



*Speech-Lecture for Justice Secretary Leila M. De Lima  
on the  
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Cebu City*

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**“Reforming and Strengthening the Prosecution Pillar”**

A blessed Sunday to all of you, my dear colleagues in the legal profession!

(Preliminary remarks...)

Five years ago, when I first became the chief steward of the powers and responsibilities of the Department of Justice as the then newly appointed Secretary of Justice, I must admit that I was left in awe of the scope, breadth and depth of the work that holding such position entailed. With its functions as the principal law agency of the Philippine Government, including the investigation, prosecution, corrections and rehabilitation of criminal offenders, not to mention the Department’s responsibilities pertaining to land registration, immigration, among many others, and my own as Attorney General – it would have been very easy to become overwhelmed.

Thankfully, my focus, even before I officially assumed office was guided by the very simple marching orders given by the President: to deliver true and complete Justice for all.

However, as simple as such marching orders may have been, as with many things in this profession of ours, it was something easier said than done.

As lawyers, we are all familiar with the horror stories about our justice system that, by now, form part of the mythos of the legal profession. They are experiences that we may have experienced personally, or have come to know or heard about vicariously – but they all tend to send the same message: navigating the laborious and tedious

intricacies of the legal system is difficult and treacherous enough for the experienced and those who have the resources, but is a task quite near impossible for those who are not and have not. A state of affairs that is further made even more reprehensible by the impression – baseless or not – that the system can be manipulated and Justice can be had for a price.

When I assumed office, I was aware of all of these things. (Remember I used to be a practitioner also)

I was also painfully aware that the Department itself suffered from the same apprehensions and negative impressions.

However, far from allowing such obstacles to undermine my resolve, I used them to illuminate the path the Department had to take henceforth.

Thus, we began with the first order of business - to regain the people's trust in the institutions of justice.

For a functional society and for an enabling environment, it is necessary that the Rule of Law should serve, and should be seen as serving, as the reference and anchor for relations and transactions. It cannot be dependent on personalities, connections, wealth or influence.

This we know to be true, and so hold to be true.

But the question was, how exactly do we go about restoring the people's faith in the justice system, specifically in the Department of Justice?

There were many avenues we had to approach the problem from, but the National Prosecution Service was one of the key ones. But that merely pinpoints the starting point, that is, the *where to start*, but not necessarily *how* to start.

To answer that question, I thought of - what people would look for in an institution they rely on when they seek Justice?

Two words come to mind: Competence and Integrity.

And those two points are where we began.

## **A. Building a reputation for integrity, probity and independence.**

Let us begin with building a reputation for integrity, probity and independence.

Just as honesty is said to be the best policy in terms of general human relations, so is integrity the best policy and, in fact, the *requirement* in public service, whether in the bar or in the bench. Building on a reputation for integrity and probity is the one surefire way of rekindling confidence in each other, for our institution, for our profession and, ultimately, for the entire Justice system.

This means that merit, accountability and transparency should be the hallmarks of our dealings.

### **1. Isolating the NPS from the Influence of Politicians and Partisan Politics**

One of the ways by which we sought to ensure the integrity of our prosecutors is to ensure that they are not entangled with local politics. We have endeavored to accomplish this by:

- a. Firstly, making it a policy not to consider endorsements from politicians when considering applicants for appointment or promotion in the NPS.
- b. Secondly, we prohibited our prosecution units, prosecutors and prosecution staff from receiving allowances and other forms of benefit from local government units to ensure they do not feel beholden to local politicians, which might affect their independence and impartiality in the discharge of their mandate.
- c. Thirdly, we are currently working to improve the selection process for the promotion and original appointments in the NPS, to depoliticize the process, eliminate the patronage system, emphasize merits of each applicant.

### **2. Enforcing Accountability**

Enforcing accountability is also a singular concern.

- a. Early on, we launched the **Code of Conduct** in the Prosecution Service, which echoed the tenets of the Codes of Professional Responsibility, among others, and emphasized the need to recall and place grave importance to ethical standards.
- b. Along with that, is the establishment of **Internal Affairs Units**, which sought to create uniform and transparent procedures for the consideration, investigation and resolution of administrative and disciplinary proceedings against members of the NPS and their prosecution staff.

So far, we cannot say that our efforts have been unmitigated successes. Far from it. I know so because, even after the launch of the Code and the establishment of the IAUs, there were still those who selfishly tarnished the institution in favor of their own interests.

