

# DIGITIZATION OF THE ADMINISTRATION OF JUSTICE

A Digital CALESA Report

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## ABSTRACT

This study/report focuses on formulating proposals for reforming laws and rules to facilitate the digitization of the administration of justice in the Philippines. It aims to unlock efficiencies, enhance transparency, and improve access to justice. The analysis primarily examines the rules and digital systems (both operational and planned) related to civil and criminal case resolution within the Philippine court system, encompassing both the legal (how procedural rules can accommodate digital modalities) and technological (procurement, project management, and deployment of hardware and software systems) aspects.

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## 1 INTRODUCTION

**OVERVIEW** This study is part of a larger project designed to formulate proposals for reforming laws and rules that will facilitate the digitization of the administration of justice in the Philippines. Digitization of the administration of justice can help unlock efficiencies - leading to transparency and greater access to justice. Beyond the logistics of design, procurement, and deployment, however the rollout of digitalized workflows can be fraught with challenges. Any successful digital system should fit the legal environment it seeks to enhance. Several countries have made the transition to digitizing large sections of workflows that are involved in the administration of justice (such as case filing and case management, up to the service and publication of court issuances and judgments). These may provide important lessons for the Philippines, to the extent that their requirements and experience converge with ours. Ultimately, we need to take into account the unique needs of the Philippine legal system in order to arrive at a customized solution.

**SCOPE** Our analysis is primarily concerned with the rules and digital systems (whether operational or planned) related to the resolution of cases within the court system, including civil and criminal cases. It does not involve administrative cases that are initiated outside of the judiciary, such as quasi judicial, licensing, price-setting cases. It also excludes legal education and the training of judges, even though these are within the remit of the judiciary. The workflow under consideration is contemplated to have two aspects:

1. **Legal** - The sections of the procedural rules that can accommodate digital modalities of the administration of justice;
2. **Technological** - The procurement, project management, and deployment of hardware and software systems through which legal procedures will be carried out.

The analysis will also not cover the temporary measures adopted by the Court during the COVID crisis. Although the pandemic was an important catalyst for the courts' digital transformation, the rules developed during this period have since been integrated into more recent rules.

## 2 PHILIPPINE JUSTICE SYSTEM

### 2.1 Historical Development

The Philippine justice system is a unique blend of legal traditions, reflecting the country's diverse cultural influences and historical evolution. It incorporates elements of customary practices, Roman civil law, Anglo-American common law, and Islamic law, creating a hybrid system that addresses a wide range of legal issues.

When the Philippines was part of Spain's colonial holdings: The laws of Spain were made applicable to the islands. Such laws included the *Fuero Juzgo*, *Fuero Real*, *Las Siete Partidas*, *Las Leyes de Toros*, *Nueva Recopilación de Las Leyes de Indias*. [1, 9.290.6, § 1.2(D)] Administering these laws was a system of superior courts (such as the *Audencia Territorial de Manila* and the *Audencia de lo Criminal de Cebu*), and inferior courts (Courts of First Instance and the justice of the peace courts). The *Audencia Real* was installed in Manila, serving as an appellate court and a check against the powers of the Governor General. [2, Chapter 1, p. 2-3]

After the Philippines was ceded to the United States of America through the Treaty of Paris - existing political laws, as well as Spanish laws not consistent with the U.S. law were abrogated. [1, § 1.2(D)] Under the American regime, Act No. 136 abolished the Spanish courts and put in its place a judicial system modelled after that of the U.S. [2, p. 3] Although the Philippine law continues to have elements of Spanish law, the American template established the structure of government and the operating principles of the judiciary today.

### 2.2 Sources of Law

The Constitution, ratified in 1987, is the fundamental and supreme law of the land. It defines and organizes the main branches of the State, and guarantees the rights of the people.

Statutes - Statutory law primarily contemplates legislation promulgated by the country's bicameral legislature. It can also include: Local ordinances passed by legislative bodies at the local government levels, regulating matters devolved to them through the Local Government Code; Treaties and conventions that the Philippines has acceded to, which have the same status as laws passed by the legislature; Rules passed by administrative and regulatory agencies pursuant to their delegated rulemaking powers, have the force and effect of laws; Court rules, in matters of pleading and practice; Decisions of the Supreme

Court, particularly those that interpret or apply the law establish binding precedent and form part of the law of the land.

### 2.3 Hierarchy of Courts

The Philippine Judiciary consists of a hierarchy of courts. The Supreme Court, created under the 1987 Constitution sits on top of this structure. Below the Supreme Court are the various courts as organized by the Judicial Reorganization Act: 1. The Intermediate Appellate Court (later renamed the Court of Appeals); 2. The Regional Trial Courts; 3. Metropolitan and Municipal Trial Courts.

