

# Minutes of the Rule of Law Working Group

## PHILIPPINE DEVELOPMENT FORUM

September 7, 2011

Heritage Hotel, Manila

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1. **Opening Messages**. Department of Justice (“DOJ”) Assistant Secretary Geronimo Sy, Chairman of the Working Group, recognized representatives from the Working Group Members, which included the Philippine judiciary and executive agencies as well as international development partners. (The list of attendees is attached and incorporated into these minutes.)

### 2. **Initial Action Agenda Items**

- *Approval of the Minutes of the Meeting*. After a review of the minutes, a move was made for its approval and duly seconded.
- *WG Coordination Matrix*. Assistant Secretary Sy briefly explained the order of the contents of the kit which was earlier distributed to the members. He requested the members to submit by the end of September 2011 any further comments or updates on their respective coordination matrix.
- *PDF Directory*. Approval of the list of permanent members is on-going. The secretariat continues to update the directory.
- *Status of the working group*. Assistant Secretary Sy brought the attention of the members on a working document that recognized the elevation of the Rule of Law working group from a sub-working to a working group. He likewise mentioned that the transition of the secretariat work from the Asian Development Bank (“ADB”) to United States Agency for International Development (“USAID”) has been completed. He informed the participants that the World Bank (“WB”) hosts the Philippine Development Forum (PDF) website where any PDF announcements of the Rule of Law working group can be posted. DOJ is supporting this initiative by adding a PDF folder on its website. The secretariat will circulate the website address to all the PDF members.



### **3. Updates on Past and Present Programs**

- CAMILLA HAGSTROEM OF THE DELEGATION OF THE EUROPEAN UNION TO THE PHILIPPINES, informed the body that the 10 million euro grant for the Philippines has just been approved two weeks ago by the European Union (“EU”) headquarters. Consequently, the grant is targeted to be signed by the Philippines, through the Department of Interior and Local Government (DILG) and the EU by the end of 2011. The grant is for over 4 years and encompasses broad rule of law programs. A series of consultations with relevant stakeholders will take place in the coming months.
- MARIA RENDON OF USAID, described the United States’ Partnership for Growth (PFG) Program as one of President Obama’s key initiatives for developing countries under his administration. In Asia, only the Philippines which was selected to be part of the PFG. Other countries include El Salvador, Ghana and Tanzania. The PFG is unique due to its whole of government approach to development. USAID is currently working with the Department of Finance on a bilateral agreement, which is expected to be signed by end of September 2011. Implementation is expected to begin in January 2012. In addition to Ms. Rendon’s explanation, Mr. Gerry Porta said that PFG will target weak governance and constrained fiscal space, which were identified by a recent study to be binding constraints to broad-based, inclusive and sustainable economic growth.
- THOMAS CARNEGIE, OF THE U.S. EMBASSY discussed the Bilateral Strategic Dialogue (“BSD”) between the United States and the Philippines. A meeting between the U.S. and Philippine government took place in 2010. Currently, both governments are in the process of identifying the dates for the next BSD. The BSD has several working groups, including one on the rule of law and security, and is in the process of determining one or two issues for regional policy-based discussions.
- ROBERT STRANG OF THE DOJ-US EMBASSY informed the body of the Resident Legal Advisor (RLA) program of the DOJ, which is funded by the US state department. Like USAID, the program supports the overall strategy of the PFG.
- PRASANNA KUMAR JENA OF THE ADB, said that ADB is proposing a \$300 million policy-based loan to the Philippine government which focuses on strengthening the budget process and its reporting mechanism, and mainstreaming of business approaches --- all within the ambit of the Organizational Performance Indicator Framework (“OPIF”). The loan takes into account efforts that the judiciary and the justice sectors have already initiated and that key to the success of these reforms is leadership commitment and ownership. ADB has identified programs for the DOJ and its attached agencies specifically in the areas of organizational development, public

expenditure management, business process, staffing, jail management, change management, national justice information system (NJIS), and correctional reforms.

- CECILE VALES OF THE WORLD BANK informed the body that WB is currently working on a justice tower project which is currently in its planning stage. An identification mission is still being finalized. On the Institutional Development Fund (“IDF”) grant, the transfer of the implementation of the grant from Presidential Anti-Graft Commission (“PAGC”) to the Office of the Deputy Executive Secretary of Legal Affairs (“ODESLA”), has now been amended and formalized. With the amendment, WB has also made official the inclusion of the Integrity Development Review (IDR) assessment of the DOJ under the IDF and has identified the Ombudsman as a beneficiary as well. The WB met with Ombudsman Conchita Carpio-Morales and also with USAID to coordinate activities on integrity development.
- CAROL LEE ON BEHALF OF PAUL SCHAEFFER, HANS SEIDEL FOUNDATION (HSF), said that HSF has been working with DOJ since June 2011 in developing a modern criminal code. A team of writers has begun drafting significant parts of Book One of the Criminal Code. A writeshop is being scheduled in October 2011 and a series of focus group discussions will be conducted with civil societies from September to November 2011. In December 5-6, 2011, a National Criminal Justice Summit will be held. In end of October 2011, an exchange study program in Berlin is being organized where a delegation of 10 including members of Congress and of the Criminal Code working group, will be meeting with different German agencies.
- SCOTT CIMENT OF THE AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE (“ABA ROLI”), informed the body that ABA ROLI has been assisting the DOJ draft a Code of Conduct and has recently completed four trainings on the Code. A similar assistance is also going to be provided to the Public Attorney’s Office in the next six (6) to eight (8) months. Discussions on providing assistance to the DOJ in the operationalization of the Internal Affairs Unit (“IAU”) and Office for Competition (“OFC”) is on-going.
- CAROLYN A. MERCADO OF THE ASIA FOUNDATION informed the body of the schedules of the different pre-summit conferences being organized by the Judicial Sector Coordinating Council (“JSCC”) prior to the Criminal Justice System Summit which will be held in December 2011. In October 7, 2011 Supreme Court (SC) will host a drug forum while the Department of Interior and Local Government (DILG) will organize an anti-corruption forum in November 2011. An action plan will be presented in January 2012. Activities related to these summits should be coordinated with the JSCC.