- c. Some of them learned the hard way just how serious I am in ridding the NPS ranks of the rotten apples. Even though I knew it would expose the Department's dirty laundry to the public, so-to-speak, I have had no qualms about ordering entrapment operations against a few of our own because, quite frankly, nurturing a false sense of pride based on a thin *façade* of respectability is not nearly as important as *actually* having respectable people serving the public.
- d. We are, once again, in the process of re-evaluating our disciplinary processes, including the setup of our Internal Affairs Unit to improve its ability to hold our people accountable. Initially, most IAUs were helmed and composed of designated prosecutors, except for the IAU for the Office of the Prosecutor General, which was helmed by an Undersecretary of the Department.

The reevaluation is aimed at balancing the need to protect our people from harassments and baseless complaints, and the just as important need to ensure that legitimate complaints do not go unacted upon.

After all, a credible and reliable prosecution service that is capable of upholding the rule of law and ensuring the fair and expeditious administration of justice is a cornerstone. There is the imperative for justice stakeholders to come together for the

different components to run in rhythm to deliver one, indivisible and complete justice be it criminal justice, social justice or economic justice. In other words, justice in all its forms.

## **B. Building a Reputation for Competence**

Now, we proceed to the other aspect of our efforts to improve the Prosecution Service and rekindle the trust and confidence of the public, that is, the building of our reputation for competence.

I have always said that the most important resource of the Department are its people. And what a scarce resource they tend to be.

As it stands, we only have a total of **2,303 prosecutor positions** in the NPS. That may look like a lot, but just imagine that this number is meant to serve the entire country with an estimated population of more than 100 million, in fifteen regions and hundreds of local prosecution units, handling thousands of pending cases and counting, which cases are of varying complexity in terms of the nature of the case, the number of parties and so forth.

That is if all 2,303 positions are filled.

However, as of last count, there are still 662 vacant prosecutor positions in the NPS. That accounts for 28.75% of available positions, which means we are currently operating at a mere 71% capacity. Although, recently, the Office of the President has released batches of appointments, we are still far from achieving full capacity, given that prosecutors will be retiring, or will be appointed to other positions in government, and those who are appointed will, of course, leave their current positions vacant.

That affects our capacity and our capabilities to serve the public.

### **1. Building our Capabilities from the Ground Up: Selection of Prosecutors**

Much as we want these positions filled as soon as possible we do not wish to forsake quality for the sake of haste. As stated, we are re-evaluating our selection and promotions process in order to be at least as effective as that employed in the selection for the members of the bench. After all, prosecutors are as much a necessary pillar of the

Criminal Justice System as judges. In fact, they might be considered as one of the first lines of defense against injustice, since no information is filed in court unless it has passed through prosecutors.

Hence, we want to be able to welcome bright lawyers into our ranks, who truly want to serve, without having the process politicized or otherwise compromised. We want merits of each applicant – both in terms of capability and personal integrity – to be the highest consideration. In fact, that is one of the ways in which we hope to build the capacity of the NPS as an institution, through the strengths of each of its member. Hence, the selection and promotions process is, again, important in these efforts.

## **2. Building the Capacity and Capabilities of our Prosecution Force**

Of course, beyond that, our priority, first and foremost, is to empower our existing Prosecution Force.

- a. Ideally, we would have wanted our prosecutors to be able to specialize. Our current undermanned Prosecution Service can ill afford it.

Hence, instead of specializing, our prosecutors have had to multi-task. Many of them, because of their proven abilities and integrity, are assigned to different task forces and special investigation teams. Although this is far from ideal, and they admittedly are being spread thin, the fact that these task forces and special investigation teams focus on particular cases somehow creates a support system for them and, to a certain degree, focuses their attention.

Among our **current task forces** are:

- i. Task Force on Intellectual Property Piracy
- ii. Task Force on Anti-Trafficking in Persons (TFATIP)
- iii. Task Force on Anti-Terrorism
- iv. Task Force on Anti-Smuggling (or RATS Cases)
- v. Task Force on Anti-Money Laundering
- vi. Task Force on Financial Fraud and Bangko Sentral ng Pilipinas
- vii. Task Force on Securities and Business Scam
- viii. Task Force on Bureau of Internal Revenue Cases (or RATES Cases)

- ix. Task Force on Anti-Illegal Drugs
- x. Task Force on the Security of Energy Facilities and Enforcement of Energy Laws
- xi. Task Force on Anti-Illegal Recruitment
- xii. Task Force on Anti-Carnapping
- xiii. Task Force on Anti-Kidnapping
- xiv. Task Force on Legacy Cases
- xv. Task Force "Titulong Malinis"
- xvi. Task Force on the Welfare of Children
- xvii. Task Force on DTI Cases/Concerns
- xviii. Task Force on Cybercrime

There is also the AO35 Technical Working Group, which focuses on extrajudicial and media killings, enforced disappearances, torture and other forms of violations of human rights.