**FIRST-LEVEL COURTS** The first level in the hierarchy of courts are:[3, p.25]

1. The Metropolitan Trial Courts - trial courts in legally defined metropolitan areas (such as Metro Manila and Cebu)
2. Municipal Trial Courts - trial courts in municipalities (usually is rural areas)
3. Municipal Circuit Trial Courts - trial courts for some some cities and municipalities organized in a circuit.
4. *Shari'a* Circuit Courts - established in Islamic regions and provinces to rule on cases under the Code of Muslim Personal Laws (the decisions of which may be appealed to the Shari'a District Court)

**REGIONAL TRIAL COURTS** Thirteen Regional Trial Courts are a layer above the first level courts, each established to have jurisdiction over large geographic areas. Each RTC is composed of several branches. RTC's serve as trial courts for certain cases within their original jurisdiction. It can also serve as appellate courts for cases resolved by the first level courts.[3, p.25]

**COURT OF APPEALS** The Court of Appeals acts through twenty-three divisions of three members. The Court of Appeals is assigned tasked to review cases elevated from decisions of the 1. regional trial courts; 2. quasi-judicial agencies (National Labor Relations Commission, Civil Service Commission) Generally, the Court of Appeals, as an appellate court, can decide based on records. In certain instances (such as for special writs like Amparo or Kalikasan), it can hold evidentiary hearings.[3, p.25]

**SUPREME COURT** Under the 1987 Constitution, judicial power is vested in the Supreme Court and in such other courts as may be established by law (Art. VIII, Sec. 1) The Supreme Court is the highest

court of the land - it is composed of the Chief Justice and fourteen Associate Justices. The Court may decide cases *en banc*, or in three divisions each composed of five justices.

Note that these divisions are not separate courts, with a hierarchy of appeal to the Court *en banc*. Each division is equal in terms of power and scope as to the other divisions and the Court *en banc* itself. However, only the Court *en banc* can reverse a doctrine or principle of law laid down by the Court *en banc* or within a division.[3, 19]

No further appeal can be availed from a decision of the Supreme Court - it is thus the final arbiter and the "court of last resort" in the country's judicial hierarchy. Although the Supreme Court is given original jurisdiction for certain forms of actions, in practice the Supreme Court requires that parties observe the principle of hierarchy of courts, which require parties to first resolve their cases through lower courts. [3, 26]

Other laws also provide for specialized courts: 1. The *Shari'a* Courts operating in the country's predominantly Muslim south; 2. The Court of Tax Appeals (which exercises appellate jurisdiction over decisions of the country's tax authority); 3. The Sandiganbayan, which specializes in graft and corruption cases and other cases against high public officials.[1, § 1.4 (A)]

## 2.4 Civil Procedure

Proceedings in civil actions are governed by the 1997 Rules of Procedure (as amended) as supplemented by subsequent issuances of the Supreme Court.

**HOW INITIATED** Civil cases are initiated with the filing of a complaint with the appropriate court, and the exchange of further pleadings (i.e. answer, and reply with the corresponding counterclaims and cross-claims. Defendants are notified by summons through a serving officer, or through some alternative form of process service. The defendant responds with an Answer. The parties are allowed to exchange other operative pleadings (such as Reply and Rejoinder), that can contain their respective counterclaims and cross-claims.[4, Rule 13]

**SUMMONS** A Defendant in a civil case is notified of the Complaint through formal summons that is served in person by a court officer. If personal service is not feasible, then the court may opt for substituted service (i.e. leaving the summons with a responsible person at the

defendant's residence or workplace), or service by publication (i.e. in a newspaper of general circulation).[4, Rule 14]

**PRETRIAL MATTERS** After the initial and responsive pleadings are filed, the court holds a pre-trial/preliminary conference and issues an order referring the parties to mandatory court-approved mediation.[5] If the parties are not able to reach settlement during the mandatory mediation, then the case proceeds to the pre-trial proper, where the parties are required to define the issues, enumerate their evidence, and further explore the possibility of amicable settlement.[4, Rule 18] During the Pre-trial period the parties may ask for leave of court to avail of discovery procedures - such as depositions, interrogatories, and requests for documents.[4, Rules 23-28]

**TRIAL** During the trial phase, the parties present their evidence, examine witnesses, and put forward their arguments in order to substantiate their claims and defenses. Under the revised guidelines, the court is required to adopt a system of continuous trial for civil cases: The parties are given a fixed period to present their cases, minimizing intervals between presentation of evidence as well as postponements.[4, Rule 30]

