

[Working Paper Series: Judicial Independence and Democracy in Asia]

Land Reform, Judicial Independence and the Rule of Law : Whither Goes Mang Juan?

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1. Ruminations of Mang Juan

A local politician evicted Mang Juan¹ from his farmland. Mang Juan protested in court, to no avail. The case is now on appeal. Mang Juan now lives in a house by the river. Without his farm, he subsists on provisions from his children. Burdened by legal fees, he has lost the will to fight and has lost trust in the judicial system but feels too old to join the local communist command. He can migrate to Canada and join his daughter, but the prospects of cold winter nights daunt him. Mang Juan sips his coffee and thinks of the kind of future he will face without his land.

2. Why Judicial Independence Matters

The impartiality of the courts is personally important to Mang Juan and his subsistence is at stake. Politically, the lack of judicial independence erodes the trust and confidence of the public in the judicial system. This paper provides a background on the Philippine judicial system, explores aspects and challenges to judicial independence, and outlines recommendations to strengthen it.

3. Overview of the Judicial System and Judicial Independence

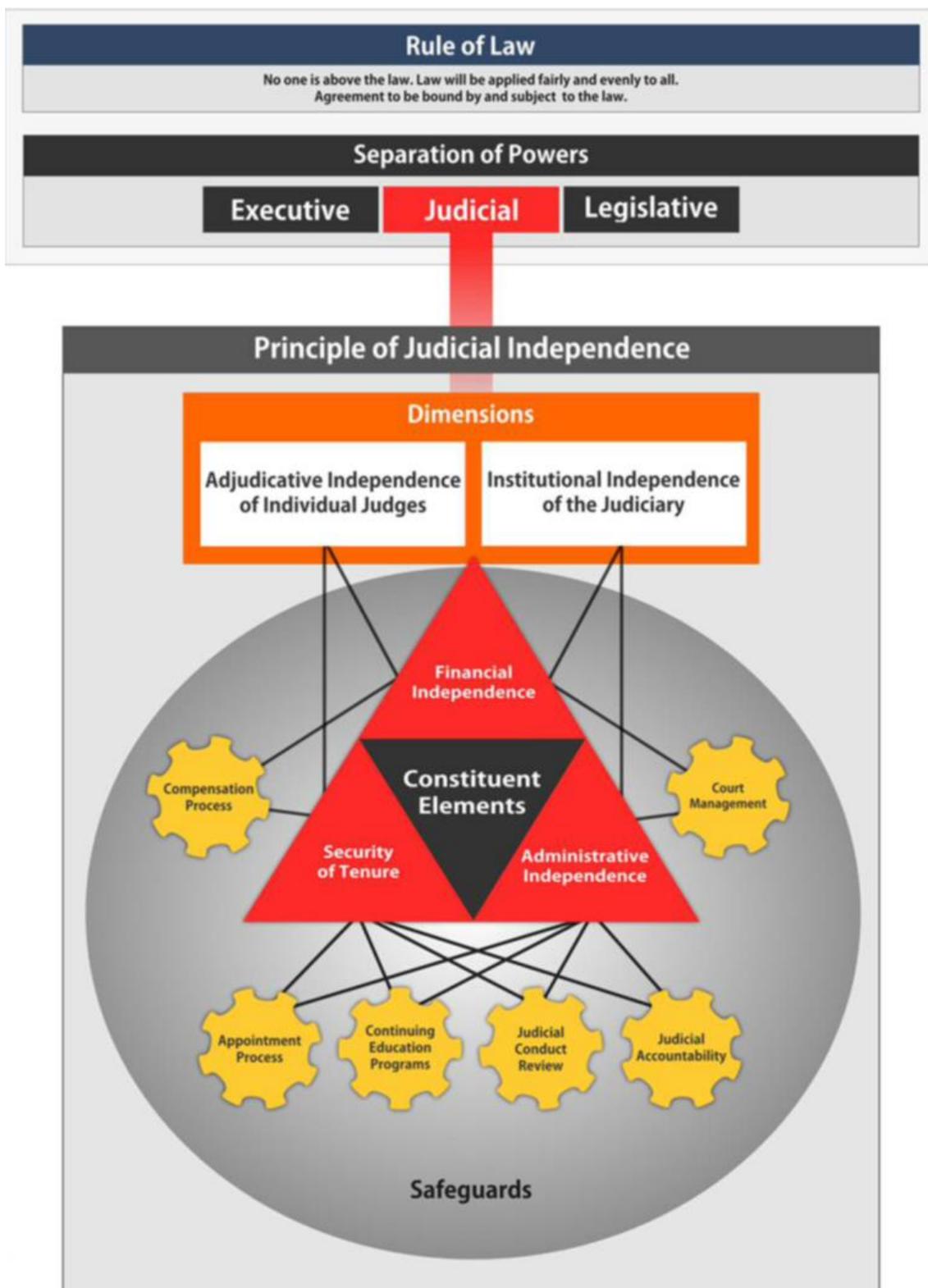
The Philippine judiciary is headed by the Chief Justice and the Supreme Court, with a system of appellate and trial courts. The country's system of government relies on the principle of checks and balances to prevent any one branch (Executive, Legislative, or Judicial) from acquiring too much power.