- ASSISTANT SECRETARY SY encouraged the DILG and the Philippine National Police (“PNP”) to utilize the JSCC to coordinate all of its activities through its several working groups that deal with several issues namely jail congestion, information system, etc. For DOJ and its attached agencies, the appropriate channel is the development planning committee which meets regularly. A pre-planning workshop is set in September and October 2011 where inputs to these workshops will be part of Year 2 executive planning workshop which will be held on November 24-26, 2011 in Tagaytay. The November executive planning workshop will likewise assess the accomplishments and challenges DOJ faced in the first year.
- DIRECTOR MARY RAWNSLE V. LOPEZ OF THE OFFICE OF THE OMBUDSMAN referred to the Inter-Agency Anti-Graft Coordinating Council (“IAGC”), a conglomeration of different agencies composed of the National Bureau of Investigation (“NBI”), DOJ, Civil Service Commission (CSC), Commission on Audit (“COA”) and Ombudsman, as the working group that deals with anti-graft programs of the government. According to Director Lopez, the council meets every Thursday of the month and has indicated that activities for the Council are in the planning stages. A strategic planning workshop is set on September 23, 2011. She said that there has been a move to transfer chairmanship of the Council from the Office of the Ombudsman to DOJ, as the chairmanship should be rotated.
- ASSISTANT SECRETARY SY said that IAGC has no development partners yet to assist them in developing a national anti-corruption plan.
- ASSISTANT SECRETARY SY instructed the Secretariat to invite the Anti-Money Laundering Council (“AMLC”), Philippine Drugs Enforcement Agency (“PDEA”), the Commission on Audit (“COA”), and the Civil Service Commission (“CSC”) in in the next Working Group meeting. The PDF can serve as venue for raising institutional issues that these agencies need to address.
- PRASSANA JENA commented on the inclusion of IAGC members in the PDF. First, the Ombudsman and COA are two different constitutional entities. Secondly, the IAGC is headed by the Ombudsman while the working group on the anti-corruption in the PDF is headed by the DBM. He suggested that for synergy between IAGC and PDF, coordination can be made directly with the anti-corruption cluster group of the PDF. According to Mr. Jena, an anti-corruption strategy is also being developed in coordination with development partners by the anti-corruption cluster of the PDF. Assistant Secretary Sy recognized the cross functional issues and noted ADB’s suggestions.

- DOJ is meeting with Department of Budget and Management (“DBM”) on September 12, 2011 to finish its rationalization plan.
- KARL MIRANDA OF THE OFFICE OF THE SOLICITOR GENERAL (OSG) inquired how his office can access the funds provided by the development partners. According to him, 77 drug cases have been dismissed by the Court of Appeals due to the non-observance of Section 21 (*Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*) of Republic Act 9165 (Dangerous Drugs Act of 2002). His agency is offering lectures and seminars to NBI, PNP and PDEA to build their capacity and is looking for potential development partners to fund this program. He also promoted the Bureau of Corrections virtual visit program where loved ones of inmates can do a virtual visit to their loved ones via internet.
- JUDGE GERALDINE ECONG OF THE SUPREME COURT (“SC”) PROJECT MANAGEMENT Office informed the body of the drug summit that SC is spearheading precisely to address all issues related to Section 21 and other related drug issues. JSCC will be tapping the Government of the Philippines (GOP) counterpart to fund this summit. On the issue of jail congestion, SC, together with International Committee of the Red Cross (“ICRC”), is creating a team of judges, prosecutors and other stakeholders to (i) look into the problems of detention prisoners who are languishing in jail for a long time while waiting for their cases to be heard, (ii) review the current system, and (iii) make recommendations on how these issues can be addressed. The program will be launched on September 23, 2011, with the Manila City Jail which has 4000 detention prisoners, as the pilot court.
- CHIEF SUPERINTENDENT ALEX PAUL MONTEAGUDO OF THE PHILIPPINE NATIONAL POLICE (PNP) echoed Karl Miranda’s concern regarding Section of 21 of RA 9165. The absence of a feedback mechanism between the OSG to the PNP regarding status of cases dismissed prevents the PNP from punishing their policemen who have wilfully violated procedure, even with the existence of rules and regulations on accountability for policemen. He also brought up problems with subpoena issuances and the use of technology to address this problem. Assistant Secretary Sy reiterated to the PNP to utilize the JSCC as a venue to bring up their concerns. Another separate effort is the arrest warrant registry which the PNP can look into. Assistant Secretary Sy also mentioned the effort of the government to develop an information and communications technology (“ICT”) plan for the justice sector agencies which will be convened in October 2011.