**JUDGMENT** Article VIII, Section 14 of the 1987 Philippine Constitution requires that all decisions rendered by the court should state the facts and law upon which they are based.[4, Rule 30] The Constitution provides a mandatory timeline for courts to make decisions or resolutions for cases before them:[?, Sec. 15.3]

1. Supreme Court - 24 months from date of submission
2. Lower collegiate courts (CA, and RTCs in their appellate capacity) - 12 months from date of submission
3. All other lower courts - 3 months

**APPEALS** Rules provide mechanisms to appeal the decision of one court, to higher courts in the hierarchy. The rules provide multiple levels of appellate review:[4]

- **Rule 40** – Appeal from Municipal Trial Courts (MTC, MeTC, MTCC, etc.) to the Regional Trial Courts (RTC) in civil cases;
- **Rule 41** – Appeal from the Regional Trial Courts (RTC) to the Court of Appeals (CA) or to the Supreme Court (SC) in civil cases;
- **Rule 42** – Petition for Review from the RTC to the Court of Appeals;

- **Rule 43** – Appeal from quasi-judicial agencies to the Court of Appeals;
- **Rule 45** – Appeal by Certiorari to the Supreme Court (Petition for Review on Certiorari).

To initiate an appeal, a party usually needs to file a Notice of Appeal. For some cases however, such as special proceedings (Settlement of Estate, Adoption, Habeas Corpus), or when there are multiple, or separate appeals - a record on appeal is required. A record on appeal can include a notice of appeal, as well as copies of the decision or order being appealed, minutes of the proceedings, and the evidence presented.<sup>[4]</sup> The filing of an appeal stays the enforcement of the lower court's judgment. Only once the judgment is final, and no further appeal is made (or is possible), will the prevailing party be entitled to its execution as a matter of right.<sup>[4, Rule 39]</sup>

The decision in appeals is usually based on the evidence and arguments present in the records of the lower court. Generally, parties are not allowed to raise new evidence or arguments for the first time on appeal. In certain cases, the appellate court can conduct hearings and receive evidence. Parties may be required to present oral arguments before the court.

## 2.5 Criminal Procedure

Criminal actions are a shared competence between the executive (through the Department of Justice's National Prosecution Service), and the judiciary (particularly those courts that can hear criminal cases).

Criminal proceedings in the Philippines have two distinguishable phases:

1. An initial stage under the Department of Justice (DOJ), through a preliminary investigation or inquest. For this stage, the DOJ, through the prosecutor has to determine whether formal charges (through a criminal information) should be filed in court.
2. The second stage under the judiciary, where the trial court must receive evidence, and conduct hearings and ultimately decide on the guilt of the accused.

**CASES FOR THE OMBUDSMAN** In certain cases, The Office of the Ombudsman and the Department of Justice share concurrent jurisdiction in investigating and prosecuting certain cases, particularly those



involving public employees and officials for offenses like graft, corruption, and abuse of authority. However, the Ombudsman has primary jurisdiction over cases that fall under the exclusive Sandiganbayan's exclusive jurisdiction.

**PRELIMINARY INVESTIGATION** Before the State can file a criminal case before the courts, a prosecutor must, through the conduct of a preliminary investigation or inquest, satisfy himself that there is a prima facie evidence with reasonable certainty of conviction. The quantum of evidence for preliminary investigation is met "when the prosecutor is convinced that the entirety of evidence presented by the parties is (a) admissible, (b) credible, and (c) capable of being preserved and presented to establish that all the elements of the crime or offense, as well as the identity of the person or persons responsible therefor".[6, Sec. 3, Sec. 5] A preliminary investigation is a summary proceeding to determine whether a person should be indicted in court after ascertaining, based on the evidence provided and after case-build up has been conducted.[6, Rule IV, Section 7] On the other hand, an informal and summary investigation, conducted by a prosecutor, or other officers allowed by the law, in cases involving persons subjected to a warrantless arrest.[6, Rule V, Section 12]

The conduct of preliminary investigation used to be a function shared by both the judiciary and the executive department. However, subsequent legislation removed courts from the conduct of preliminary investigation. The Supreme Court has long adopted a policy of non-interference in the public prosecutor's conduct of preliminary investigation. The only ground for the court to step in is grave abuse of discretion.[7, p. 3-7] Given that preliminary function is an executive function, and the Court's non-interference, the Court resolved to recognize the authority of the DOJ to promulgate its own rules on preliminary investigation. The Court also repealed provisions of the Rules on Criminal Procedure (specifically provisions in Rule 112) that are inconsistent with the DOJ's rules.[7, p. 7]