Although judicial independence is not an explicitly guaranteed right under the 1987 Philippine Constitution, it has been enshrined in case law and there are provisions in the law and in regulations that support it.

The Canadian Judicial Council breaks down judicial independence into **adjudicative independence** of the individual judge and the **institutional independence** of the judiciary. Figure 1 illustrates this and will also be used for the Philippine context.

¹ *Mang Juan* literally means Mr. John. In the Filipino context, Mang is generally a salutation of respect for an elderly man.

Figure 1: Diagram on Judicial Independence in Canada



Source: Canadian Judicial Council (2016)²

² "Why Is Judicial Independence Important to You?" Canadian Judicial Council (Ottawa, 2016). https://www.bccourts.ca/documents/Why_is_Judicial_Independence_Important_to_You.pdf.

4. An Overview of the Judiciary

The Judiciary is a three-tiered unitary system with one Supreme Court (SC) that acts as a constitutional court, with the power of judicial review. The SC is also the apex appellate court after cases have gone through the trial and appellate courts.

4.1. The Three-Tiered Hierarchy of the Courts

The first tier in the judicial system contains the municipal and regional trial courts³ which handle criminal and civil cases at the first instance. The second tier is comprised of the appellate courts: Court of Appeals (CA), Court of Tax Appeals (CTA), and Sandiganbayan (SB). Although technically the SB is a trial court, it is uniquely created for graft cases by the Constitution. The third tier is the SC with both adjudicative and managerial functions. It supervises all lower courts and has 15 magistrates headed by a Chief Justice. Aside from being an appellate court, the SC also exercises judicial review over actions of other branches of government.

Table 1: Profile of the Caseload of the Philippine Judiciary

	Total Caseload 2019	Total Disposals 2019	Total Pending Cases as of the end of 2019
Trial Courts	1,377,915	724,872	653,043
Court of Appeals	34,159	13,002	21,157
Supreme Court	14,764	5,792	8,972

Source: Data from the “Judiciary Annual Report 2019”

(Manila: Supreme Court of the Philippines Public Information Office, 2020).⁴

Figure 2 illustrates that cases from the Executive Branch with quasi-judicial functions, like the Land Registration Authority, etc., could end up in the judicial system, when appealed to the Court of Appeals. This is another important feature of judicial review.

4.2 The Judiciary Budget

The judiciary should receive 2-6% of the national budget in order to be effective and independent.⁵ Table 2 indicates that the judiciary’s budget is below this threshold.⁶ This is a challenge to the institution and its independence.

