



**KEYNOTE SPEECH # 3**

**PUBLIC INTEREST LITIGATION IN THE PHILIPPINES:  
CHALLENGES, PROBLEMS, AND PROSPECTS<sup>1</sup>**

by

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**Introduction**

Lawyers perform a strategic role in shaping our national life. Rightly or wrongly, we are often perceived as leaders with the wisdom and capability not normally attributed to other professions.

Perhaps it is because of this perception and the preparation inherent in our craft that many lawyers occupy prominent positions in government politics, business, and many other fields of human endeavor. Lawyers play a significant role in political education and in promoting national as well as local issues that have a direct bearing on people's livelihood, rights, and welfare.

Conversely, it is also true that in the public mind we are oftentimes stereotyped as shrewd, self-seeking, ambitious, opportunists, and protectors and advocates of the *status quo*, who are generally wanting in commitment to social change.

Some of the criticisms and observations about lawyers are valid; most, of course, are not. It may be true that, by reason of their training, legal education and experience in law practice, lawyers are generally conservative and naturally inclined to defend the establishment. After all, the law, stripped of its usual rhetorical façade is merely the collective expression of the interests and a sophisticated mechanism of the dominant elite to perpetuate the existing system in any given society. It is also true that legal education in the Philippines and the educational system in general have been so structured and oriented to serve elite and foreign

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<sup>1</sup>Based on speeches delivered during the (1) 7<sup>th</sup> National Convention of the IBP, Davao City, Philippines, 21-25 April 1999 and (2) Conference on *Public Interest Litigation and Public Interest Law from Asian Experience* co-sponsored by the Dongfang Public Interest and Legal Aid Law Firm, the Asian Legal Resource Center, and the Chinese Bar Association. Beijing, China, 19-20 April 2006.



interests. Finally, it cannot be denied that quite a number in our profession, in opting to serve the interests of the elite, have identified and sometimes merged their interests with that of their clients and have completely abandoned their ethical values. They became conspirators in the plunder of our economy, the exploitation of our workers and peasants, and the repression of our people.

But the foregoing are the exceptions rather than the rule. Our historical experience has shown that lawyers, by nature, are sensitive to social and political conditions and especially to injustices and human rights violations. We generally respond to the challenge to contribute our skills in defending the poor and even serve and lead in the struggle for a just and humane society. At crucial junctures in our history, we produced passionately committed people's lawyers like Apolinario Mabini, Jose Abad Santos, Claro M. Recto, Jose W. Diokno, and Lorenzo M. Tanada.

The Marcos dictatorship saw the flowering of people's lawyering, with many young lawyers in all parts of the country taking the people's side versus military and political repression. These lawyers joined FLAG, MABINI, PLLP, BONIFACIO, COLUMN, MAKATAO, BICOLANDIA, SOMOROY, and other human rights lawyers' organizations. In the United States, the New York-based Filipino Lawyers' Committee for Human Rights similarly responded to the challenge by supporting the people's movement and by exposing and denouncing human rights violations and suppression of our freedoms. They have also led – at great personal risk and financial sacrifice – in handling public interest cases which exposed and challenged the validity of unjust, oppressive, undemocratic, and anti-people legislation and policies, and in utilizing whatever judicial remedies were available for upholding human rights and the rule of law.

In the Philippine context, lawyering for the poor means lawyering for the peasants, workers, urban poor, small fisherfolk, indigenous peoples, and migrant workers who comprise the overwhelming majority of our people.

The Philippine legal system serves the poor in two ways. The first is through traditional legal aid or free legal assistance to indigent litigants, a practice introduced by our Spanish and American colonizers along with their legal systems.

The second is through human rights lawyering or public interest law practice. Sometimes it is also called alternative law practice, to distinguish it from traditional law practice. The late Senator Jose W. Diokno called it developmental legal aid.

Whichever name is used, the fact remains that in addition to rendering competent and dedicated legal services, we are also committed to our clients' aspirations for social change.



## **Traditional Law Practice and Legal Aid**

There are about 50,000 Filipino lawyers, according to the Integrated Bar of the Philippines (IBP), the national bar association where membership, by law, is mandatory. This is not a bad number for a population of 85 million Filipinos.