**INITIATION OF A CRIMINAL CASE** A criminal case is commenced either through a complaint or an information[8, Rule 110, Sec. 5]:

1. **Complaint** - A sworn written statement charging a person with an offence, subscribed to by the offended party, any peace officer or other public officer charged with the enforcement of the law violated.[8, Rule 110, Sec. 3]
2. **Information** - An accusation in writing charging a person with an offence subscribed to by the fiscal and filed with the court[8, Rule 110, Sec. 4]

**ARRAIGNMENT** The defendant in the criminal case must then be arraigned before the court where the complaint or information has been filed or assigned for trial[8, Rule 115, Sec. 1(a)]. Arraignment involves having the defendant physically appear before the court and to personally enter his plea to the accusations against him. Should the defendant refuse to plea, a plea of not guilty shall be entered for him.

**BAIL** As a general rule, before final conviction any defendant in a criminal action is entitled to release on bail as a matter of right. Bail refers to the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. The exception: For crimes punishable by *reclusion perpetua*, when evidence of guilt is strong.[8, Rule 114]

**TRIAL** After arraignment, assuming that accused enters a plea of not guilty, then the trial shall proceed on a continuous basis - i.e. on a weekly or short-term basis. The total trial period should not exceed 180 days from the first day of trial.[8, Rule 119, Sec. 2]

**JUDGMENT** Judgment in a criminal case is carried out through a written decision, prepared and signed by the judge. Its contents should include: the facts and law that form the basis of the decision.[8, Rule 120, Sec. 1] If the judgment is one for conviction, it shall include: 1. The legal qualification of the offense as constituted by the acts of the accused, including aggravating and mitigating circumstances; 2. The degree of the accused's participation (e.g. as principal, accomplice, or accessory) 3. The penalty to be imposed; 4. Civil liability or damages.[8, Rule 120, Sec. 2]

**APPEALS** After a decision, either party may appeal the court's judgment. However, no appeal can be made if the same would constitute putting the defendant in double jeopardy.[8, Rule 121, Sec. 2]

## 2.6 Alternative Dispute Resolution

**BARANGAY MEDIATION** Under the Local Government Code, individual parties who reside in the same city or municipality may initiate (or may be required to submit to) conciliation proceedings of the Katarungang Pambarangay (or community justice) for the amicable settlement of all their disputes. As a general rule parties must first go through this process before they can resort to an action before the courts. [9, Sec. 408]

**ADR LAW** The Alternative Dispute Resolution (ADR) law recognizes and institutionalizes alternative dispute resolution in the Philippines. The law supports several modes of out-of-court dispute resolution, including but not limited to arbitration and mediation:[10, ]

The law applies to most forms of privately arranged ADR. It does not cover court-annexed mediation (which will be up to the Supreme Court to define), as well as the existing system for construction industry arbitrations. The ADR law also provides mechanisms for Philippine courts to confirm and enforce arbitral awards and mediated settlement agreements.[10, Section 17]

**COURT REFERRED MEDIATION** Once a case has been initiated and responsive pleadings have been filed, the case proceeds to pre-trial. The stage provides the parties the opportunity to simplify the issues of the dispute, to handle some evidentiary matters (e.g. stipulations and pre-marking), and explore the possibility of amicable settlement. During the pre-trial stage, the case may be referred to two modes of ADR under the auspices of the Court: Court Annexed Mediation or Judicial Dispute Resolution.[4, Sec. 18]

1. **Court Annexed Mediation**After the pre-trial, the court shall refer the parties to mandatory Court Annexed Mediation at the appropriate Philippine Mediation Center Unit. Parties may select a mutually-acceptable mediator among the PMCU's roster of accredited mediators. Should the parties be unable to select a mediator, then the PMCU can assign a mediator for their case.[5, Chapter 2 (A), Sec. 1-4]
2. **Judicial Dispute Resolution**If the parties fail to settle during mediation, and the presiding judge is convinced that settlement is still possible, then he may refer the case to a specially-trained judge for Judicial Dispute Resolution. Parties shall appear before the JDR judge, who may act as "mediator, conciliator, and/or neutral evaluator to actively assist and facilitate negotiations among the parties"[5, Chapter 2(C), Sec. 3 and 5]