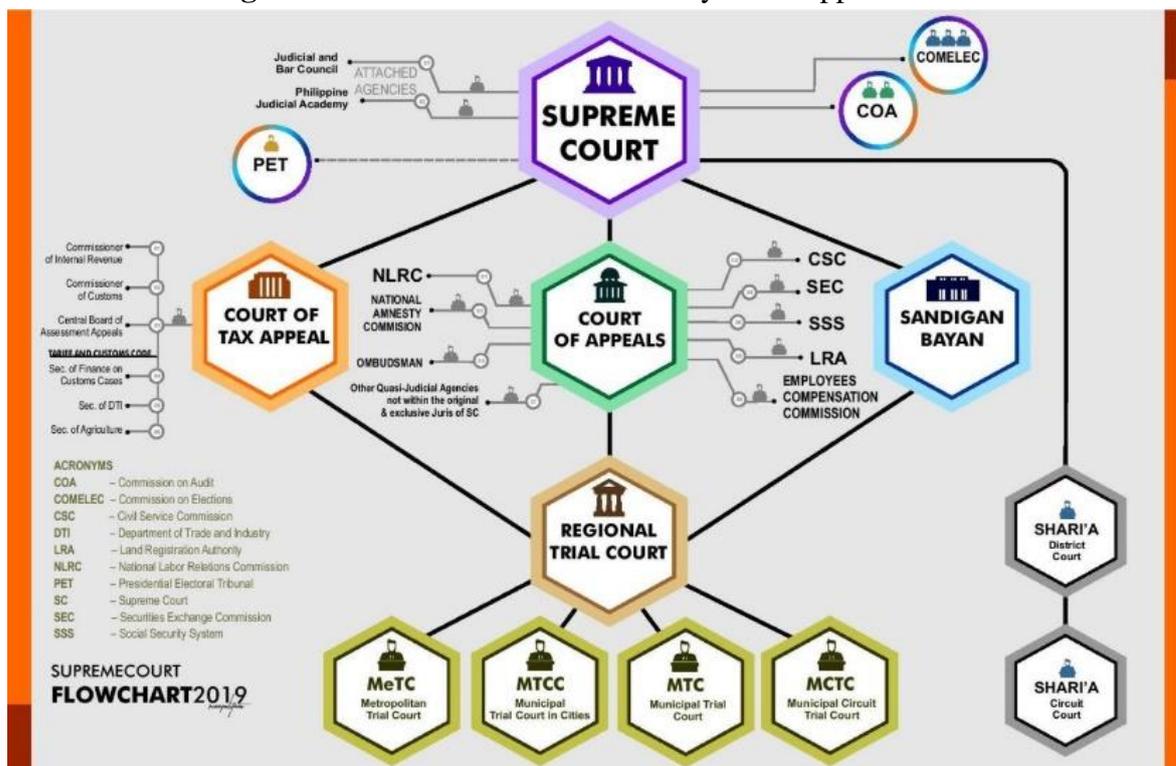
³ This also includes Sharia Courts in the southern Philippines which enforces the Code of Muslim Personal and Family Law.

⁴ Supreme Court of the Philippines Public Information Office, “Judiciary Annual Report 2019” (Manila, 2020).

⁵ Leandro Despouy, *Report of the Special Rapporteur on the Independence of Judges and Lawyers: addendum : Mission to the Democratic Republic of Congo*, U.N. Doc A/HRC/8/4/Add.2, para. 76 (April 11, 2008)

⁶ Republic of the Philippines Department of Budget and Management Budget Information and Training Service, “2019 National Budget: Building a Bright Future for the Philippines and Its People (Quick Glance)” (Manila, 2019), https://www.dbm.gov.ph/images/pdffiles/2019-People's-Budget-Quick-Glance_English-Version.pdf and Republic of the Philippines Department of Budget and Management Budget Information and Training Service, “2020 National Budget: Continuing the Journey to a More Peaceful and Progressive Philippines” (Manila, 2020), https://www.dbm.gov.ph/images/pdffiles/2020_Quick_Glance_FINAL_v1.pdf.

Figure 2: Flow Chart on the Hierarchy of Philippine Courts



Source: Council of ASEAN Chief Justices (2019)⁷

Table 2. Judiciary’s Share of the National Budget

Year	Budget for the Judiciary in PhP Billion	Budget of the National Government in PhP Billion	Judiciary’s Share of the National Budget
2019	39.5	3,662	1.07%
2020	41.2	4,100	1.00%

Source: Data from the Manila: Department of Budget and Management Budget Information and Training Service (2019 and 2020)⁸

5. Key Constitutional Aspects of Judicial Independence

The 1987 Constitution is replete with provisions supporting judicial independence at the institutional and adjudicative levels. It has created the Judicial and Bar Council (JBC) to depoliticize the appointment process for judges and justices. It has provided for the judiciary’s fiscal autonomy,⁹ security of tenure,¹⁰ and the *discipline of judges and justices*¹¹. Administrative