- b. The strategic initiatives include the improvement of the operational efficiency of our prosecutors. The implementation of the **Strategic Performance Management System** for prosecutors is ongoing. Fitting performance indicators to measure prosecutor performance that will lead to acknowledging or rewarding those who perform and sanctions against those who don't are being formulated.
- c. We also plan to establish a **training center for prosecutors**, or what we are tentatively calling "the NPS Academy". The center will be charged with the formulation and implementation of a continuing program of prosecutorial education for prosecutors and prosecutorial staff. It shall provide and implement a curriculum to upgrade the legal knowledge, moral fitness, probity, efficiency and capability of prosecutors.

The center shall fulfill the core competency requirements for prosecutors, and shall, at the same time, provide the path to career enhancement to encourage new and seasoned lawyers to join the NPS.

All these shall be hosted in a centralized DOJ building that will also serve as a one-stop venue for justice-related services. As practitioners, you know the inconvenience and challenges of our offices that are all over the metropolis.

### 3. Institutional Changes

Building the competence of the NPS also require some institutional Changes.

- a. One of the principles I have introduced from the very beginning is the importance of re-evaluating and re-focusing **the role of prosecutors in the case build-up and evidence-gathering stage.**

With as many cases that remain pending before the courts, there are cases that do not even reach the trial stage or, even if they do, do not result in conviction. It either means that victims never even have their day in court, or they lose in court even as we waste taxpayers' money in unsuccessful attempts at prosecution.

It wouldn't be a problem, of course, if those who stood accused are freed because they are innocent. It becomes lamentable when they are set free because of a failure in the gathering of sufficient, admissible evidence, and their successful presentation in court.

From the very beginning, I have set out to address this by fostering a collaborative, active and pro-active relationship between investigators and prosecutors.

In certain high-profile cases, such as the Mamasapano Incident, the Zamboanga Siege, the Lahad Datu Stand Off, the Amalilio and Rasuman Fund Scams, the so-called "Sex-for-Flight Scam", and alleged Illegal Mining and Illegal Logging activities, we have constituted special joint NPS-NBI investigation teams composed of prosecutors and investigators, knowing that the expert eye and perspective of prosecutors will be key in guiding investigators in the case build-up stage.

Initially, we encountered resistance, especially from the old-schoolers who somehow believe that prosecutors are akin to judges, forgetting that prosecution of criminal offenses is an executive function and, hence, the failure to file cases in court is



as much a failure as losing those that actually end up filed in court.

Of course, while I wanted prosecutors to take an active role in the prosecution of cases from as early as the case build-up stage, I was, at the same time, very aware that we had to ensure that prosecutors who had a hand in the case build-up would take no part in conducting the preliminary investigation of the case, or in resolving any appeals that may be taken thereon, so as ensure the impartiality required of those who will undertake the same.

- b. The **Criminal Investigation** Bill, which we strongly advocate for and which is now ongoing public hearings, seeks to address the bottlenecks in the criminal justice process. Improving the preliminary investigation will result to institutional efficiency not only with the investigating agencies but with the courts as well.
  - i. The Criminal Investigation Bill seeks to more permanently institutionalize the role of prosecutors in the case build-up stage.
    - It will integrate the functions of the prosecution and the investigator in gathering evidence and building up cases which will have a higher likelihood of successful prosecution in court. This aligns with international best practice and corrects a historical quirk that has added not a few years to the resolution of criminal cases.
    - It will cut down the procedure and rationalize the process to two: First, the criminal investigation where the police and prosecutor will work closely together to gather evidence and build a case. The prosecutor will be tasked to determine whether or not the case shall be filed in court without need for an adversarial procedure. Second, the preliminary hearing, where the trial judge will evaluate complaint based on preponderance of evidence and determinewhether a full-blown criminal trial is warranted or not<sup>1</sup>.