**MEDIATION IN CRIMINAL CASES** The provisions of the ADR Law do not cover criminal liability. While ADR is not typically used for the criminal aspects of a case (e.g., determining guilt or innocence), it can be used to resolve the civil liabilities arising from the crime, such as compensation for damages.[10, Sec. 6(g)]For criminal cases initially filed as a complaint before the prosecutor, complaints for certain offenses (simple theft, qualified theft, estafa, criminal negligence resulting in damage to property, and violations of the Bouncing Checks Law, when the amount involved does not exceed P200,000) shall be

immediately forwarded for mediation.[11, Rule IV.A, in relation to Sec. 3]Before respondents submit a counter-affidavit (and therefore before the issues are joined and before the prosecutor is fully cognizant of the case), the parties can submit to voluntary mediation by writing and signing a Agreement to Mediate.[11, Rule IV.B]

## 2.7 Appearance of Lawyers

### 2.7.1 *Generally Required*

As a general rule, a lawyer makes a formal appearance before the court to represent the client and conduct litigation on his behalf. The rules allow a party to conduct the litigation personally. In such capacity of self-representation before the court, the party may conduct all matters related to the case, from commencement to termination.[4, Rule 138, Section 4]However, once a party makes the choice to represent himself, the party cannot be allowed to switch midway through the proceedings. (Santos vs. Judge Lacurom, A.M. No. RTJ-04-1823, August 28, 2006).

### 2.7.2 *When Lawyers Excluded*

**KATARUNGANG PAMBARANGAY** The law expressly prohibits lawyers from participating in the conciliation proceedings. Parties must appear in person and without the assistance of counsel or representative. In the case of parties who are minors or incompetents, they may be assisted by their next of kin, who must not be lawyers.[9, Sec. 4r15]The exclusion of lawyers is based on the goals and nature of the proceedings: The process is informal and conciliatory. Parties are thus encouraged to communicate and negotiate directly, without recourse to technicalities of procedure.

**SMALL CLAIMS CASES** In small claims cases, parties are required to appear personally, while lawyers are expressly prohibited from appearing on behalf of parties.[12, Sec. 18 and 19] The rule on small claims apply to proceedings before Metropolitan and Municipal Trial Courts where the actions are purely civil in nature and the claim of relief prayed for is solely for payment or reimbursement of a sum of money.[12, Sec, 5]

### 3 LEGAL ENVIRONMENT FOR DIGITIZATION

#### 3.1 Digital Presence and Remote Work

##### 3.1.1 *E-Commerce Act*

**RECOGNITION OF ELECTRONIC DOCUMENTS** Based on the UNCITRAL Model Law, the E-Commerce Act provides legal framework for the recognition of electronic documents, electronic signatures, and electronic transactions.[13] Thus, where the law imposes requirements for the formation of contracts, such requirements may be complied with through electronic data messages or electronic documents. Consequently, no contract shall be denied validity or enforceability on the sole ground that it is in the form of an electronic data message or electronic document.[13, Chapter III, Section 16] If a rule of evidence requires a document, that requirement can be satisfied by an electronic document, which is considered as functionally equivalent to a written document under existing laws. This does not necessarily make electronic documents or electronic data messages more admissible (or gives them more evidentiary weight).[13, Sec. 7] In any legal proceeding, electronic data messages and electronic documents will not be denied admissibility solely on the basis of their electronic form. As long as the electronic data message meets certain standards (e.g. maintaining its integrity and reliability, and capable of authentication), then it constitutes the "best evidence" of the agreement or transaction sought to be proven. As to evidential weight, this can be assessed by considering the following factors:[13, Sec. 12]

1. The reliability of the manner in which it was generated, stored, or communicated;
2. The reliability of the manner in which its originator was identified;
3. Other relevant factors.

**RECOGNITION OF ELECTRONIC SIGNATURES** An electronic signature is deemed to be equivalent to a conventional signature, provided that it can be proved to have originated from a procedure that is not alterable by the parties. This procedure should also feature:[13, Sec. 8]

1. A method for identifying the party being sought to be bound, and indicating that party's access to the electronic document
2. The method is reliable and appropriate for the purpose of the document

3. There is a necessary link between the provision of the electronic signature and the further processing of the transaction
4. There is a provision for parties to verify the electronic signature

In proceedings that involve an electronic signature, the court is required to presume that 1. the electronic signature is the signature of the person to whom it correlates; and that the electronic signature was affixed with the intention of signing and approving the electronic document. This presumption can be overturned when the party relying on the electronic signature is aware of defects or unreliability of the signature.[13, Sec. 9]