As earlier stated, traditional legal aid or legal aid to indigent litigants is a feature of the legal system introduced by colonial powers. The Philippine Constitution defines the rights of poor litigants to adequate legal assistance in the following emphatic terms: “Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty” (Article III, Section 11).

This is a strong constitutional mandate both to the government and to the lawyers' organizations in the country. Pursuant to this mandate, the Department of Justice maintains a bureau called Public Attorneys' Office which renders free legal assistance in almost all courts in the country. Other government agencies like the Department of Labor and Employment and the Department of Agrarian Reform as well as local government units also have their own free legal assistance programs. Some public officials and politicians hire, either at their personal expense or at the expense of the government, private lawyers who extend free legal services to their constituents and political followers.

The private sector has similar responses. For example, the Roberto Concepcion Legal Aid Program of the IBP provides free legal aid in all its chapters. Credit must also be given to voluntary bar associations such as the Philippine Bar Association, Citizens Legal Aid Society of the Philippines, and some corporate law firms. The country's leading law schools maintain legal aid clinics which serve the dual purposes of giving apprenticeship and training programs for senior law students and legal aid for the poor. Trade unions and mass-based organizations of peasants and urban poor train their own paralegals to provide legal services that do not require admission to the bar as a requisite. You could even argue that all of us private practitioners maintain free legal assistance programs for our relatives, friends, and neighbors.

I think the recent trend in our legal system allowing *pro se* appearances and representation and assistance to litigants by non-lawyers in quasi-judicial bodies is another form of legal aid program for the poor.

Indeed, we can proudly say that in terms of human and material resources, the Philippine legal system is relatively coping with its legal duty to provide free legal assistance to poor Filipinos. This fulfills the social responsibility of the bar and the constitutional duty of the state to ensure that poor people's rights are protected in an orderly and impartial dispensation of justice.



I have no intention of belittling the importance of traditional legal aid. On the contrary, I believe that this type of legal aid must be encouraged by both the public and the private sectors. Surely, in a country like the Philippines where more than 70% of the population live below the poverty line, there is great need for a socialized or a purely welfare program of providing free legal services to the poor.

The challenge is to transform even partially and gradually traditional legal aid into public interest lawyering – something we have been trying to do with limited success. Welfare aid to the poor, including free legal services, may provide temporary relief to the beneficiaries. But without a complementary program to raise the client-beneficiaries' awareness of the social and economic inequities prevailing in the country, this kind of legal aid diminishes rather than helps the poor by perpetuating a system that breeds poverty and injustice.

### **Public Interest Law Practice As Distinguished from Traditional Legal Aid**

Perhaps the best way to define public interest law practice and to distinguish it from traditional legal aid is to state its client-beneficiaries, its mandate, the issues and causes involved, the tactics employed in handling cases, and the kind of commitment and discipline demanded of public interest or people's lawyers.

Philippine society is highly stratified, with a tiny elite monopolizing political power and economic resources. We have a long history of anti-colonial and neo-colonial struggles against foreign domination, particularly the United States, and the U.S.-controlled multinational corporations and multilateral institutions. Our economic, political, social and cultural life has been dominated by our elite and foreign masters. An overwhelming majority of our people remain poor and disenfranchised.

The people's lawyers emerged as a response to these social inequities, particularly human rights abuses, and to the aspirations of the poor for a just and humane society. The people's lawyers derive their mandate from the poor people's struggle for justice – not from the government, not from the law, and certainly not from selfish material agenda.

Our client-beneficiaries and the issues and causes we take up are the following:

1. The peasants in their struggle for genuine land reform and their legal battle against land-grabbing and eviction in the name of so-called development by land-grabbers masquerading as property developers;



2. The workers in their struggle for decent wages and working conditions and in their struggle to organize trade unions and associations that empower them and represent their genuine interests;
3. The urban poor and informal settlers, oftentimes disparagingly called “squatters,” in the defense of their right against summary eviction and for adequate relocation sites, housing, and livelihood;
4. The migrant workers in the defense of their human rights under national and international law in the host country and in their struggle against the apathy and callousness of their own government to their problems as migrant workers, and to the problems that beset their families in the homeland;
5. The small fisherfolk in their struggle to defend their fishing grounds against the intrusions of local and foreign fishing magnates;
6. The indigenous peoples in the defense of their ancestral domain against land-grabbers and local and foreign mining companies;
7. Political victims of violations of human, civil, and political rights such as extra-judicial killings, involuntary disappearances, torture, illegal arrests, and arbitrary detention committed by the state through its police, military, and paramilitary forces;
8. Women in their struggle for equal rights and against all forms of violence against their persons and discrimination;
9. The youth in their struggle for empowerment and meaningful participation in the movement for change; and
10. The public in general on legal issues like environmental protection and consumer rights.