⁷ Council of ASEAN Chief Justices, “Supreme Court Flow Chart 2019,” accessed February 16, 2021. <https://cacj-ajp.org/web/philippines/flowchart>

⁸ Data from the “2019 National Budget: Building a Bright Future for the Philippines and Its People”, (Manila: Department of Budget and Management Budget Information and Training Service, 2019), https://www.dbm.gov.ph/images/pdf/files/2019-People's-Budget-Quick-Glance_English-Version.pdf and the “2020 National Budget: Continuing the Journey to a More Peaceful and Progressive Philippines”, (Manila: Department of Budget and Management Budget Information and Training Service, 2020), https://www.dbm.gov.ph/images/pdf/files/2020_Quick_Glance_FINAL_v1.pdf.

⁹ Const., (1987), art. VIII, §13 (Phil.).

supervision of the lower courts has also shifted from the Department of Justice to the SC since the 1973 Constitution. Today, the SC's Office of the Court Administrator (OCA) manages the country's 2,409 lower court judges.

Other features that promote judicial independence include continuing education through the Philippine Judicial Academy to better exercise their judicial discretion and apply legal precepts to pending cases and court administration through the Office of the Court Administrator which ensures timely delivery of equipment and salaries to lessen proclivity for private contributions that compromise impartiality.

6. Judicial Independence and Judicial Accountability: Challenges in Practice

Judicial independence heralds separation of powers and checks on abuses of the Executive and Legislative. But is the judiciary free to do anything? To what standards should they be held accountable?

Judicial independence should be balanced with judicial accountability, with both committing to “mechanisms that can ensure that judges, being free from any influence, will, in fact, be guided by appropriate considerations in reaching decisions” (Vanberg, 2008).

A module on judicial independence from the United Nations states that lack of accountability raises concerns in the separation of powers such that the judiciary's excesses in control over its own composition and in power in interpreting the law may reshape the legal framework with values and views the public nor other branches of government may not share. Securing a good balance between independence and accountability, it says, is not an easy task.¹²

6.1 The JBC and Judicial Independence

The 1987 Constitution created the JBC as a pathway to judicial independence as it limits the president to three candidates vetted by a panel. The Philippines' JBC model is hybrid where the composition is a mix of government and non-government officials while Canada's Independent Advisory Board is a pure model with exclusively private, non-governmental members.¹³ The performance of the 34-year-old JBC as an institution that promotes judicial independence may be evaluated through a poll of sitting judges being vetted by the JBC.

6.2 Administrative Supervision over the Lower Courts

The shift in the administrative supervision of the lower courts from the executive branch to the judiciary is a hallmark of judicial independence but it poses challenges due to the increasing size of the judicial workforce in the country's 17 administrative regions. This workforce requires timely payment of salaries and other support from the SC.

¹⁰ Const., (1987), art. XI, §2. (Phil.).

¹¹ Const., (1987), art. VIII, §11 (Phil.).

¹² United Nations Office on Drugs and Crime, “General issues. Judicial independence as a fundamental value of the rule of law and of constitutionalism.” (module series, United Nations Office on Drugs and Crime, February 2020). <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-14/key-issues/1--general-issues--judicial-independence-as-a-fundamental-value-of-the-rule-of-law-and-of-constitutionalism.html>.

¹³ Office of the Commissioner for Federal Judicial Affairs Canada, “Members of the Advisory Board,” last modified September 24, 2018, <https://www.fja-cmf.gc.ca/scc-csc/2021/biographies-eng.html>.

A judge with sufficient resources and adequate facilities and staff makes for a robust and independent judicial officer. As a practitioner, I saw this is not mostly the case. Some judges operate with faulty phones and air conditioning in cramped courtrooms doubling as storage. Adequate resources are also needed for videoconferencing, the new normal in court proceedings during the COVID pandemic.¹⁴

In 2001, the Asian Development Bank (ADB) approved a USD 1.2M technical assistance (TA) facility¹⁵ which addressed the over-centralization of the SC. It piloted the regional court administration offices (RCAO) in Central Visayas but the program was discontinued after Chief Justice Davide's retirement.

6.3 Security of Tenure

The performance of judges is important as it also secures the independence of the judiciary. Underperformance and ethical violations, however, are observed with the security of tenure as an excuse.