**ELECTRONIC SIGNATURES FOR GOVERNMENT TRANSACTIONS** Despite this, many government transactions (whether internal or public-facing) required physical (or so-called "wet" signature) - systems for accepting and authenticating electronic signature in government offices and courts in particular have not been in place. More recently, perhaps as a response to the pandemic, the COA issued a rule that recognizes digital signatures for documents submitted for government transactions. The Commission on Audit, (a constitutional body that can review the formal regularity of government transactions) now allow digitally signed documents in government transactions. The submission of electronic documents with electronic signatures (which include digital signatures) that comply with the COA Guidelines comply with the commissions requirement of a duly signed document, and an electronic signature shall be accepted as an equivalent to a signature on a written document.[14, IV. A. 1-2]

### **3.1.2 Internet Transactions Act**

The Internet Transactions Act applies consumer protection regime to online commerce. The law grants the Department of Trade and Industry regulatory jurisdiction over the use of internet for conducting e-commerce by e-marketplaces, online merchants, electronic retailers, digital platforms, and third party platforms. This regulatory authority, however, is ancillary to existing jurisdiction established over such entities and exercised by other agencies such as the Philippine's central bank (over payment systems along this value chain, for example).[15, Section 12] Although the law does not apply to government platforms (such as systems used by the judiciary), it can apply to private third parties used by the courts to facilitate online payments.

### **3.1.3 Cybercrime Prevention Act**

The Cybercrime Prevention Act (CPA) secures the online environment by providing penalties for crimes committed with or through

computers. Sec. 4(a) of the CPA punishes offenses against the confidentiality, availability of computer data and systems, such as illegal access, illegal interception, or interference with data and systems. As defined, this can cover many of the discrete activities involved in "hacking".[16, Sec. 4] Sec. 4(b) of the CPA also punishes several "Computer-related Offenses", which share elements against the security-related offenses, but are treated as special cases based on their intent or consequences: Computer-related forgery, fraud, or identity theft.[16, Sec. 4(b)] Sec. 4(c) covers a special class of offenses concerned with offensive or dangerous content carried through computer systems: cybersex, child pornography, unsolicited commercial communications ("spam"), libel.[16, Sec. 4(c)] All other crimes defined by the Revised Penal Code, or other special laws that are committed by, through the use of information and communications technologies, is deemed a cybercrime under the CPA.[16, Sec. 6]

The CPA likewise empowers the country's police organizations with tools for investigating and prosecuting cybercrimes, through warrants for real-time data collection (Sec 12), data preservation (Sec 13), service provided disclosure (Sec 14), as well as the search, seizure, and examination of computer data (Sec 15). The Philippines has also acceded to the Budapest Convention, which requires the Philippines to adhere to the following commitments: 1. Criminalization of a categories of online behavior; 2. Empowering Law Enforcement Authorities to investigate cybercrime and secure electronic evidence through new remedies (such as cyberwarrants); 3. International cooperation, through mutual legal assistance, extradition.

#### 3.1.4 *Other Relevant Laws*

**DATA PRIVACY ACT** Built along the lines of the GDPR - integrating its core concepts and obligations. Core principle is that data processing should be lawful, primarily through consent or some other justifying ground (such as public necessity, or the interest of the individual data subject in exigent circumstances) Other principles for processing - 1. Lawfulness primarily through consent, or some other grounds; 2. Exceptions for government functions would mean that most activities from Law Enforcement Agencies, Prosecutors, and the Courts would not be within the scope of the act.[17]

**TELECOMMUTING ACT** Passed even prior to the COVID-19 crisis, the Telecommuting Act legitimizes telecommuting or work-from-home employment arrangements, providing a legal framework for the recognition and protection of the rights of telecommuting workers.[18]



**PHILIPPINE ID SYSTEM ACT** The Philippine ID System Act mandates the creation of a centralized, nationwide identification system. Under this system, each registered individual will have a unique 12-digit identification number, as well as an identification card (through a physical card or digital ID) that can serve as a single proof of identity. A related system (PhilSys Check) allows for the online verification of the ID. Registration will require physical appearance, as well as on-site capture of biometric information.<sup>[19]</sup> The National ID system can provide a reliable system of identity that can be the basis of account creation, account management, and digital signatures - these in turn can allow for attribution and non-attribution in digital justice systems.

## 3.2 Digital Presence in Formal Legal Proceedings

### 3.2.1 *Prelitigation Proceedings*

**ALTERNATIVE DISPUTE RESOLUTION** The law itself does not provide a modality for appearance, as well as filings, and evaluation of evidence - which may allow online hearings (especially if both parties consent).

### 3.2.2 *Physical Court Proceedings*

In the Philippines, personal appearance before the court is generally required for litigants, subject to some exceptions. Appearance means the party (or their counsel) formally presenting themselves to the court in order to participate in the court proceeding. Depending on the circumstances of the case - parties can either appear voluntarily, or be compelled by the court.