Public interest law practice is also lawyering for the poor, just like traditional legal aid. The fundamental difference is that the people’s lawyers extend legal services to the poor not merely because the client cannot afford to pay legal fees, but because the clients’ poverty and the injustice committed against them result from a social system that needs to be changed.

Commitment to social change is therefore an essential component of their legal services. Unlike the typical *pro bono* lawyer, the people’s lawyers do not limit themselves to the generally accepted interpretation and use of the law to uphold and protect their clients’ interest. They know that in an elite-dominated society, the law is merely the expression of elite



interests. Instead, they take a critical view of the law and what the law should be from the perspective of the disenfranchised or marginalized client.

The people's lawyers give premium to social justice and meaningful reforms over and above their personal interests and material agenda.

Unlike the traditional practitioner who pleads the client's cause during adversarial proceedings with the cold neutrality of a skilled legal technician, the people's lawyers fight with passion and dedication to the legal as well as the social cause of the client, pleading such cause in and outside the courtroom or legal fora, in dialogues and negotiations, in networking and building alliances, in street rallies, in media, in legislative inquiries and hearings, and in symposia and conferences.

Allow me to share with you what I believe are some basic principles that guide the people's lawyers.

First: People's lawyers should involve themselves in causes, cases, and issues that fundamentally affect the lives of a large number of people, usually a sector of society or even the whole society itself.

Second: We must bear in mind that these issues arose from a conflict of rights or interests and from the exploitation and oppression of the numerous poor by the tiny privileged sector and/or government policies or programs.

Third: Unlike the traditional lawyer, the people's lawyers view the legal issue in the larger context of social problems.

Fourth: The people's lawyers initiate and assist in a process whereby the issue is utilized for organizing and raising the social awareness, unity, and militancy of the people and those who support their cause.

Fifth: The legal battle is not confined to the courtroom. People's lawyers employ creative forms of collective action, mobilizing and utilizing the people's strength, unity, and militancy, bringing the issues to the public, and rallying support for the clients' cause.

Finally, the people's lawyers interact with clients in a mutually beneficial way, such that they learn or deepen their commitment to the clients' struggle for the empowerment and betterment of their lives. The relationship is broadened from a mere professional one to a unity of understanding of the problems of society, the common goals for fundamental reforms, and the role of the people's struggles.



These principles may be illustrated in the following example.

We in the Public Interest Law Center are the lead lawyers for the 5,000 farm workers and employees of Hacienda Luisita, a 6,453-hectare sugarcane plantation in Tarlac province owned by the family of late President Corazon Cojuangco-Aquino. In 1988, Hacienda Luisita should have been covered by the government's agrarian reform program and subdivided and distributed to the actual tillers working on the land. But because of the clan's political clout, they continue to own and control the land. The so-called stock distribution option (SDO) of the government's agrarian reform program would have farm workers and employees believe they are co-owners of 33% of the capital stock. In reality, they remain daily wage workers, receiving starvation pay and without any real voice in management or share of profits or dividends. Worse, the Cojuango family converted a big portion of the land into commercial, industrial, and residential tracts and a leisure farm. These converted areas were sold and the family appropriated unto themselves the proceeds from the sales. Meantime, the area being worked on by the farm workers shrank, and their daily income likewise dropped.

In response, the employees and farm workers staged a strike that paralyzed the operations of the entire farm, including the sugar mill and the real estate business for one year. In November 2004, the Philippine army and police and Hacienda Luisita's private army retaliated, resulting in the massacre of seven strikers and the wounding of more than 40 others.

