

BETTER GOVERNANCE FOR INCLUSIVE GROWTH

A. INTRODUCTION

Good governance sets the normative standards of development. It fosters participation, ensures transparency, demands accountability, promotes efficiency, and upholds the rule of law in economic, political and administrative institutions and processes. It is a hallmark of political maturity but also a requisite for growth and poverty reduction, for there are irreducible minimum levels of governance needed for large-scale investment to occur and for social programs to be supported.

A cornerstone of good governance is adherence to the rule of law, that is, the impersonal and impartial application of stable and predictable laws, statutes, rules, and regulations, without regard for social status or political considerations.

The Philippine Development Plan (PDP) 2011-2016, with good governance and anti-corruption as its overarching theme, envisions a country that has achieved an inclusive growth, which is characterized as high, sustained and broad-based. Inclusive growth means economic expansion must be rapid enough to matter, given the country's large population, geographical differences, and social complexity.

The PDP is anchored on President Benigno Aquino III's 16-point "Social Contract with the Filipino People" that stems from a thriving government dedicated to developing its people's capacities, guided by the principles of good governance and anti-corruption. The PDP translates the commitments in the Social Contract into effective, efficient and inclusive government interventions that would result in an improved quality of life of all Filipinos.

For the past two years, the Aquino Administration put in place critical reforms that pursue these strategies and that laid the foundation for effective and honest governance. Its firm commitment to transformational leadership has gained support from different sectors of the society, and it effectively harnessed this to deepen citizen participation in governance. Its commitment and effort to institute effective and honest governance enabled the Aquino Administration to attain initial gains in terms of improving the government's responsiveness to public needs, strengthening democratic institutions, rebuilding people's trust in government and enhancing their access to justice.

The PDP aims to institute effective and honest governance to create an enabling environment for inclusive growth and poverty reduction. Four strategies were set to achieve this goal:

(1) Improve delivery of public goods and services essential to citizens' development will be enhanced in terms of physical and economic accessibility, availability, acceptability, quality and safety, and without discrimination. This will be done by: (a) integrating services according to the needs of the citizens; (b) professionalizing the bureaucracy as duty-bearers; (c) enhancing the transparency of government transactions; (d) making government focus on its core functions; (e) standardizing the quality of public service delivery; (f) devising a common measurement tool and methodology to solicit citizens' feedback; and (g) improving the financial management system in government.

(2) Curb corruption decisively to ensure that resources are effectively and efficiently used for priority public goods and services. To achieve this, the government will: (a) intensify efforts to detect and prevent corruption; (b) resolve pending corruption cases with dispatch; (c) adopt a comprehensive anticorruption program; (d) enhance the legal and policy framework for corruption prevention; (e) strengthen integrity mechanisms and control structures; (f) enhance partnership structures and mechanisms and international linkages; and (g) conduct anticorruption advocacy campaigns.

(3) Enhance citizens' access to information and participation in governance as an accessible and transparent mechanism for redress and accountability, including fair, prompt and immediate investigation of violation of right to equal access to public service and equal access to justice. Citizens' access to information and participation in governance will be enhanced by creating space for free, active, voluntary and genuine participation in policy making, decision-making and development planning. Towards this end, efforts will be focused on: (a) pursuing the passage of the Freedom of Information Bill; (b) ensuring

open and transparent search process in the selection of appointees in independent bodies; (c) promoting and implementing multi-sectoral National Anticorruption Program of Action (NACPA) programmes and projects; and (d) ensuring budget transparency.

(4) Strengthen the rule of law to improve the quality and strength of interaction between and within societies and economies, which can create opportunities for all through avenues such as trade, investment, and the government of people and ideas. There can be no sustainable development without the rule of law to protect the rights and liberties of citizens. To achieve this, government will strengthen the Oversight Bodies; effectively and speedily resolve cases to Courts and Other Quasi-Judicial Bodies; reduce the Cost of Litigation; avoid Law Suits Involving Government Contracts; enhance the Integrity and Competence of Justices, Judges, Court Personnel and all other Officers of the Judiciary and Quasi-Judicial Bodies; increase Resources for Justice Sector Agencies and Quasi-Judicial Bodies; improve Access to Justice of All Sectors of Society particularly the Vulnerable Groups; promote the use of Alternative Dispute Resolution; and institutionalize Existing Justice Sector Coordinating Mechanism.