Under the Rules of Court, , in-person hearings are required both for parties seeking relief from the court, or witnesses providing testimony or documents before the court.

**PRE-TRIAL APPEARANCE** After last responsive pleading has been served and filed, the Court (through its clerk) a notice of pre-trial with calendar dates for the pre-trial hearing, as well as Court-Annexed Mediation as well as Judicial Dispute Resolution (if necessary).<sup>[4, Rule 18, Sec. 3]</sup> The parties and their counsels are then required to appear in all of these settings, at the threat of sanctions. Non-appearance can be excused only for Acts of God, force majeure, or duly substantiated physical inability. A representative can appear for the party but must be fully authorized in writing to enter into an amicable settlement, to submit to amicable modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.<sup>[4, Rule 18, Sec. 4]</sup>



Plaintiff and counsel's failure to appear, without any valid excuse, in any of the pre-trial or mediation settings shall be ground for dismissal of their case. On the other hand, similar failure from defendant and counsel will allow the plaintiff to present his evidence ex-parte within ten calendar days from the termination of the pre-trial, and the court can render judgment based on that evidence.[4, Rule 18, Sec. 5]

**APPEARANCE DURING PRESENTATION OF EVIDENCE** Plaintiff (or counsel) is supposed to appear on the date scheduled for presentation of evidence for the complaint. Otherwise, the court can dismiss the complaint.[4, Rule 17, Sec. 3]

### 3.2.3 *Digital Presence in Formal Legal Proceedings*

**VIDEOCONFERENCING GUIDELINES** The Guidelines on the Conduct of Videoconferencing allows the conduct of videoconferencing as an alternative mode to in-court proceedings (which are still the primary means of hearing cases)[20, I.1.a] Resort to videoconferencing applies to all actions and proceedings, in whatever stage, if the court determines that the conduct of videoconferencing will be beneficial to the fair, speedy, and efficient administration of justice. Such circumstances could include:

1. Extraneous circumstances
  - a) Acts of God e.g. typhoons, floods, earthquakes, other unforeseen events
  - b) Human-induced events such as fires, strikes, lockdown
  - c) Circumstances that limit physical access to the courts
  - d) Other instances posing threats to the security and safety of the courts and its personnel
  - e) Public emergencies
2. Special Attributes of the litigant, witness, (or counsel)
  - a) Litigant or witness is "high-risk" (one who is charged with terrorism, or genocide), or is a high-value target (risk attendant to placement in jail, or transportation to the court - e.g. members of terrorist groups, drug and organized crime syndicates)
  - b) Unable to physically appear in court due to security risks, serious health concerns, disability, or victim of sexual offense or domestic violence
  - c) Overseas Filipino Worker, Filipino residing abroad or temporarily outside of the Philippines

- d) Litigant or witness is a non-resident foreign national who while in the Philippines was involved in any action pending before any court, and would like to appear and or testify remotely from overseas.
3. Other circumstances where the court deems that there are compelling reasons to justify resort to videoconferencing

**VERSUS THE RIGHT TO CONFRONT WITNESSES** The Constitution provides:[21, Article III, Sec. 14(2)]

"In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, \*\*to meet the witnesses face to face\*\*, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable."

This means that witnesses in a criminal case must provide testimony in the presence of the accused (who will also have the right and opportunity to cross-examine these witnesses). The requirement also allows the court to observe the demeanor of witnesses. The right may be waived, either expressly or impliedly - such as when the accused fails to be present during the trial. The right to confront witnesses "face to face" is arguably incompatible with "remote", technologically mediated appearance and testimony through videoconferencing. To balance the constitutional right of the accused, the videoconferencing rules allow the court to suspend the videoconference. Videoconferencing can only continue based on compelling state interest or public policy.[20, I.1.g]

**OTHER PROCEEDINGS, WHEN ALLOWED** The Rule on Expedited Procedures in First Level Courts ("Expedited Procedures") were promulgated to streamline the handling of certain cases. The rules are applicable to first-level courts (such as Metropolitan Trial Courts (MeTCs), Municipal Trial Courts in Cities (MTCCs)) in their handling of civil cases (such as forcible entry and unlawful detainer, claims equal to or below 2 million pesos), criminal cases (traffic law violations, bouncing checks laws), and summary procedure.[22, ] For these cases, videoconference hearings can be set by the judge (or upon motion of the parties) at any stage of the proceedings.[22, ]

