

Glimmers of hope: A report on the Philippine Criminal Justice System

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Abstract

There is a saying: "Justice delayed is justice denied." The perception of a continuing failure of the Philippine criminal justice system to deliver fast and efficient justice has inevitably led to the erosion of public trust in the government. As a consequence, citizens are laden with anxiety because of unabated criminality and violence in their communities. The type of justice that leads to peace and prosperity continues to be elusive in the Philippines as the worsening scenario of jail congestion continues to manifest its malevolent implications for the human rights of prisoners. It appears that the culprit is an overwhelmed machinery of criminal justice that has not been able to keep pace with growing rates of population, urbanization and criminality. There is also an apparent imbalance in the justice structure where there are too few judges, prosecutors and public defence attorneys to process the cases filed by the numerous law enforcers who file criminal cases. This leads to bottlenecks in criminal justice procedures and has resulted, in not a few instances, in human rights crises in jails. However, emerging developments give some hope to Filipinos.

Keywords: detention, pretrial detention, overcrowding, conditions of detention, the Philippines, criminal justice system.



Delia Israel was pregnant when first detained on a murder charge at Manila City Jail in 1995. She ended up giving birth to a daughter who was taken away from her immediately. By the time she was released, her daughter had already celebrated her 18th birthday. Her case was finally terminated after she pleaded guilty to the lesser offence of homicide and was consequently released, having been deemed to have served the maximum penalty for the offence.

What makes Delia's story distinctive is that it took the court eighteen years before a decision was rendered, during which she was detained because she could not afford bail amounting to 30,000 pesos, or \$600. Delia's protracted trial and more than eighteen years of preventive imprisonment show a bleak picture of the justice system in the Philippines.

Delia's story was published by a leading media outlet, *GMA News Online*, on 25 June 2013,¹ in an article that highlighted the glaringly slow grind of the Philippine Criminal Justice System, with many more facing the same predicament that she went through. When her story was circulated, the approximate number of prisoners detained by the Bureau of Jail Management and Penology (BJMP) in either pretrial detention or under a conviction of three years or less was 78,836, with a congestion rate of 292.73% of intended occupancy. By the end of 2016, the number of prisoners was 127,339, with an exacerbated jail congestion rate of 511% of capacity.²

One of the grim consequences of prison overcrowding, and the deteriorating living conditions that come with it, is the associated increase in illnesses and, consequently, the number of deaths among detainees during their preventive imprisonment. The BJMP reported that in 2013, 221 prisoners died, followed by 261 deaths in 2014. There were 319 deaths among 105,647 prisoners in 2015.³ The total number of deaths compared to the mortality rate of the entire population in the Asia-Pacific region appears modest. However, the picture substantially changes as soon as one discovers that the deaths happen in the most congested jails that are increasingly becoming vulnerable to crisis.

It is axiomatic that when the court dockets are filled to the brim, the jails are filled with detainees beyond capacity. The current congestion rate in Philippine jails is now 600%, based on the National Building Code Standard of 4.7 square metres per inmate. Currently, an average of seven prisoners inhabit a 4.7-square-metre space. In some jails the congestion rate is even higher, going up to as much as 2,000%.⁴

The Philippine Criminal Justice System is made up of five "pillars": the Community, Law Enforcement, Prosecution, Court, and Correction. On the

1 Mark Merueñas, "Too Poor to Post Bail, Thousands Spend Years in Jail without Conviction", *GMA News Online*, 25 June 2013, available at: www.gmanetwork.com/news/news/specialreports/314386/too-poor-to-post-bail-thousands-spend-years-in-jail-without-conviction/story/.

2 For current figures, see the "Data and Statistics" section of the BJMP website, available at: www.bjmp.gov.ph/datstat.html. Data for earlier periods are available upon request from BJMP Directorate for Operations, 144 Mindanao Avenue, Quezon City, Philippines, Trunkline No. (0632) 9276383, email: itu@bjmp.gov.ph.

3 See above note 2. Similar data for 2012 were made part of the Third Periodic Report of the Philippines to the United Nations Committee against Torture, UN Doc. CAT/C/PHL/3, 2015, available at: www.refworld.org/publisher,CAT,,PHL,56bae76c4,0.html.

4 See above note 2.

surface it appears that the slow grind of justice is the fault of one pillar, but a closer look at the situation reveals that the entire scenario is actually a consequence of an overwhelmed Philippine Criminal Justice System, affecting each of the five pillars. The common challenge each pillar faces is that it is operating beyond its ideal capacity. Ostensibly, while the general population has increased significantly during the past few decades, there has been no concurrent rise in public investment towards the improvement of the Philippine criminal justice machinery in order to meet the demands of justice in the country – such as the hiring and allocation of equivalent resources for more judges, prosecutors and public attorneys – or to provide ample space for the increasing number of detainees. The situation is overwhelming, and has made Philippine jails susceptible to humanitarian crisis.

As early as 1993, a modest but effective decongestion approach was launched by the BJMP. The decongestion programme consisted of (a) a system of legal assistance, with a pool of paralegals trained to help inmates apply for various legal modes of release and follow up with the courts to ensure the expeditious resolution of their cases; (b) lobbying for funds for the construction of additional jail space; and (c) a legislative agenda programme aimed at the enactment of laws that will provide enhanced and/or additional modes of legal release. For the year 2016 alone, more than 70% of all inmates released were assisted by the paralegal officers of the BJMP.