B. GOOD PRACTICES

There are two notable good practices cited in the Plan: (1) the Anti-Red Tape Act (ARTA) of 2007 and (2) the use of Alternative Dispute Resolution (ADR) mechanisms.

To create an enabling environment for inclusive growth and poverty reduction, one of the strategies is to enhance the transparency of government-to-business and government-to-citizen transactions. In line with the Anti-Red Tape Act (ARTA) of 2007, all government entities with frontline services shall have completed as soon as possible their Citizen's Charter (CC) which serve as a service charter or pledge that describes the step-by-step procedure for availing of a particular service, and the guaranteed performance level that the public may expect for that service. Information such as procedures to avail of the service, responsible person/office, processing time, documentary requirements, applicable fees or charges, and procedures for filing complaints are reflected in the CC. Despite the September 2009 deadline set by

ARTA, more than a thousand entities, particularly local governments, still have to comply with the law. ARTA mandates the review and reengineering of frontline services to cut red tape and enhance efficiency, transparency, and accountability in the delivery of public services. It requires the formulation and publication of CCs and the establishment of Public Assistance Desks to receive feedback and handle complaints from the transacting public. In order to remain responsive to the need of citizens, agencies must continually improve their systems and standards through the publication and implementation of Citizens' Charters, Citizens Feedback Surveys, and Transactions Reengineering.

To streamline frontline services and procedures as planned, the Civil Service Commission (CSC) is conducting the Anti-Red Tape Act (ARTA) Report Card Survey (RCS) to enhance the efficiency and transparency of frontline services. The CSC also gave more emphasis on providing a more honest reporting of the true state of Philippine public services. This is extremely important as hiding public service problems prevents timely resolution of unsatisfactory services to ordinary citizens.

From 2010-2012, 937 National Government Agencies (NGAs), State Universities and Colleges (SUCs) and Local Government Units (LGUs) had failed services under the Anti-Red Tape Act-Report Card Survey (ARTA-RCS). Nonetheless, the following summary table provided by the CSC to the Socioeconomic Report preparation shows that a good number of subnational agencies were able to make a good account during the same period. There is also the good news that 11 government bodies received the Citizen's Satisfaction Center Seal of Excellence Award (CSC-SEA) in 2010. Another 12 and six awardees, for 2011 and early months of 2012, respectively, received the same award.

Table 1: Adjectival Rating of Agencies				
	2010	2011	2012 (Jan-Aug)	Total
Excellent	1	22	20	43
Very Good	10	-	-	10
Good	7	133	183	323
Adequate	17	-	-	17
Acceptable	4	206	81	291
Failed	11	136	106	253
Total	50	497	390	937
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In the Philippines, ADR have come about to address the perennial problem of court delays. The use of ADR methods can be traced as far back as the barangay and other forms of village governments before the Spaniards came in 1521. In the early days, the *datus* used to settle disputes of their constituents, and their decisions were invariably accepted as having authority and finality.

Considered an equally important ADR system nowadays in the local level is the *KatarungangPambarangay* or Barangay Justice System. It was institutionalized by Presidential Decree No. 1508 (Establishing a System of Amicably Settling Disputes at the Barangay Level) on 11 June 1978 by President Ferdinand Marcos. The Barangay Justice System is an extra-governmental mechanism aimed at perpetuating the time-honored tradition of amicably settling interpersonal disputes in a community without recourse to the formal legal system of confrontational social behavior.

