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Judicial Reform for a Competitive Future

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Ladies and Gentlemen:

It is a very distinct honor for me to address you today on the theme *Judicial Reform for a Competitive Future*. Thank for providing me this forum.

To be frank, I was not too eager to come and stand before you on any theme at all. After having sat on the Bench for more than three decades, I became averse to public speaking. But when the invitation to speak was extended that I remembered that the officers of JRI came to call on me in the Supreme Court just a few weeks into my incumbency as the Chief Justice of the country. My callers were very genial, and some of them I even knew on a personal basis. We quickly went into an exchange about many matters of common interest. It is only fair to my callers, therefore, that I return the courtesy by making time today and be here. So, here I am.

The theme *Judicial Reform for a Competitive Future* really inspires me to traverse new territory. While I do admit to knowing something about

[1] Speech delivered by Chief Justice Lucas P. Bersamin during the Management Association of the Philippines (MAP)-Judicial Reform Initiative (JRI) Joint General Membership Meeting on May 21, 2019 held at Rizal Ballroom A and B, Shangri-La Hotel in Makati City.

judicial reforms for having been on the Supreme Court in the past decade, I have to confess that I may know little about the part of the theme on competitive future. I assume, however, that the theme would simply have me correlate one with the other. The correlation will be the context in which I shall cover the theme of this occasion.

To speak on the several reforms so far undertaken in the administration of justice in the Philippines should be welcome to me as the incumbent Chief Justice. I am certain that Business and Industry are always keen about judicial reforms, whether ongoing, done, or still being proposed, because such reforms surely impact on your sectors. Also, today's occasion is going to enable me to reach out to you who are the leaders, policy-makers, and managers of the wealth-generating sectors of the country, and possibly persuade you to see the Supreme Court as both a political and a social institution established and serving as a catalyst for progress, not as an obstacle to it. Lastly, this occasion furnishes me the rare opportunity for an interaction that very infrequently happens because the Supreme Court, by virtue of its inherent institutional reticence, has traditionally precluded itself from engaging in any dealing or communications with one constituency in the absence of its other constituencies.

The "Philippine Development Plan 2017-2022" that the National Development Authority (NEDA) crafted succinctly explains the crucial role of the administration of justice in the task of nation building, as follows:

> Providing justice is a crucial element in enhancing the social fabric. It serves as a deterrent to those intending to violate the law, provides recompense and closure to the victims of those who violate the law, and gives a chance to those convicted of

violating the law to face the consequence of their action and redeem themselves in society.

Providing justice is the role of government. Therefore, the administration of justice must be swift and fair so that people trust government.

NEDA's foregoing succinct explanation is an apt statement. Justice must both be swift and fair if it will be a positive factor in the development and progress of our country. Swiftness and fairness are the twin drivers of genuine justice, for one without the other cannot result in true justice. In turn, true justice is the bedrock of the Rule of Law, that ideal in a democratic republic that considers no man to be above the law, and that commands every inhabitant to bow to the majesty of the law. Indeed, the Rule of Law is the "principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards."[2]

The essentiality of the Rule of Law in national life cannot be understated. According to UN Secretary-General Ban Ki Moon's fitting capsulation of it is worthy of mention herein: "The rule of law is crucial for promoting economic growth, sustainable development, human rights and access to justice. Where the rule of law is strong, people and businesses can feel confident about investing in the future."[3]

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[2] *The Rule Of Law And Transitional Justice In Conflict And Post-Conflict Societies*, p. 4, Report of the Secretary-General, United Nations Security Council. Retrieved from https://www.un.org/ruleoflaw/files/2004%20report.pdf on May 9, 2019.

[3] *Business for the Rule of Law Framework,* United Nations Global Compact. Retrieved from https://www.unglobalcompact.org/docs/issues_doc/rule_of_law/B4ROL_Framework.pdf on May 8, 2019.

Since its founding in mid-1901, the Supreme Court has constantly labored, along with the lower courts, to make the administration of justice efficient and effective. I am using the word *constantly* here because its efforts have sometimes fallen short in the eyes of many but yet it has never stopped or wavered. Its long history details the efforts and frustrations, revealing a tenacity for reforms that was not easily cowed by failures. Those of us who work in the Philippine Judiciary accept that we need to ceaselessly strive to keep on adopting reforms because only thereby will we ensure the stability of the judicial system.