#### **4. Discussion Regarding the Definition of the “Rule of Law”**

- ASSISTANT SECRETARY SY proposed to develop a working definition for the rule of law using the the United Nations (UN) definition by UN Secretary General Kofi Annan. He also wanted the definition divided into working parts and outlined based on measurable standards. Cecile Vales proposed using the rule of law definition of the World Justice Project as mentioned in the Rule of Law chapter of the Philippine Development Plan (PDP). Assistant Secretary Sy aired his reservations mainly due to some overlaps in definition and methodology used. However, he expressed openness in using this definition should this definition have an impact on the working plan of the PDF that will soon be developed.

#### **5. Discussion Regarding Proposed Work Plan**

- ASSISTANT SECRETARY SY opened the floor for suggestions on how to approach the formulation of the workplan for the rule of law cluster group that will serve as its blueprint from 2011 to 2016.
- JUDGE ECONG suggested to the body to consider the recommendation of Chapter 7 to 9 of the 2011-2016 Philippines Development Plan (“PDP”) for inclusion in the workplan.
- KARL MIRANDA proposed the automatic inclusion to fund JSCC and PDF meetings in the General Appropriations Act (GAA). Maria Rendon assured the body that USAID has earmarked funds specifically for the PDF secretariat. A letter of request from JSCC is already being drafted to request for congressional insertion to support JSCC initiatives. With respect to the PDF, a separate meeting will be held to discuss this concern.
- GERRY PORTA OF USAID suggested dividing the Work Plan into different themes as articulated in the PDP and forming smaller subcommittees to discuss specific areas. Assistant Secretary Sy commented that this approach may be repeating past methods that hinder cross fertilization and cross functionalities. He instead encouraged the use of lateral thinking where subgroups are formed based on membership from different entities to provide an exchange of ideas and solutions. Chief Supt. Monteagudo, echoed the need for a different and more cross-lateral approach.
- SCOTT CIMENT, ABA ROLI, suggested that the workplan be based on what each agency identifies as the biggest obstacles it faces in meeting the goals of the PDP. He said

that it would take multiple entities to address each issue, and if the workplan focused on addressing each issue, it would be clearer to see progress.

- RYAN C. THOMAS OF THE DOJ said that there is a problematic compartmentalization of the justice system, such that DOJ is not able to come up with consistent statistics.
- CAROL MERCADO suggested combining the recommendation of Judge Econg and Mr. Scott Ciment where the body begins with collating issues and segment them into the different pillars of the justice sector. The PDP can be used as the initial draft but agencies may add issues not covered under the plan. Atty. Mercado also mentioned involving the development partners early on.
- ERIENE AGUILA OF THE DILG said that if a list of issues were be compiled, the inter-relations of issues between government agencies would surface.
- JUDGE ECONG requested that the Land Registration Authority (LRA) be included if cases that will be dealt with will be universal to include both criminal and civil aspects. She also asked if the rule of law will only cover criminal cases or will also include civil cases. Assistant Secretary Sy replied that the initial efforts will be on criminal cases but will extend to civil cases, commercial cases and special proceedings as next steps.
- With respect to how the drafting of the workplan will be approached, identification and mapping of universal issues, involvement of the different agencies in the discussion of these issues (based on themes) including development partners according to their existing mandates, and bringing in the JSCC or PDF to serve as venue for consolidating these efforts are among the suggestions that the members have raised for the PDF to consider .
- CAROL MERCADO suggested the creation of a committee to discuss the design of the program. The design of the program will determine the number of days of the workshop. Assistant Secretary Sy asked for five (5) volunteers and the representatives from the SC, DOJ, USAID, PNP and DILG expressed their assent.
- ASSISTANT SECRETARY SY suggested holding the workshop in Tagaytay and Judge Econg offered the Philippine Judicial Academy as a possible venue.
- JUDGE ECONG informed the body that the Supreme Court will be discontinuing its regular donor's meeting in lieu of the PDF meetings to avoid duplication of efforts.
- ASSISTANT SECRETARY SY formally moved for the DILG to be co-chair of the Rule of Law working group. Given that the PDF is a forum for the executive and the development partners to coordinate, the Supreme Court, being the judiciary, cannot co-chair the cluster group. However, Judge Econg expressed active participation on the PDF.

- MARIA RENDON gave the closing remarks and thanked the body for its participation in the discussion particularly on how the working group will proceed with the formulation of the workplan. A copy of the minutes of the meeting will be circulated to the members.