It is an alternative, community-based mechanism for dispute resolution of conflicts. The central feature of the system is the *LupongTagapamayapa*(Committee of Peace) and the barangay captain, who serves as its chairman. The Committee intervenes as a mediator at the barangay (village) level. The *Lupon* do not act as judges or adjudicators of disputes but as facilitators during the discussion of the disputing parties for possible solutions. Under Philippine law, local councils are recognized as having the most direct contact with communities and therefore being the most relevant authority to determine local development issues, and community-based conflict resolution effort that is highly supportive of the notions of social ordering and human development without judicial recourse. While the speedy administration of justice is the immediate concern of the *KatarungangPambarangay*, of equal importance is leadership building and community empowerment as the resultant effects of institutionalizing the system.

The *barangay* justice system was established primarily as a means of easing up the congestion of cases in the judicial courts and to address inequalities in access to justice, particularly experienced by marginalized communities. This could be accomplished through a proceeding before the *barangay* courts which, according to the one who conceived of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character. To make it truly effective, it should also be compulsory. Section 6 of Presidential Decree No. 1508 requires the parties to undergo a conciliation process before the *Lupon Chairman* or the *PangkatngTagapagkasundo* as a precondition to filing a complaint in court, subject to certain exceptions. The said section has been declared compulsory in nature. With this primary objective of the *barangay* justice system in mind, it would be better served if an out-of-court settlement of the case is reached voluntarily by the parties.

Presidential Decree No. 1508 is now incorporated in Republic Act No. 7160 (The Local Government Code), which took effect on 1 January 1992. The pertinent provisions of the Local Government Code making conciliation a precondition to the filing of complaints in court are reproduced below:

SEC. 412. *Conciliation.*- (a) *Pre-condition to filing of complaint in court.* – No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat secretary as attested to by the lupon or pangkat chairman or unless the settlement has been repudiated by the parties thereto.

(b) *Where parties may go directly to court.* – The parties may go directly to court in the following instances:

- (1) Where the accused is under detention;
- (2) Where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings;
- (3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support *pendente lite*; and
- (4) Where the action may otherwise be barred by the statute of limitations.

(c) *Conciliation among members of indigenous cultural communities.* – The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.

(d) Offenses where there is no private offended party;

(e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice. (G.R. No. 176405, Promulgated: August 20, 2008)

In the overall, the Barangay Justice System aims to complement government efforts to make justice accessible to every barangay resident. This means of dispute resolution intends to lessen the burden on the part of the courts to hear cases, which could be resolved within the level of the barangay. Not only are barangay officials elected leaders of the community, they are also mediators and conciliators through the Barangay Justice System.

On the other hand, there are also legislated laws on ADR such as Republic Act No. 876 otherwise known as the Arbitration Law that was enacted by the Philippine Congress on 19 July 1953 which authorized the making of arbitration and submission agreements and provided for the appointment of arbitrators and the procedure for the arbitration in civil controversies. Republic Act No. 9285 or the Alternative Dispute Resolution Act (ADR Law) of 2004 which was enacted by the Philippine Congress on 2 April 2004, declares that it is a policy of the State to encourage and actively promote the use of Alternative Dispute Resolution systems.

The commonly used ADR methods are **arbitration, mediation and conciliation**. These three are primarily resorted to by parties as an as an expedient and cost-effective ways of settling disputes.

A more popular form of alternative dispute resolution is mediation. The Philippine ADR Law mentions two kinds of mediation: **court-annexed mediation** and **court-referred mediation**.

Court-annexed mediation is any mediation process conducted under the auspices of the court, after such court has acquired jurisdiction of the dispute. It is mandatory, being part of pre-trial. On the other hand, court-referred mediation is mediation ordered by a court to be conducted in accordance with an agreement of the parties when an action is prematurely commenced in violation of such agreement.

When court-annexed mediation fails, the case is brought to the judge who then acts as a conciliator, a neutral evaluator and a mediator. The judge will try to mediate the case. If the judge's intervention as a mediator succeeds, the case is concluded with a judgment based on a compromise. If the dispute is still unresolved, then the case is referred to another judge for trial. Both parties must now be prepared for litigation.