The struggle of the farm workers and employees to own the land continues, both at the grassroots level and in court and other legal fora. Because of the farm union's strength and militancy, its broad network of supporters locally and overseas, and the public sympathy generated for the strikers, the government of President Gloria Macapagal-Arroyo was pressured to revoke and cancel the stock distribution program. It then placed the hacienda under compulsory acquisition, a scheme that will enable farm workers and employees to own the land by paying the government in installments over several years. To be sure, the farm workers and employees' struggle to own the land is far from over. But their sacrifices, anguish, and initial success elicit important lessons, not only for the clients but also for the people's lawyers.

First, for a long time, the leaders of the workers' and employees' unions were subservient to management. They allowed management to influence the elections of union officers and to control the latter. A transformation came about when the rank-and-file members decided to elect officers who genuinely represent their interests;

Second, in conflicts pitting peasants/workers against landowners and capitalists, one cannot always rely on government to uphold the peasants' rights and the rule of law. This will happen only if the peasants and workers are sufficiently organized, strong, united, militant, and enjoy the support of a broad alliance of supporters;



Third, the legal rights of our poor clients cannot be adequately protected in an elite democracy. People's lawyers must think of creative ways to use and expand the limited legal and democratic space;

Fourth, both the people's lawyers and the clients recognize that legal issues have national and generational significance. The outcome of the case will leave an impact on the entire Philippine peasantry's struggle for land and life. The Hacienda Luisita farm workers and employees carry the heavy burden of defending and asserting not only their own rights, but also the rights of millions of other Filipino peasants; and

Fifth, the people's lawyers and clients must guard against state violence employed to protect the ruling class. Aside from the massacre of striking workers, the president of the employees' union was likewise killed, along with the president of the umbrella organization, two priests supportive of the strike, and a city councilor. Those implicated are forces identified with the police, the military and the death squad of the company management. Our response to those killings has been good documentation and solid gathering of evidence, filing of charges in the Commission on Human Rights, Office of the Ombudsman and United Nations Human Rights bodies, fact-finding missions, strong denunciations and protest activities, and appeals for support among local and international human rights organizations and personalities.

### **People's Lawyering and the Integrated Bar of the Philippines (IBP)**

Since its establishment, the IBP has been mandated by its charter to (1) elevate the standards of the legal profession, (2) improve the administration of justice, and (3) enable the bar to discharge its public responsibility more effectively.

Within the IBP, its traditional free legal aid program is commonly seen as adequate fulfillment of its social responsibility. As a result, the IBP has oftentimes been criticized as passive and indifferent to public interest issues and social problems. Some say that, by its very nature, the IBP is saddled with limitations that arise from its composition, leadership, and the dynamics of its relationship with the incumbent dispensation and the existing political and economic order. Worst, our detractors say that our programs and activities are ineffective, if not irrelevant, to our goals and especially to the challenges of our time.

But there have been numerous occasions when the IBP took up the challenge of going beyond traditional legal aid and into people's lawyering.

In 1991, for example, the IBP board of governors took an unequivocal position in contributing to the long and heroic struggle to dismantle the US bases in the Philippines. That



same year, our House of Delegates unanimously affirmed a resolution of the Board of Governors, which I sponsored as IBP governor, adopting Developmental Legal Aid as a program of the IBP under the National Legal Aid Committee which I was presiding then. The unanimous adoption of the program was made after a long workshop and detailed presentation of its merits. Despite limited resources, we have sustained this program, often in collaboration with the Public Interest Law Center where I am also involved. The IBP Committee on Human Rights and Due Process is now managing the program.

In 1994, at the instance of its national leadership, then headed by President Mervyn Encanto, the IBP took an unprecedented step in helping lead opposition to oil price increases by challenging its legality in the Supreme Court. Subsequently, the IBP Committee on Human Rights and Due Process and the National Committee on Legal Aid were asked by the national leadership to study the expanded value-added tax law as a public interest issue and present a position paper to the Board of Governors with the objective of either taking the issue again to the Supreme Court or advocating its repeal or amendment.