A glimmer of hope is on the horizon, as the new administration has approved a budget of almost 1.7 billion Philippine pesos for the BJMP to build additional jails in 2017. These will add around 85,000 square metres of living space, enough to accommodate 18,000 inmates, potentially reducing the congestion rate to around 420% from the current 500%. An additional estimated amount of 10 billion pesos would be needed to reduce the congestion rate to zero – and sustaining a zero congestion rate would be another formidable challenge, unless the pending bill on alternatives to imprisonment, among other measures, is enacted.⁵

Interestingly, in the recently approved Philippine Development Plan,⁶ a new chapter was devoted to the administration of justice. Having been integrated into the national development plan, considerable public investment in the pillars of the criminal justice system and agencies of the Philippine Criminal Justice System can now be reasonably expected. One particularly interesting programme in the Philippine Development Plan is the expansion of the use of alternatives to litigation (also known as alternative dispute resolution or ADR) in the adjudication of criminal cases. The idea is to use ADR in every stage and pillar of

5 The original draft bill was pending during the 16th Philippine Congress. Currently, a modified version proposing community services in lieu of imprisonment is a priority bill. See Mara Cepeda, “List: 14 Bills the 17th Congress Aims to Pass by May 31”, *Rappler*, 2 May 2017, available at: www.rappler.com/.../168632-philippines-17th-congress-bills-pass-by-may-31.

6 See Republic of the Philippines, National Economic and Development Authority, *Philippine Development Plan 2017–2022*, 2017, available at: www.neda.gov.ph/2017/07/26/philippine-development-plan-2017-2022/.

the Criminal Justice System and to expand its scope in the Court and Community pillars where it is already implemented. In the pillars where ADR is currently used, a high 70% resolution rate is the norm, compared to a mere 25% conviction rate for litigated criminal cases. This expansion programme is part of a strategy for the eventual mainstreaming of ADR in the Criminal Justice System. This would not only tame the highly retributive Criminal Justice System but would also, and more importantly, provide an additional cost-effective and expeditious avenue for conflict resolution. ADR has extremely high potential for improving access to justice for citizens, and for decongesting court dockets and consequently reducing overcrowding of jails.

Another noteworthy development is the refile of the legislative bill on alternatives to imprisonment in the Philippine 17th Congress.⁷ The bill was patterned after the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), which are expected (if passed into law) to rationalize or reduce the use of custodial or restraining measures and to provide alternative penalties for those convicted of crimes by granting judges the leeway to impose non-custodial measures in lieu of imprisonment.

In addition, a plan to propose a revision of the *Bail Bond Guide*, issued by the Department of Justice in 2000, is on the agenda of the BJMP paralegal program.⁸ The revision would aim to increase the availability and reach of bail, especially with respect to non-violent, non-recalcitrant, sick and/or financially constrained offenders.

In the Philippines, the Rules of Court enumerate at least ten factors in determining bail, whether it is to be granted – in those cases where bail is discretionary – and the proper amount of bail in each case. Rule 114, section 9, provides:

Amount of bail; guidelines. – The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

- (a) Financial liability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that the accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

7 Senate Bill No. 1452 and House Bill No. 335.

8 Department of Justice, National Prosecution Service, *The 2000 Bail Bond Guide*, 2000, available at: <https://legalhawk.files.wordpress.com/2007/12/bailbond-guide.pdf>.

Excessive bail shall not be required.⁹

Ideally, these factors need to be determined *before* the prosecutor will recommend the granting or denial of bail, and there should be an automatic bail hearing before the judge to determine the propriety of the bail recommendation, including the appropriate amount, at the outset before the trial. In practice, however, the sole consideration made in determining the propriety and amount of bail rests solely on one factor: the gravity of the offence. When an accused is arrested, the complaint filed provides a bail recommendation based solely on the gravity of the offence allegedly committed. If, for example, the charge is murder, the prosecutor will recommend no bail. It follows that when an accused is charged for murder or drug-pushing, almost automatically no bail will be recommended. If the accused wishes to be released on bail, he or she needs to file a petition for bail and ask for one or more hearings where the prosecutor must show strong evidence of guilt requiring that bail be denied. During this time, the accused is detained. This is in contradiction with section 13 of Article III of the 1987 Constitution, which states that “[a]ll persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law”.¹⁰

In the current practice, only when the accused invokes his right to bail or asks for a reduction of the amount of bail recommended will the court consider the other bail factors, such as the strength of the evidence, the possibility of flight or the financial capacity of the accused, to mention a few. This process effectively deprives many of their right to bail and/or unwittingly delays the grant of temporary liberty to a number of accused. Perhaps the more troubling aspect is the delay in the trial of the criminal cases pending, as bail hearings tend to take away from the court more of its precious time that could be used for the trial of cases on their merits.

Society must address drivers of criminality in order to reduce the size of prison populations and make a giant leap towards mitigating or, even better, eradicating the egregious threat of humanitarian and human rights crises in jails. After all, the Philippine Criminal Justice System was never meant to become a mechanism of oppression, but rather was intended as an instrument of restorative justice – the kind of justice that leads to lasting peace.

9 Rules of Court of the Philippines, Rule 114, § 9, available at: www.lawphil.net/courts/rules/rc_110-127_crim.html.

10 Constitution of the Republic of the Philippines, Article III, § 13, available at: www.officialgazette.gov.ph/constitutions/1987-constitution/.