The distinction between court-annexed mediation and court-referred mediation is important. The provisions of the Philippine ADR Law do not apply to court-annexed mediation. They cover voluntary mediation only, not court-annexed mediation or mandatory mediation. Under this law, there must be a

binding agreement of the parties to mediate their dispute. This usually results when the parties insert a clause in their contract requiring a prior resort to mediation before the dispute may be brought to arbitration or filed in court.

There are also Alternative Dispute Resolution Programs in the Executive Department. Executive Order 523 dated April 7, 2006 was instituted to promote the use of alternative modes of dispute resolution such as, but not limited to, mediation, conciliation and arbitration as part of their practice in resolving disputes filed before them. Over 270 ADR Specialists were successfully trained from over 150 agencies under the Office of the President. Internship programs, where trainees were made to mediate live cases, resulted in the following success rates from the following agencies: 96% in the DTI, 100% in the NLRC, and 94% in POEA. This program also led to the record zero-backlog of trade-related cases at the DTI-NCR- the first time in 20 years. This program resulted to the installation of an ADR system in many agencies. All agencies under the Office of the President are mandated to develop, implement and institutionalize an Alternative Dispute Resolution (ADR) Program, and report its progress annually to the President.

Administrative intervention for dispute avoidance is also being implemented. The Department of Labor and Employment issued DOLE Circular No. 1 series of 2006 that established an administrative procedure for the voluntary settlement of labor disputes to promote industrial peace. Either or both the employer and the certified collective bargaining agent (or the representative of the employees where there is no certified bargaining agent) may voluntarily bring to the Office of the Secretary of Labor and Employment, through a REQUEST FOR INTERVENTION, any potential or ongoing dispute. The dispute may be: (a) a live and active dispute; (b) one that may lead to a strike or lockout or to massive labor unrest; and (c) one that is not the subject of any complaint or notice of strike or lockout at the time such a request is made. This recourse is separate from the established dispute resolution modes of mediation, conciliation and arbitration under the Labor Code, and is an alternative to other voluntary modes of dispute resolution such as the voluntary submission of a dispute to the Regional Director for mediation, to the National Conciliation and Mediation Board (NCMB) for preventive mediation, or to the intervention of a regional or local tripartite peace council for the same purpose.

A comprehensive program was likewise developed by the Office of the Ombudsman to institutionalize mediation that included training of over 110 mediators across the country and consultations for the drafting of operational guidelines for the new mediation unit.

Pursuant to P.D. No. 242 in relation to Sections 66-71, Chapter 14, Executive Order No. 292, the Solicitor General is authorized to encourage settlement to resolve disputes, and is accordingly vested with authority to settle the claims, disputes, and controversies between or among the departments, bureaus, offices and other agencies of the national government. The use of ADR provides a fair and expeditious settlement of disputes among the agencies of the National Government through a non-judicial process (Mediation, Arbitration, or Early Neutral Evaluation) which ensures harmonious and friendly relationships between or among the parties. However, disputes involving constitutional issues, public order, public policy, morals, principles of public exemplarity or other matters of public interest shall be resolved through adjudication. All others may be the subject of a compromise agreement secured through negotiation, mediation/ conciliation or other alternative mode of dispute resolution, except those that by law cannot be the subject of a compromise.

The Office of the Government Corporate Counsel (OGCC) is the principal and statutory law office of all government-owned or controlled corporations, their subsidiaries, corporate offspring, government-acquired asset corporations (corporate assets is better), government instrumentalities vested with corporate powers, or other government corporate entities. Pursuant to Presidential Decree 242 in relation to Book IV, Chapter 14 of Executive Order 292, the Administrative Code of 1987, and upon prior authority from the Secretary of Justice, the OGCC shall, in the public interest, encourage settlement through early neutral evaluation, mediation or arbitration to resolve disputes, and is accordingly vested with authority to settle claims, disputes, and controversies involving GOCCs the legal departments of which are under its control and supervision.

