 Rule 130. 24 (b) lays the principle of the attorney-client privilege. Attorney-client privilege is well established in the Philippine Judicial System. It is a rule that preserves the confidentiality of communications between lawyers and clients. Under the said rule, a lawyer cannot divulge any information obtained from his/her client. The purpose of the privilege is to encourage clients to share information with their lawyers openly and let lawyers provide effective representation. Subject to some exceptions, lawyers are prohibited to reveal the confidences and secrets of his clients[[2]](#footnote-2). Likewise, the Rules of Court also protects an attorney from being examined as to any communication[[3]](#footnote-3).

**Constitutional Policy**. The creation of the Integrated Bar of the Philippines as the official national body composed of all persons whose names are included in the Roll of Attorneys of the Supreme Court. The fundamental purpose of which is to elevate the standards of legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively.

**Legal Policy**. The Creation of Justice Sector Coordinating Council (JSCC) in support of the Efficient and Effective Administration of Justice. JSCC is composed of a senior representative from the Judiciary, Department of Justice (DOJ), Department of the Interior and Local Government (DILG), and their relevant attached agencies. The JSCC shall serve as a joint forum for dialogue on issues of common interest and mechanism for effective coordination and sharing of information in support of planning and implementation of joint initiatives.

**Administrative policy**. The establishment and development of “Justice Zones, the program is installed in areas where local justice sector actors such as police, prosecutors, public attorneys, judges, and prison staff, work together to identify common problems and generate common solutions to address them.

To better coordinate information sharing, analysis, and reporting among stakeholders, the program has also operationalized five (5) information systems such as the E-Warrant System, E-Subpoena, Crime Information Reporting and Analysis System, the National Police Clearance System, and the Case Information Database Management System.

Creation of PNP Letter of Instruction No. 01/06 or Task Force Judges, Prosecutors, and IBP Lawyers relative to the creation of Task Force to ensure the security of Judges, especially those handling cases on heinous crimes.

Continuous joint efforts by the Supreme Court, IBP, and the PNP to address reports of threats, harassment, and killings of lawyers and judges.

**The effect of COVID-19 pandemic to the free exercise of the legal profession.** As far as the free exercise of the legal profession is concerned, the COVID-19 pandemic also had an adverse effect on legal practice due to the postponement of court hearings due to health protocols and COVID-19 restriction measures. But these concerns were properly addressed by the Judiciary, by initiating actions that may suit the lingering effect of the COVID-19 pandemic, such as introducing online court sessions and other means like including the lawyers as front liners to ensure efficient administration of justice.

**Recommendation to better protect and guarantee the free exercise of the legal profession.** Strict implementation of laws established rules and regulations for the protection of lawyers, prosecutors, and judges in the exercise of their legal profession.

1. ***Please describe the entities and/or mechanisms that are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession, whatever the source of the interference.***

The Integrated Bar of the Philippines (IBP) is the official unification of the entire lawyer population of the Philippines. Such Bar association adopts the disciplinary proceedings based on the code of professional conduct of lawyers. To ensure the free and independent exercise of the legal profession, the IBP renewed its commitment with the Philippine National Police.

The PNP Human Rights Affairs Office reviews the PNP compliance with human rights standards in police operations to strengthen and develop greater confidence among police personnel and officers of the Court.

Further, Senate Bill 1947 or an Act Creating the Office of the Judiciary Marshals has also been approved on third and final reading to create a security force to protect judiciary officials and other members of the bar.

1. ***Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?***

The Integrated Bar of the Philippines (IBP), as an official organization of Philippine Lawyers, was de jure independent from the State, albeit established through confirmation by Republic Act No. 6397. It was created pursuant to the rule-making power of the Supreme Court and its independence from the State is evidenced by its non-political nature as provided for under Section 4 of the Integrated Bar of the Philippines By-Laws. The IBP has a vital role in upholding professional standards and ethics, in protecting the members from improper restrictions and infringements to meet the ends of justice. In addition, the function of the bar association is to ensure the independence of the legal profession.