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<sup>1</sup> Draft Senate Bill " An Act Institutionalizing a Criminal Investigation System, Repealing for the Purpose Republic Act No. 5180, Otherwise Known as "An Act Prescribing a Uniform

- ii. Note that the threshold in the preliminary investigation stage is sought to be elevated **from probable cause to preponderance of evidence.**

The DOJ is recommending to raise the evidentiary requirement in filing of cases in court from the current “probable cause” to “preponderance of evidence” in order to address the high rate of dismissal and rationalize the indiscriminate filing of criminal information that will result to more efficient court processes, reduce backlog and maximize the use of the government’s limited resources. Current statistics show that 61% of criminal information filed in court are dismissed<sup>2</sup>.

Many cases that are filed in court do not result in conviction because of the huge evidentiary gap between probable cause and proof beyond reasonable doubt. The change in the evidentiary threshold, in addition to the enhanced collaboration between prosecutors and investigators in the evidence-gathering case build-up stage, seeks to improve the chances for successful prosecution while ensuring that it is not achieved at the expense of those who were legitimately aggrieved.

- iii. Another reform initiated is the **police-prosecutor collaboration** that presages the fused criminal investigation and enforcement process discussed earlier. Last year, the prosecution service took police officers to a new frontier of policing the community.

Through a Memorandum of Agreement between the National Prosecution Service (NPS) and the Philippine National Police, police officers are now empowered to act as Police Prosecutor Assistants (PPA) to assist in the prosecution of any criminal case filed by the PNP. PPAs can prosecute, with the conformity and approval of the public prosecutor, criminal actions falling within the jurisdiction of the Municipal Trial Courts or Municipal Circuit Trial Courts. PPAs can also now

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System of Preliminary Investigation by Provincial and City Fiscals and their Assistant, and by State Attorneys or their Assistants”, and Other Related Laws and Issuances.

<sup>2</sup> 2014 PSD Statistical Report

actively participate in the prosecution of cases falling within the jurisdiction of the Regional Trial Court, where they will be designated<sup>3</sup>. This will at best address the manpower constraints of prosecutors in identified areas.

- c. Another institutional measure that the Department is currently pursuing is the **Integrity Management Program (IMP)**. The NPS stands to benefit from this program. The IMP involves identifying the risk areas involving critical processes in the NPS such as inquest, preliminary investigation and case management and develop strategies to minimize the risk of inefficiency, corruption and other factors that inhibit the performance of prosecutors.
- d. We are also currently addressing our backlog of cases, much of which were inherited from past administrations, through the **Zero-Backlog program** that covers the present leadership particularly aimed at resolving pending petitions for review filed prior to 2010 and subsequently thereafter. We are instituting disciplinary measures to those who fail to comply with the timelines provided in this Program. We need to tighten the reins for us to be able to move forward with speed so we can render true justice for our people.
- e. We also established close coordination among the NPS, the Bureau of Immigration, the National Bureau of Investigation and other concerned law enforcement agencies in ensuring that those who stand accused of offending our criminal laws do not evade justice.

Some members of the prosecution service might be tempted to think that one more fugitive from justice could mean one less case they have to actively prosecute. But, again, that is a failure in the discharge of our mandate that we cannot tolerate, especially since the NPS and the BI both belong to the same DOJ family. We have sought to establish communications and coordination mechanisms that would facilitate the exchange of real-time information that would ensure that we are fugitives do not easily slip through our fingers. (We have thought of ILBO as

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<sup>3</sup> Memorandum of Prosecutor General Claro A. Arellano and Prosecution Attorney Gail Stephanie C. Maderazo to Assistant Secretary Geronimo Sy dated 9 March 2015 on the Inputs on NPS Reforms for the Speech of the Honorable Secretary at the 15<sup>th</sup> National Convention of Lawyers of IBP in Cebu City

a necessary substitute for HDO/WLO, the issuance of which by the SOJ has been TRO'd by the SC.)

- f. However, I do believe that the best way we can prevent flight of fugitives and, in a more general sense, catch those who should be made to face charges in court is through **National Justice Information System (NJIS)**, the first phase of which seeks to integrate the various systems of law enforcement, prosecution and correction agencies, thus facilitating the sharing of real-time information across agencies, on which they could base their respective and collective actions.

#### **4. Holistic Approach to Improving the Criminal Justice System**

On the other hand, we need to look at the criminal justice system in its entirety. No single justice institution can work alone in achieving its goals for a coherent and effective administration of justice.

