Speaker: **Professor Poncevic CEBALLOS, Ateneo Law School, Philippines**
Chair: **Professor Anselmo REYES, Faculty of Law, HKU**
Title: **Civil and Criminal Justice Reform in the Philippines**

Background:
The Philippines is a combination of civil and common law jurisdictions and the talk was intended to cover law reforms that have taken place over the past 5 years in the Philippines, where – as a result of a heavy docket of cases slowing down the process of justice – the Supreme Court intervened to change certain procedures.

Presentation:
There are 75 million citizens living in the crowded cities of the Philippines and, as a result, the courtrooms were frequently overcrowded with parties waiting to be heard. Of the often over 1000 cases on the dockets, courts heard only 30 to 60 cases per day: calling the cases alone can take over 1 hr 30 minutes, since each case required some form of scrutiny and action. This would leave only 2 hours for trying cases and hearing testimony, meaning that if ten cases were ready for trial, each witness would be granted no more than ten minutes to present part of their testimony.

As a result, such piecemeal trials took between three and five years to finish and had become the rule rather than the exception. Judges took little interest in ongoing cases due to the fact that after such a protracted trial s/he would have no choice but to decide the case based on a transcript through which there was little or no connection of the testimonies to the demeanour of the witnesses. Moreover, it was quite possible that another judge would decide the case in their stead. This situation led to a sentiment of hopelessness and concern throughout the country and led to few foreign businessmen making long-term investments in the country due to the lack of assurances concerning their potential investments.

The prolonged length of time that cases take is in large part due to the inability of courts to hear the accounts of multiple witnesses concurrently; if each of the 1000 cases relies on but two witnesses, this would mean 2000 witnesses would be waiting to be called into court, creating extremely lengthy queues outside the courtroom. This state of affairs is further hindered by the lack of adequately trained prosecutors; kin a large case, it is common to have only two prosecutors. The bar exam pass rate is approximately 20% and the Supreme Court has not been lenient in setting the pass mark, despite a shortage of public prosecutors.

The introduction of the Judicial Affidavit Rule (JAR) in 2012 aimed at changing this status quo; the JAR requires all parties to disclose evidence against each early in the proceedings, withholding no evidence that would later be relied upon in court. Parties submit these affidavits prior to pre-trial along with any documentary and object exhibits. The JAR directs parties to use judicial affidavits of witnesses in place of their direct testimonies; as a result, the time needed for cases has been significantly cut by two-thirds – the amount of time that is usually occupied by direct examination. The proposed rules of civil procedure have adopted this change.

Since its entry into effect in January 2013, judges have overwhelmingly approved of the rule (77% of those polled) and it has facilitated the trial without diminishing the value of testimonies. The JAR does not affect the rights of cross-examination nor does it deny opposing counsel from cross-examining witnesses on their affidavits and on exhibits before the court. Moreover, the JAR grants authority to the court to actively take part in examining the witnesses; whereas before, the judge

would sit back and wait for testimony, the judge may now rely on the affidavit as an instrument of the law and the court becomes a major player in the search for the truth.

JAR applies in all cases triable by the Metropolitan Trial Courts (MetCs), Municipal Trial Courts (MTCs) provided the accused opts for trial using judicial affidavits, and Regional Trial Courts (RTCs). MetCs are found in cities; MTCs are found in provinces; and RTCs are positioned above the jurisdiction of MetCs. The JAR applies, therefore, to civil, criminal and family law, with the exception of dissolution of marriages. Should a party fail to submit a judicial affidavit, they would be deemed to have waived their right to submission. Should there be a valid reason for default and where another opportunity would not unduly prejudice the opposing party, the defaulting party may pay a fine of between 1000 and 4000 pesos (at the court's discretion) and submit an affidavit.

Such lengthy trials also have a severely detrimental impact on the welfare of the accused. The ironic situation is that, despite the presumption of innocence until proven guilty, city jails - where accused parties are remanded in custody – are of a significantly poorer quality than penitentiaries – where convicted offenders are housed. The latter enjoy larger living spaces, hospitals, sports facilities, recreational outlets, and even craftwork facilities for earning income; the former house accused parties in extremely poorly ventilated and unsanitary conditions, where widespread cases of boils, asthma, tuberculosis, depression and psychotic behaviour are rife. This inhumane treatment impacts them irrespective of whether they are later acquitted or discharged and may scar them psychologically or result in medical conditions as a result.

The conditions under which remanded parties are kept has drawn concern from the ICRC that the Philippine government has violated internationally set standards of living in detention facilities as well as guarantees of due process. Although the Rules of Criminal Procedure require courts to fix a reasonable amount of bail for accused persons taking into consideration their financial abilities and flight risks, the *de facto* situation was that courts simply adopted the amounts of bail that the prosecutor recommended based on the Department of Justice (DOJ) bail bond guide. In practice, therefore, prior to reform only those able to afford bail – the wealthier accused parties – are able to avoid such interminable conditions.