Indeed, in 1995, the IBP took a lead role in the celebrated case of Flor Contemplacion, a domestic helper in Singapore sentenced to death for a crime she did not commit. Then IBP President Jose Grapilon, Atty. Edre Olalia of the Public Interest Law Center, and I collaborated to save the victim of a frame-up. Because of neglect by the Philippine government, Flor Contemplacion's plight gained public attention only very late into the case. We agreed to represent her less than a week before the scheduled date of hanging. We were aware that the whole nation was following the case, and that our client's plight would project the consequence of government apathy to the deplorable conditions of millions of Filipino migrant workers around the world. We needed the active participation of militant organizations like Migrante and Bayan as well as of the media to expose the frame-up and manipulation of the Singaporean judicial system by the rich and powerful culprit, to project our strong newly discovered evidence, and to make it an international embarrassment for the Singaporean government to deny our petition for a new trial.

We were pained by our failure to save her life. The martyrdom of Flor Contemplacion is now part of the history of Filipino migrant workers' struggle for a better life. But we are consoled by the fact that, because of this case, the Philippine government has since shown a little more sensitivity to the problems of our so-called "Modern Heroes."

Unlike in traditional legal aid, our work as people's lawyers did not end upon termination of the case. We remain deeply committed to the legal defense, protection, and promotion of the human rights of millions of Filipino migrant workers. We believe their struggle is also our struggle, and the government should not only respond to the problems of migrant workers in the host countries, but also confront the root causes of such migration by providing adequate job opportunities in our own country.



Many other public interest issues have been taken up by IBP officers, committees, and members on the national and local levels pursuant to our mandate to discharge our responsibility to our people. While there is a lot more we can and need to do to elevate the standards of our profession and improve the administration of justice, it is the effective discharge of our public responsibility that will make the IBP truly relevant to our time and allow us all to be proud and be counted.

### **Problems and Prospects**

We cannot talk about public interest litigation without discussing the problems of those engaged in this endeavor. These problems are obvious and difficult, although not necessarily insurmountable.

In the Philippines, two major factors impede the development of public interest law practice as a truly viable alternative law practice. These are the problem of legitimacy and the problem of material base.

In 1991, I was honored to be elected to the national leadership of the IBP. One of the first projects I proposed was the adoption of a program called Developmental Legal Aid, which is another name for public interest law practice. As part of our research, the IBP conducted a survey among its members on whether public interest law practice could be considered as an accepted field of specialization among lawyers and, therefore, legitimate. To our great frustration, many considered it as unknown, not viable, a radical undertaking, a subversive field – and therefore those engaged in it were queer and subversives, too! The problem of legitimacy remains a big challenge. Our goal is to make public interest lawyering a strong option for law students and young lawyers.

Public interest law practice still lacks a strong and stable material base to support it. Many public interest law firms and practitioners rely on funding partners to support their practice. Others rely on other private sources or even on government programs. I am an advocate of self-reliance. By this I mean we have to develop our client base: the peasants, workers, urban poor, small fisherfolk, indigenous peoples and migrant workers as our material base. I do not see any reason why, in a highly stratified society controlled by a tiny elite constituting 3% of the population, the remaining 97% cannot serve as a reliable material base for public interest law practice. It is not the resources alone coming from our poor clients that matter; it is also their recognition of the value of our services and that they alone can make public interest law practice truly viable.



After long years of experience as a people's lawyer, I can honestly say it has been a treasured journey of self-fulfillment and rewarding achievement. I know it will be the same for all others who choose to tread this path. #

**Romeo T. Capulong** is the Philippines' leading human rights lawyer, having served as counsel and lead spokesperson in all principal human rights cases in the country for the past three decades. In 1989, he founded the country's first public interest law firm, the Public Interest Law Center (PILC), of which he is currently the Chairperson. In 2000, he led the Preparatory Committee for the formation of the International Association of People's Lawyers (IAPL), later on becoming its first Eminent Person.

Atty. Capulong was elected by the UN General Assembly in 2001 as *Ad Litem* Judge of the United Nations International Criminal Tribunal for the former Yugoslavia. He is currently the Chairperson of the largest voluntary national association of human rights lawyers in the Philippines, the National Union of Peoples' Lawyers (NUPL), founded in 2007. Supreme Court Chief Justice Reynato S. Puno had this to say about him: "Atty. Capulong is the most steadfast, the most impressive defender of human rights in the Philippines among the present crop of lawyers."