- a. It is for this purpose that the **Justice Sector Coordinating Council (JSCC)** was reactivated to comprehensively address the issues that we all confront today.

The Honorable Chief Justice Ma. Lourdes Sereno, Secretary of Interior and Local Government Mar Roxas and myself have seen the need to bond together to undertake the task of reforming the justice system through a concerted action that will strengthen not only the institutions that we lead, but the manner in which justice must be dispensed with. The thrust of the JSCC hinges on the coordination and cooperation among the law enforcement, prosecution and the courts. Cooperation from among its members is just as crucial as one dispenses of its individual functions.

Through the JSCC, we were able to identify joint actions such as the continuous trial, joint trainings for JSCC member institutions, single-marking system for evidence to be presented in court, automation of processes and procedures through the electronic notification, establishment of Justice Zones, synchronization of calendars to reduce court postponements and decongest jails through the timely release of those detained.

Just last week, our prosecutors deliberated on 138 templates of criminal information aimed at instituting a uniform template for

all of the 210 prosecution offices nationwide. This initiative aims to reduce the dismissal of criminal information filed in court.

- b. I'm sure you've heard about the work of the **Criminal Code Committee** that is mandated to bring together criminal justice stakeholders to review existing laws to ensure consistency and to craft a **new Criminal Code of the Philippines** that is updated, modern, simplified, responsive and truly Filipino, in order to improve the administration of justice in the country and enhance access to justice of the poor and other marginalized sectors.

The approach was to engage and tap experts and practitioners in the field – the operatives, the law enforcers, the prosecutors, the judges, the corrections officers, the civil society organizations, and business and media groups, but with an eye towards a lay approach to make the criminal code easy to understand and accessible. This is to instill inclusive justice.

Hence, on 06 August 2013, House Bill No. 2300, otherwise known as the Philippine Code of Crimes was filed by Congressman Niel C. Tupas, Jr. As the Committee progressed in drafting the Criminal Code, Book 1 and Book 2 were finally completed and integrated into one on 31 July 2014. This is endorsed to both Houses of Congress and the ball is on their faithful hands. We urge both Senate and House to support and pass this bill as testament to our commitment to improve our criminal justice system in the country.

- c. These shall all be aligned with a long overdue **Criminal Justice Research and Training Institution** that will be tasked to identify the current issues that need to be researched on – both under domestic and international law, and considering best practices, conduct researches and gather data on the identified subjects, engage with international partners and linkages to conduct research and further studies and issue policy papers on specific criminal justice matters, concerns and issues. Ultimately, the Criminal Justice Research and Training Institution is envisioned as the think-tank for justice sector agencies. It will serve as the centre for legislative measures, especially for those that deal with crime, to come up with a coherent approach on the further deliberation of the law and in the submission of policy papers in Congress.

Already, we have started partnership to undertake the Codification Project, that shall create a master list of laws, classify it by category, consolidate and harmonize statutes by category; and propose the codification of statutes by category or subject matter and/or the passage of repealing statutes. The Criminal Code Committee is likewise tasked to oversee this project as a consequence of its mandate.

## **Conclusion**

As you can probably tell, the task of Reforming and Strengthening the Prosecution Pillar does not only require a lot of time and effort, but also a re-evaluation of our long-held notions, not just on the role of the prosecutor, but also in what constitutes the best procedures to achieve Justice for All.

It is not only a time-consuming endeavor, it is, in fact, a never-ending endeavor. No system is ever perfect, not when criminal elements are forever finding ways to undermine, compromise or simply evade the system. And, so too, justice should serve the needs of the people; and for as long as those needs continue to evolve, so, too, should the Justice System continually improve if it is not to stagnate.

We will continue to work for to improve the delivery of justice.

To achieve this, we request your support and encouragement as we realize our joint tasks. Five years after, in my last year watching over the DOJ, I am humbled by the work that we have managed to get done and challenged of the still many tasks yet to be completed.

Yet, these challenges does not daunt me, nor should daunt anyone else.

In the words of Theodore Roosevelt, "Nothing in the world is worth having or worth doing unless it means effort, pain, difficulty... I have never in my life envied a human being who led an easy life. I have envied a great many people who led difficult lives and led them well."

And, if there is anything in this world that is worth having and worth doing, it is Justice.

Thank you for the opportunity to lay out the changes in the Department of Justice. I hope I have also helped you comply with at least an hour of your MCLE requirement.

*Mabuhay* and God bless us.