Sec. 2 Rule 139-A Rules of Court provides that *“the fundamental purposes of the Integrated Bar shall elevate the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively”.*

As to the independence of the bar association, the Supreme Court was provided with the power to integrate the association. It is an inherent part of the Court’s constitutional authority over the Bar. In providing that “the Supreme Court may adopt rules of court to effect the integration of the Philippine Bar,” Republic Act 6397 neither confers a new power nor restricts the Court’s inherent power but is a mere interest or, more specifically, will “raise the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively.”4

1. ***Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were found guilty? How many of them were ultimately disbarred?***

Proceedings for disbarment, suspension, or discipline of attorneys are taken either by the Supreme Court *motu propio* or by the Integrated Bar of the Philippines (IBP) upon verified complaint of any person.

1. ***Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.***

The Philippine Government has been consistent in its advocacy for the democratization of civic space and the empowerment and greater participation of a multiplicity of civil society actors especially the less-resourced grassroots community-based organizations, rights holders, and human rights defenders to include indigenous peoples, Communist Party of the Philippines-New Peoples Army-National Democratic Front (CPP-NPA-NDF) returnees reintegrated into society, parents of child combatants, rescued child combatants, and victims of CPP-NPA-NDF atrocities and their families.

Legal and judicial remedies

Following are **judicial remedies** availableto persons whose constitutional rights, particularly the right to liberty, have been violated by state agents:

* **The writ of habeas corpus** safeguards the right against arbitrary state action. It covers all cases of illegal detention by which any person is deprived of his liberty.
* **The writ of amparo** was promulgated to protect other fundamental human rights that are beyond the scope of the writ of habeas corpus. In fact, following the Rules, upon the filing of the petition for the Writ of Amparo or at any time before final judgment is rendered, the court, justice, or judge may grant any of the following interim reliefs: (1) temporary protection order; (2) inspection order; (3) production order; and (4) witness protection order.
* **writ of habeas data** is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee or of a private individual or entity engaged in gathering data or information regarding the aggrieved party.

Following are legal remedies in place for aggrieved parties to avail themselves. The victims could file criminal cases or complaints for the following:

* **libel, slander, or cyber-libel;**
* acts defined and punished under the **Revised Penal Code** such as grave threats, arbitrary detention, delay in the delivery of detained persons to the proper judicial authorities, among others;
* the Philippine **Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity** or R.A. 9851;
* violation of the **Anti-Graft and Corrupt Practices Act** under RA 3019. The law considers as corrupt practice any act that causes undue injury in the discharge of official functions, to any person or entity through manifest partiality, evident bad faith, or gross inexcusable negligence;
* administrative charges under the **Code of Conduct and Ethical Standards for Public Officials and Employees** under RA 6713 and the Revised Rules on Administrative Cases on Civil Service (RRACCS) as alleged red-tagging by government officials and/or employees constitutes grave misconduct, administrative charges under the Code of Conduct and Ethical Standards for Public Officials and Employees under RA 6713 and the Revised Rules on Administrative Cases on Civil Service (RRACCS);
* Civil actions, particularly indemnification for the damages caused, under Articles 19, 21, and 32 of the Civil Code;

1. ***To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.***

The Supreme Court issued Circulars providing guidelines to comply with the measures required by the National Government, such as limiting the office capacity and court operations, conducting videoconferencing in lieu of face-to-face hearing and remote appearances.

The Bar association also harnessed “Justice Bills” to be in pace and at par with the new global standards and best practices during the pandemic.

Besides conducting remote hearings to ensure cases are heard promptly, the Court divulged that **more persons deprived of liberty (PDLs) have been released from prison amid the outbreak.**

1. ***Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.***

Strengthened coordination and collaboration among actors in the justice sector would contribute to the better protection of the free exercise of the legal profession.

We hope that the above information would contribute to a deeper appreciation of the topic and be useful in the preparation of the SR’s thematic report to be presented at the 50th Regular Session of the Human Rights Council in June 2022 (pursuant to HRC resolution 44/8). ##

1. Article VIII, Sec. 13 of the Constitution [↑](#footnote-ref-1)
2. Canon 21 of the Code of Professional Responsibility [↑](#footnote-ref-2)
3. Rule 130 Section 24 (b) of the Rules of Court [↑](#footnote-ref-3)