The Supreme Court has also taken steps to ensure that accused individuals are not left languishing in remand for excessively prolonged periods of time. On March 18, 2014 it issued A.M. 12-11-2-SC, providing "Guidelines for Decongesting Holding Jails by Enforcing the Right of Accused Persons to Bail and to Speedy Trial." This Administrative Memorandum eases the bail requirements for the destitute by declaring that the DOJ Bail Bond Guide was no longer controlling and insisting that 'in no case shall the Court require excessive bail.' Furthermore, should the bail imposed still be subjectively excessive, the accused may seek a reduction by demonstrating their lack of sufficient funds or financial situation. Most significantly, perhaps, is the cap that the Memorandum imposes on temporary detention of the minimum period of imprisonment that a crime carries upon conviction. That is to say, if the minimum period of imprisonment a conviction carries is 2 years, this will be the uppermost limit that an accused party will be subject to remand in custody and the court will automatically order his release on his own recognisance or personal undertaking pending further hearings of the case.

The Supreme Court also laid down rules to enforce the rights of the accused parties to a speedy trial: the raffle of the cases should take place within 3 days of filing; the arraignment should take place within 10 days; the pre-trial conference should take place within a further 10 days; and the trial should commence within 30 days of the

pre-trial conference. The trial itself should be complete within 180 days, excluded situations falling under the category of justified postponement under the 1998 Speedy Trial Act. The accused shall be entitled to dismissal of the case on the grounds of denial to his right to a speedy trial upon non-observance of these time-limits. Where the postponements are justified due to the absence of essential witnesses the whereabouts of whom are unknown, the case is to be provisionally dismissed after 3 postponements. However, notice must be given to the complainant prior to the provisional dismissal of the case and the guidelines further provide that the one or two-year period allowed for reviving a provisionally dismissed criminal case shall be reckoned from the issuance of the order of dismissal. Should the case fail to be revived during the required period, the dismissal shall become permanent. In reality, however, this is not the way in which cases are dealt with. With the exception of cases involving tourists – which must be decided within 2 weeks – cases are frequently not dealt with within these parameters.

Interactive session:

Q: The slides refer to the minimum jail term of 2 years, 4 months and 1 day for theft of 6500 pesos. Is this a mandatory minimum sentence?
A: Yes, this is the term set out by the Penal Code. The Court does, however, have discretion under the Penal Code's provision of mitigating circumstance. Plea bargaining could *potentially* reduce such a sentence to a few months. There is, thus, a huge incentive to plea bargain.

Q: In criminal cases, must the defence give a full and frank disclosure in their affidavit? If so, would this not force the defence counsel to reveal their argument and defence prior to the prosecution giving their statement of facts and presenting its case?
A: The prosecution submits its affidavit and case first; the defence then has time to draft and submit its affidavits. However, there is no plea bargaining after the affidavits have been submitted, only beforehand.

Q: How has the JAR really helped the system in the Philippines? Should the affidavits be the actual testimony reduced to an affidavit? Has it helped to speed up the trials?
A: It has undoubtedly made it more difficult for firms: they must bring all witnesses to the office, draft the affidavits, sign them and submit all the documents at the same time. Prior to the JAR, this was done on a case-by-case basis.
With respect to the content of the affidavit, there should be no argument included; the affidavit should serve only to include the facts of the matter. Witnesses should then corroborate one another's stories. Many times the examination itself also takes a long time. Any objections to the affidavit as involving hearsay etcetera can be made in court. Moreover, if the facts are not included in the affidavit, they cannot be included in the trial (unless, by poor choice, during cross-examination that evidence is raised by the questioning party).

Q: What statistics have there been to support the success of these reforms?
A: It is speedier- judges have commented so. The time that is used now is done during cross-examination alone. Moreover, in pilot courts – where the new law is applied to test the water of its success – there have been positive responses.

Q: Which language do the affidavits have to be submitted in?
A: These can be written in dialect but must be translated into English as the language of the court at the expense of the individual submitting the affidavit. In criminal cases, however, the court interpreter will translate and the cost of this is borne by the court.

Q: If affidavits, as legal documents, must be submitted prior to the trial commencing, can an accused party change their plea mid-trial?
A: This has never been heard of in the Philippines. In theory, it is possible- however, the ramifications would be very severe: they could be charged with perjury and the barrister may also be disbarred. As a result, there is a huge disincentive for changing one's plea and the likelihood is that, even if the charged individual(s) know that the evidence is overwhelmingly stacked against them, they cannot plea bargain mid-trial, the ramifications are severe and there is no incentive for them to cut the trial short.

Chair: These reforms are rather tepid and they do not appear to be capable of changing the landscape significantly.
A: It is simply a matter of getting used to the situation. The affidavits show what the defendant wants them to say.

Q: Why truncate trials rather than not having one/three/five days in court back-to-back? Surely, a continuing mandatory trial would make more sense. Why not at least prioritise the cases according to severity i.e. mass murder, murder, serious bodily harm, etc.?
A: This would be unfair to all of the 1000 cases that needed to be heard. However, the Court can provisionally dismiss a case after 1 year and permanently dismiss it after 2 years.
Due, also, to budgetary issues, a lack of judges, etcetera, this is not feasible. Even the Ampatuan Massacre, which led to the creation of a stand-alone court tasked with dealing with that single case alone will take several years due to the number of witnesses, prosecutors, and so forth. Each witness or accused is entitled to their own lawyer, which then clogs up the system.

Q: Is there something wrong with the prosecutors in submitting too much interlocutory material? Is there a culture of bad ethics?
A: No- this is a reflection of a type of democracy, or interpretation thereof. Lawyers are entitled to submit all of these materials for each of their clients and so therefore they exercise this capacity to the full extent. This is simply the system at work.

The Chair closed the session