Monthly reports on case disposal and aging of cases are submitted by judges using the time standard found in the Constitution¹⁶ wherein a judge should issue a decision three months after parties have rested their cases. For criminal cases, six months continuous trial is the standard.¹⁷ There is, however, no time standard for the completion of the hearing of civil cases. There is no information on how these monthly reports impact the performance evaluation of the judges. A mechanism to process these reports and feed them back to the judges is therefore proposed.

Judges also have a multi-dimensional role as managers to their internal processes, staff, and other stakeholders. Metrics for the measurement of such a role should also be developed as another area for evaluation.

The other face of security of tenure is the discipline of judges which the Judicial Integrity Board (JIB) and the Corruption Prevention and Investigation Office (CPIO) handle. The JIB and the CPIO streamline the process, clarify jurisdiction, and make judicial accountability more balanced with judicial independence.

6.4 Security of Tenure of SC Justices

The discipline of Supreme Court justices is constitutionally limited to impeachment (Article 11). However, this principle was re-interpreted when then Chief Justice Maria Lourdes Sereno was ousted through a *quo warranto* petition.¹⁸ This drew very sharp reactions. The Integrated Bar issued a strong statement reiterating that only impeachment can remove an SC justice.

After an acrimonious series of hearings, the SC granted the *quo warranto* petition on a split 8-6 vote. It declared the sitting Chief Justice as ineligible to hold office and Sereno was ousted.

This saga is not complete without considering President Duterte's statement: "I am putting you on notice that I am now your enemy, and you have to be out of the Supreme Court."¹⁹ Many

¹⁴ The high levels of transmission of COVID 19 in the jails was a major issue in the early days of the pandemic and continues to be a concern to date.

¹⁵ Elsie Louise P. Araneta, "Technical Assistance Completion Report," Asian Development Bank, accessed February 26, 2021, <https://www.adb.org/sites/default/files/project-document/66531/34081-phi-tcr.pdf>.

¹⁶ Const., (1987), art. VIII, §15 (Phil.).

¹⁷ Revised Guidelines for Continuous Trial of Criminal Cases, A.M. 15-06-10-SC (effective September 1, 2017) (Phil.), <https://sc.judiciary.gov.ph/1480/>.

¹⁸ *Republic of the Philippines v. Maria Lourdes Sereno*, G.R. No. 237428, (2018) <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64003>. (Basically, a *quo warranto* petition seeks judicial recourse in order to determine whether a person is holding a public office lawfully or not.)

¹⁹ Ver Marcelo, "Duterte to Sereno: I am now your enemy," last modified April 13, 2018, <https://cnnphilippines.com/news/2018/04/09/president->

have perceived this case as being a case of executive overreach - a serious case where judicial independence is compromised. Others have argued that it was a true display of judicial independence.

The case has re-interpreted the Constitution to mean that *quo warranto* is also possible to effectively remove a sitting justice. The decision itself has weakened judicial independence to which measure is anchored to fealty to the constitution and the rule of law. At the end of the day, we should be free to debate this decision which now stands as case law.

6.5 The Issue of SALNs

The link between judicial independence and accountability is also illustrated by the disclosure to the public of the Statement of Assets, Liabilities and Net Worth (SALN) required under Republic Act 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).

RA 6713 is clear on the obligatory filing of the SALN and its availability for public scrutiny to promote transparency and accountability in public service. There are no conditionalities on disclosure. However, the SC, now invoking the balance between the independence of the judiciary and the public's right to know, ruled in a case that disclosure may only be allowed under such circumstances that "would not undermine the independence of the Judiciary" and "must not endanger, diminish or destroy the independence, and objectivity of the members of the Judiciary in the performance of their judicial functions, or expose them to revenge for adverse decisions, kidnapping, extortion, blackmail or other untoward incidents."²⁰

Freedom of information advocates have argued that this rule puts the magistrates in a class of their own. Other government officials are exposed to risks by SALN disclosures, but such SC standards do not apply to them even if the burden of public office is the same for all.

This author believes that the explicit right to information is uppermost in the hierarchy of constitutional values since the right to information is explicit in the Bill of Rights ²¹ while the right to judicial independence could only be inferred. The limitations on the access to judicial SALNs is a rule imposed by the Supreme Court and not by any law and provide a bad precedent for other public officials who may not also disclose their SALNs to "people with evil intentions."