It is my highest duty as the Chief Justice to lead the entire Judicial Branch of the Government in discharging the constitutional mission of seeing to it that court proceedings respect the people's rights to due process, speedy trial, free access to the courts, and adequate legal assistance. I will remain committed to this duty by initiating reform programs that will enhance judicial efficiency, decongest court dockets, and reduce delays until the last day that I will sit in this office.

Permit me now to focus on the initiatives undertaken by the Supreme Court to realize swift and fair justice.

First. The Supreme Court has been often criticized through the years for having a heavy docket. By that I mean that the workload of the Supreme Court was large. Has the Supreme Court done anything to deal with such large workload?

Each of the 15 Members of the Supreme Court begins his or her stint with an inherited workload. How large is the inherited workload depends on how long has the immediate predecessor sat on the Supreme Court as well as on how fast said predecessor worked while on the Supreme Court. Under the Constitution, however, a Member retires before reaching 70 years. By the time of the mandatory retirement, the Member has to leave the undecided cases to the new successor. Take note that some Members may sit on the Supreme Court for very short periods until their mandatory retirement because they have been appointed at an advance age, while others sit longer, like from five to even more than 10 years. While serving on the Supreme Court, every Member receives an average of 40 cases monthly for study and report. Although most of the monthly allocated cases are recommended for outright dismissal (in case of original petitions) or denial (in case of appeals), the rest of the cases will add to the existing docket of each Member. On the average, each Member may dispose of 20-40 cases monthly by means of unsigned resolutions or full length signed decisions. The consequence is that the individual Member's docket, even on the disposal ratio of 1:1, may grow.

We have always given serious thought to the volume of our work on the Supreme Court. We continue to look for ways and means to reduce the heavy dockets brought about by the institutional causes I have mentioned.

We have also realized that most of the time many cases do not deserve to reach the Supreme Court. Thus, the unworthy cases are either dismissed or denied due course outright through unsigned resolutions (*i.e.*, the so-called minute resolutions). This has been how the Supreme Court has disposed of much of its workload. But the filings made with the Supreme Court on a monthly basis has simply bloated in recent years, and this has been mainly attributable to the irresponsibility of litigants and their lawyers who have

ignored the warnings regularly issued against bringing clearly frivolous or unsubstantial or dilatory petitions. The time for imposing sanctions on such litigants and lawyers may soon be around the corner.

Last March 12, 2019, the Supreme Court promulgated its decision in *Gios-Samar Inc. v. The Department of Transportation and Communications* (G.R. No. 217158) with the intention of further managing the growing volume of cases directly filed in the Supreme Court. That ruling is one good step taken by the Supreme Court because it strongly signals a resoluteness to filter out the unworthy or frivolous cases.

Gios-Samar involved a petition for the writ of prohibition brought directly to the Supreme Court by a taxpayer. By going directly to the Supreme Court, however, the petitioner actually by-passed the lower courts (meaning, the Regional Trial Court and the Court of Appeals) despite said lower courts having concurrent jurisdiction with the Supreme Court on the action for prohibition. To justify the by-pass, the petitioner cited transcendental importance of the issue presented for resolution – the stoppage of the bidding of several airport projects in the Visayas and Mindanao on constitutional grounds.

However, because the resolution of the petition for prohibition would entail the determination of disputed facts, the Supreme Court ruled that it would not entertain the petition because it was not a "trier of facts." Equally important was that the petitioner's direct filing of the petition had ignored the doctrine of the hierarchy of courts. Accordingly, the petition was dismissed by emphasizing that the doctrine of the hierarchy of courts was a

"constitutional imperative" and a "filtering mechanism" that could not be ignored. The Supreme Court, through the erudite Justice Jardeleza, observed:

> In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of *certiorari, prohibition, mandamus, quo warranto*, and *habeas corpus* (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the *raison d'être* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.