A milestone in the Philippines is the issuance of Executive Order No. 78 issued on July 4, 2012 mandating implementing agencies from the national governments to include the provision on the use of alternative dispute resolution (ADR) mechanisms in all contracts involving public-private partnerships, build-operate and transfer projects, joint venture agreements entered by the government, including those by local government with private entities. This creates an inviting climate for private investors by ensuring that the resolution of disputes arising out of a contract is less expensive, less tedious, less complex and time-consuming exercise especially for large-scale, capital-intensive infrastructure development contracts.

C. Way Forward

To move towards responsive governance, systems that promote objective decision-making, professionalism, transparency, and accountability continued to be instituted and mainstreamed. Thorough reforms in the budgeting process, in public procurement, and in the awarding of major contracts are needed to restore public confidence in government institutions and practices. In budget planning, a key reform is the adoption of zero-based budgeting (ZBB), under which budgets of government departments and agencies are comprehensively scrutinized and justified in complete detail, from a zero base, not just incrementally. Budget releases are being aligned with the number of active personnel and the actual progress of programs and projects to avoid such abuses as “conversion” and other kinds of fund diversion.

In public procurement, full use shall be made of electronic bidding and procurement to minimize discretion, achieve arm’s-length transparency, and attain cost-efficiency. Terms of reference shall be based on comprehensive technical specifications prior to bidding and contracting to facilitate close comparability across alternatives and to prevent arbitrary ex-post “variation orders”. Clear terms and transparent rules are vital to the success of big-ticket infrastructure projects such as the PPP. The publication and enforcement of blacklists of contractors and individuals suspected of rigging bids and showing substandard performance shall be undertaken to show the government’s determination to clean up procurement and bidding.

The completion of the implementation of the Rationalization Plan (RP), as mandated under EO 366, s. 2004, will be pursued to focus efforts on government’s vital/core functions and priority programs and projects, and channel resources to these core public services; and improve service delivery by cutting red tape through systems and organizational improvements, and elimination of redundancies and overlaps in functions and operations. In transforming the Executive Branch, government offices are duty-bound to complete a strategic review of their respective operations and organization and implement their RP upon approval of the Department of Budget and Management.

The rationalization of government functions, pay, and personnel covers the executive branch and, recently, the government corporate sector. The enactment of Republic Act No. 10149 on 6 June 2011 otherwise known as the Corporate Governance Act, extended the RP to government-owned and –controlled corporations (GOCCs) and government financial institutions (GFIs). Thus, Governance has the strongest impact on inclusiveness of growth across sectors and the process of inclusive growth with reforms in institutions marked by good governance.

The anticorruption drive has been strengthened with the revitalization of the Run-After-Tax- Evaders (RATE), Run-After-the- Smugglers (RATS), and Revenue Integrity Protection Service (RIPS) programs. Likewise, the Freedom of Information Act and the Whistleblowers' Act are both pending on second reading in the Senate of the Philippines.

The close collaboration, coordination, and information-exchange among various agencies have contributed to the strong build-up of cases against public officials and private persons involved in plunder, corruption, tax evasion, and other crimes involving the misappropriation of public resources. Strong cases, especially those involving well-known instances of plunder and grand corruption have been pursued uncompromisingly by the Office of the Ombudsman, the Department of Justice (DOJ), and the revenue agencies, showing neither fear nor favor and in line with true and complete justice for all.

On one hand, the Lupon Members as the administrators of justice and conflict resolution at the barangay-level are provided, through seminars and workshops on a continuing basis, with increased procedural and technical skills and knowledge in implementing the KatarungangPambarangay. The barangay justice system helps them better understand the importance of their role in community-building by maximizing the KatarungangPambarangay as a transformative tool in fostering peace, harmony a strong sense of civic duty among community members.

Moreover, the Philippines continues to make significant strides in development through better governance and partnerships with private business, civil society and the media in governance monitoring and feedback to make government more responsive to the needs of citizens.

The government's strong commitment to good governance has also resulted in increased investor confidence, which in turn could lead to more investments that would support higher growth. Our continuing challenge is to encourage more inclusive growth and the quality of governance emerges as having the strongest effect on the inclusiveness of growth.

D. REFERENCES

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