6.6 Continuing Assessment of Judicial Compensation and the Local Government Code

One key legislation on payment of adequate judicial compensation was Republic Act 9227, entitled *An Act Granting Additional Compensation in the Form of Special Allowances for Justices, Judges and All Other Positions in the Judiciary with the Equivalent Rank of Justices of the Court of Appeals and Judges of the Regional Trial Court, and for other purposes* (October 23, 2003). This law doubles the salaries of the judges through increments of 25% over a period of four years but does not solve the long term need of the judges to have adequate compensation to maintain judicial independence, viewed along with a provision in the Local Government Code (LGC) which allows the support of the local government units (LGU) to local judges and prosecutors.

rodrigo-duterte-chief-justice-sereno.html.

²⁰ Re: Request for Copy of 2008 Statement of Assets, Liabilities and Net Worth (SALN) and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary, A.M. No. 09-8-6-SC (June 13, 2012) (Phil.) and Re: Request of Philippine Center for Investigative Journalism (PCIJ) for the 2008 Statement of Assets, Liabilities and Net Worth (SALN) and Personal Data Sheets of the Court of Appeals Justices, A.M. No. 09-8-07-CA (June 13, 2012), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/54826>.

²¹ Const., (1987), art. III, §7 (Phil.).

Anecdotal evidence shows that judges sometimes lobby for appointments in cities with generous allowances and provisions for judges and courtroom essentials. LGUs even sometimes provide travel expenses for judges' conventions. A review of judges' salaries and the repeal of the LGC section are possible remedies to the conflict of interest and impairment of judicial independence from this untenable situation.

Canada's independent commission (Judicial Compensation and Benefits Commission) which reviews the adequacy of judges' salaries and benefits every four years could be a good model.²² Such commission is a step towards the repeal of the pernicious provisions of the LGC. The SC could study how this commission could be set up for the long-term interest and independence of the judiciary.

6.7 Fiscal Autonomy and the Full Utilization of Funds

Fiscal autonomy is a pyrrhic concept if the funds do not efficiently flow to the courts serving the public which forms an opinion on the judiciary's capability to help them fairly and expeditiously.

In the 2019 Annual Audit Report of the Commission on Audit (COA), it was observed that the SC had low absorptive capacity to implement projects. For SC's infrastructure project, the COA noted PhP 3.902 billion unutilized funds.²³ Another PhP 3.515 billion was found to be idle for the SC's ICT program. This is concerning due to the increased need for video conferencing under the COVID-19 pandemic.

The independence of the judiciary is measured not by the fact that it has fiscal autonomy, but by the fact that this autonomy is efficiently and effectively utilized. The challenge for the SC is not so much fiscal autonomy, but the capacity to utilize funds to deliver goods and services to the people who need them the most.

7. Five Recommendations to Strengthen Judicial Independence and Accountability

This paper recommends that judicial and accountability may be strengthened by 1) evaluating the JBC's effectiveness in depoliticizing the appointments process; 2) strengthening the SC's management capacity and a revisit of the principles of decentralization; 3) improving the performance evaluation metrics of judges; 4) revisiting the issue of SALN disclosure to dispel that the SC is hiding information from the public; and 5) establishing a continuing review of judicial compensation to remove its current *ad hoc* nature.

Conclusion: The Epilogue of Mang Juan

Mang Juan decides to migrate to Canada where his daughter is gainfully employed as a nurse, and where he can look forward to taking care of his grandchild. He has discovered that winter nights are not as daunting as he thinks. As his plane departs, he thinks about the land which gave him life for many years. The judge has been partial to the politician – his trust in the judicial system has faltered. However, he still hopes that perhaps, on appeal, justice may be served. ■

²² Canada Judicial Compensation and Benefits Commission, "Home," last modified August 6, 2020, https://quadcom.gc.ca/pg_JcJc_QC_01-eng.php.

²³ Republic of the Philippines Commission on Audit, "2019 Annual Audit Report on the Supreme Court of the Philippines," (2020), accessed February 26, 2021, <https://www.coa.gov.ph/index.php/national-government-agencies/2019/category/8610-the-judiciary>.

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