Following the promulgation of the ruling in *Gios-Samar*, all litigants and their lawyers will now have to be careful and deliberate in choosing the Supreme Court as the immediate venue for their actions. Well disguising causes as raising a constitutional question will no longer be tolerated. The ruling in *Gios-Samar* is aimed at substantially lessening the docket of the overburdened Supreme Court, and enable the faster disposition of cases. The ruling also announces the basis for the Supreme Court to be stricter in rejecting misfiled or unworthy petitions, and to be readier in sanctioning irresponsible litigants and lawyers.

Second. On February 26, 2019, the Supreme Court promulgated the resolution that increases the threshold amount for money claims cognizable by the Metropolitan Trial Courts (MeTCs) under the *Revised Rules of Procedure for Small Claims Cases* (Revised Rule on Small Claims) from ₱300,000.00 to ₱400,000.00, beginning April 1, 2019.

To comprehend the impact of this increase, let me advert to the background of the *Rules of Procedure for Small Claims Cases*, which I will conveniently denominate the Rule on Small Claims. It was discovered from our data that a lot of cases involving purely money claims have demanded too much of the time of the lower trial courts. The congestion brought by the large number of such cases warranted the adoption of the new procedure for litigating the same. Thus came to be conceptualized the Rule on Small Claims, adopted in 2010 as the means to solve the congestion of the dockets of the first-level courts. The rule was implemented nationwide to deal with purely money claims of not more than ₱100,000.00, which was under the original and exclusive jurisdiction of the first-level courts, and which the trial courts had to resolve within 30 days from the filing of the claims.

Upon the implementation of the Rule on Small Claims, the number of small claims was greatly reduced. The Supreme Court saw fit to regularly raise the threshold amounts since 2010. The most recent raise was under the Revised Rule on Small Claims but this only affected the money claims in Metro Manila, where most of the claims were concentrated. It is expected that the country's ranking in the World Bank's "Ease of Doing Business Report" will improve because of this reform.

Third. Funded by our development partner, the American Bar Association-Rule of Law Initiative (ABA-ROLI), the program called Judicial Strengthening to Improve Court Effectiveness (JUSTICE Program) has been launched as a reform initiative designed to enhance court efficiency, transparency, and accountability through an automation system that replaces manual court processes.

The JUSTICE Program has included the Electronic Courts System (e-Courts System), an electronic case management system that allows judges and their court personnel to easily monitor, manage, and process their cases. The e-Courts System also allows our court officials to monitor the performance of the lower courts under their supervision. Key components of the e-Courts System are the e-Raffle (or the electronic raffling of cases) to handle the assignment or allocation of court cases among several judges; automated hearing system; encoding of all information on cases of the e-Courts System; automated availability of information on the status of cases that the public may access through computers installed in public kiosks located in all e-Court-enabled courthouses; and the use of templates of court-issued forms.

The e-Courts System was piloted in Quezon City in 2012, and has since been deployed in 249 second-level courts and 95 first-level courts (or a total of 343 courts nationwide).

Fourth. Also under the JUSTICE Program are the adoption and implementation of the *Revised Guidelines on Continuous Trial of Criminal Cases* (Revised Guidelines) effective on September 1, 2017 after the Revised Guidelines was piloted in 54 trial courts within Metro Manila.

The Revised Guidelines prohibits litigants from seeking delays through motions for postponement except on exceptional grounds. Since its implementation, the Revised Guidelines has yielded improved compliance rates in the various stages of arraignment, pre-trial, trial and promulgation of the judgment. The trials in many drugs cases are now being completed and resolved inside of from two to 2 ½ months from the time of filing as required

under the *Comprehensive Dangerous Drugs Act*; while the trial in other criminal cases are to be completed within six months from their filing in court in accordance with the letter and spirit of the *Speedy Trial Act of 1998.*[4] The pertinent provisions of both laws have been incorporated in the Revised Guidelines.

Fifth. The next program that may be of interest to you is the constitution of the Justice Zones in different areas of the country. The constitution of the Justice Zones aims to address delay and inefficiencies in the criminal justice system of the country, and thereby free the trial courts for handling and deciding other cases.

Prior to the constitution of the Justice Zones, the three important pillars of the criminal justice system operated independently and separately from each other. The pillars of the criminal justice system are the Judiciary, under the leadership of the Supreme Court; the Department of Justice (DOJ), under whose umbrella are the National Prosecution Service, the Public Attorney's Office, the Probation Office, the Philippine National Police, the National Bureau of Investigation, and other related offices and agencies; and the Department of Interior and Local Government (DILG), which includes the Bureau of Jail Management and Penology and the local government units (LGUs). In most areas of the country, the courts, the DOJ and the DILG often approached the criminal cases without coordination, a situation that did not bring about ideal and speedy results.

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[4] Republic Act No. 8493 entitled *An Act To Ensure A Speedy Trial of All Criminal Cases before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, Appropriating Funds Therefor, And For Other Purposes,* which was approved by Pres. Ramos on February 12, 1998.

In contrast, the Justice Zones bring about closer coordination among the three pillars of the criminal justice. The establishment of the Justice Zones has been supported by the Governance for Justice (GoJUST), an initiative sponsored by the European Union.

The concept of the Justice Zones is to bring an area into a zone where there is a minimum number of inter-agency coordinative reforms in the criminal justice system, such as the adoption of the e-Courts System; automated hearing systems for trial courts; e-Subpoena for the police officers who are witnesses in cases; e-Dalaw as a quick way to facilitate jail visitations; and jail decongestion. The establishment of the Justice Zones has been made possible upon the creation of the Justice Sector Coordinating Council (JSCC), a council that is made up of the Supreme Court, represented by the Chief Justice; the DOJ, represented by the Secretary of Justice; and the DILG, represented by the DILG Secretary.

There are currently four Justice Zones in the country today, namely: those in Quezon City and Cebu City, which were constituted prior to my assumption as the Chief Justice; and two that were put up during my watch as Chief Justice, specifically in Davao City, launched on March 19, 2019, and Angeles City, inaugurated on April 12, 2019. In view of the effectiveness and efficiency in the delivery of criminal justice in the Justice Zones so far constituted, the JSCC may soon consider constituting more areas as Justice Zones.

Let me now turn your attention to the four-point agenda I announced upon my assumption as the Chief Justice. The four-point agenda have a direct relation to our theme of creating a business environment suited for a

competitive future. The first and second points deal with the swift administration of justice. The third and fourth ensure that justice is fair.

The first point has been to revise existing procedural rules. The daily work of the Supreme Court and all the other courts has been regulated by the body of rules of procedure known since 1940 as the *Rules of Court*. Before 1940, the various procedures were regulated by rules and guidelines provided for or stipulated in different issuances. The 1940 *Rules of Court* was understood to address the desirability of codifying the various rules of procedure for the convenience of the courts and the public, including the legal profession. Since 1940, there have been several massive revisions of the *Rules of Court*, the major ones being those made and adopted in 1964, 1985, 1989 and 1997. But the passage of time always occasions new needs that can be satisfied only through constant updating. Add to this the fast developments in technology, which is a world-wide phenomenon. The court system, to remain responsive to the Filipino public's insatiable clamor for justice, must respond to such demands only by quickly adapting to the changes.

Upon my assumption as Chief Justice, therefore, I assigned the task of heading the effort to revise the existing *Rules of Court* to our colleague, Associate Justice Diosdado M. Peralta, by naming him the Chairman of the Committee on the Revision of the Rules of Court, known in our circle as the Mother Committee because of its importance in the life and times of the country's court system. Justice Peralta has been devoting his time, expertise and energy with dedication.

Let me mention in this regard that the promulgation of the rules of procedure is one of the two more important functions and substantive

responsibilities of the Supreme Court under the 1997 Constitution. I am confident that the revision work, which has proceeded in earnest, will soon give to the Supreme Court good results for deliberation and adoption, and enable us to promulgate the revised version of the rules of procedure before I bow out of active service by mid-October of this year.

The second is the enhancement of the physical infrastructure of the courts as the means to improve everyone's access to justice. I am gratified to mention that during my tenure, we have inaugurated several courthouses some of which were constructed from the ground up while others were repurposed. We have been encouraged by the commendable generosity of the LGUs, particularly the Cities of Quezon, Marikina, Valenzuela, San Pablo, Cebu, and General Santos, and the Province of Sarangani, for underwriting the projects. I cannot overemphasize the necessity of having well-equipped courthouses where our people can bring their grievances and seek justice for their causes.

The third and fourth points focus on how the Judiciary can ensure fairness in our adjudications.

The third point actually refers to the quality infrastructure for our court system. This is about the strengthening of the vetting and recruitment procedures and the expansion of the training facilities for the continuing and adequate development of our judges and personnel. The administration of justice will not be fair unless the individuals we recommend for appointment as judges and as support personnel will be well prepared by study or training to assume and discharge their sworn responsibilities. In short, the candidates

for judicial and staff positions must be competent and imbued with good character and individual integrity.

The vetting and recruitment procedures for judicial positions are entrusted to the Judicial and Bar Council (JBC), which we must strengthen by expanding its capacity. We have had a noticeable increase of applications for judgeships throughout the country, and many of the applicants have good qualities as well as have become much younger, albeit lacking in experience as compared to the applicants of the past. Attribute this to the better pay now being made available by legislation.

Included as essential to the quality infrastructure of our court system is the relentless improvement of the education of our future lawyers by shifting to the experiential approach in legal education. This approach has been common in some countries, particularly in the United States of America, and has been quite successful in producing competent lawyers, and, if adopted, can be a paradigm shift. Currently, although the Supreme Court has been regulating the admission to the Bar of qualified law graduates who hurdle the yearly Bar Examinations, the Legal Education Board (LEB), a body created by law, has the responsibility to define and regulate the law curriculum implemented by the law schools. There seems to be a disconnect somewhere. Yet, the Supreme Court cannot dictate on the LEB to make the paradigm shift to the experiential approach.

As the Chief Justice, therefore, I cannot simply stand by and watch without doing anything. I have decided to call for the holding of a Legal Education Summit in July or early August of this year. This will be the first ever legal education summit to be conducted in the Philippines. In

preparation for the Summit, the Court has tasked Associate Justice Alexander G. Gesmundo to compose and head the organizing committee to conduct regular consultations with the various stakeholders in legal education throughout the country in order to identify the problems affecting legal education, and to learn of the ways on how to address and resolve the perceived and identified problems; and to propose measures to assist in the development of law students into practice-ready lawyers.

The fourth has to do with instilling discipline in the ranks of the judges, their personnel, and the legal profession, and purging the Judiciary of the corrupt, the misfits and the scalawags. There is no fairness in the delivery of justice unless corruption and unfitness in all the levels of the Judiciary are eliminated.

In this regard, let me share with you relevant data available from the Office of the Court Administrator and the Office of the Bar Confidant. According to the Office of the Court Administrator, there were in the period of 90-days from January 1, 2019 to March 31, 2019: (a) 13 judges who were fined, reprimanded, or admonished; (b) 38 court employees who were either admonished, fined, reprimanded, had benefits forfeited, or suspended; and (c) four court employees who were dismissed for cause from the service. As for lawyers, the Supreme Court will not relent from ridding the ranks of the Integrated Bar of the misfits, the corrupt and the scalawags. Since my assumption as Chief Justice in the last week of November 2018, the Supreme Court has suspended 14 lawyers from the practice of law, fined 21, and either reprimanded, admonished, censured, or warned 14 of them. I am acknowledging that having ethical and competent members of the Bar is an imperative that we cannot ignore.

I would like to assure all of you in the business and industrial sectors that the Judiciary shall remain steadfast and true to the ideals of swift and fair justice. The reform initiatives I have initiated are a solid testament to a willingness to review and adopt procedures fully responsive to our current and future needs and wants. I ask your support and cooperation for everyone of us is a stakeholder of the justice system. The delivery of swift and fair justice to our people is an investment that we must make.

I also urge you to help the Supreme Court ensure accountability in the Judiciary; and to help us eliminate inequality and corruption. Your advocacy in this regard has always been admirable. Please continue the advocacy, and let us together work to guarantee the country's competitive future.

I wish the MAP and JRI much success in all your endeavors.

Thank you very much.