**PRELIMINARY INVESTIGATION AND INQUEST** Usually, preliminary investigations and inquests are conducted in person, with parties submitting written/printed documents and appearing in person before the prosecutor. The 2024 rules on preliminary investigations and inquest proceedings however allow for remote/digital modes for their conduct. Preliminary investigations can be carried out through videoconferencing using the appropriate information and communications technology (ICT)[6, Rule IV, Sec. 7, par 2]. In the case preliminary investigations are conducted virtually, all subsequent documents can be filed electronically, by email. (NOTE: There seems to be no provision for the initial complaint being filed electronically)[6, Rule IV, Sec. 11] Likewise, the prosecutor conducting the inquest may opt to conduct the process electronically, with documents filed through email and the proceedings carried out via videoconferencing.[6, Rule V, Sec. 12, Sec. 14]

### 3.3 Digitization of Recording, Fact-Finding, Investigations

#### 3.3.1 *Notarization*

**GENERALLY** The notarization of documents can impact their validity as well as their evidentiary weight in cases. Notarization verifies that the individuals executing the document are who they claim to be, through personal appearance of the presentation of identification. By converting a private document into a public one, notarization grants the document the presumption of regularity, due execution, and authenticity. Notarized documents are "self authenticating", and are generally admissible in court without further proof of their authenticity. For some transactions, such as the sale of real estate, or business documents, such as articles of incorporation, must be notarized.

**INTERIM RULES** The rules governing notarial practice required personal appearance, physical documents, and physical means of authentication (wet signature and seal).[23, ]The COVID-19 pandemic, with its travel restrictions and social distancing requirements, made notarial acts under the 2004 Notarial Rules difficult (if not impossible). In order to cope with the situation, and primarily as a stopgap, the Supreme Court promulgated the 2020 Interim Rules on Remote Notarization (The Interim RON Rules), designed to supplement the 2004 rules, and was applicable to areas that were subject to travel restrictions.[24, ] The Interim RON Rules do not cover the notarization of electronic documents, or electronic means of authentication. Instead, the rule is concerned with facilitating the verification, through videoconferencing, of paper documents executed by parties. After parties execute the document, they are to put it in a sealed envelope

(with their initials), then deliver the same to the notary public either personally or through a courier service. Included in the documents sent are: 1. Competent evidence of identity of the parties; 2. A video of the parties executing the document, contained in a portable physical media such as a USB stick or compact disk Upon receiving the parcel, the notary should conduct a videoconference with the parties to conduct the following: 1. Confirmation of the parties' identities and location (through GPS, or landmarks) ;2. Opening of the sealed envelope in full view of the parties; 3. Verify that the parties voluntarily executed the document, and the witnesses were present; 4. Authenticate the signature, through a comparison of the signature in the document and a new signature, affixed by the parties on a blank paper during the videoconference.[24, ]

**RULES ON ELECTRONIC NOTARIZATION** The Supreme Court recently passed the rules that would allow electronic documents to be notarized through electronic means. These new rules further supplement the 2004 Rules (which would remain in effect for paper-based notarization) The new rule allows the courts to commission Electronic Notaries Public, who can perform electronic notarization in person or remotely.[25, text]

### 3.3.2 *Search, Seizure, Custody of Electronic Evidence in Criminal Cases*

**RULE ON CYBERCRIME WARRANTS** The Rule on Cybercrime Warrants makes available to Law Enforcement Agencies (LEAs) a range of tools to enable the disclosure of various types of computer data.

**WARRANT TO DISCLOSE COMPUTER DATA** Under the rule, a Warrant to Disclose Computer Data - LEA can apply, and Court can issue this written order, authorizing the former to require any person or service provider to disclose or submit computer data in his/her possession or control.[26, Rule 4.2]

**WARRANT TO INTERCEPT COMPUTER DATA** This allows the LEA to carry out any or all of the following activities: Listening to, recording, monitoring, surveillance of the content of communications. This includes procuring of the content of the computer data at the same time that the communication is occurring, either: 1. Directly, through access and use of a computer system; or 2. Indirectly, through the use of electronic eavesdropping or tapping devices.[26, Rule 5.2]

**WARRANT TO SEARCH SEIZE, AND EXAMINE COMPUTER DATA** A Warrant to Search, Seize, and Examine Computer Data (WSSECD)

is a court order authorizing LEAs to search the particular place for items to be seized and/or examined.[26, Rule 6.1]

**WARRANT TO EXAMINE COMPUTER DATA** This warrant authorizes the LEA who has lawfully acquired computer device or computer system (e.g. through a search warrant or a warrant of arrest, or valid warrant of arrest) to conduct forensic examination on the computer data contained therein.[26, Rule 6.9]

### 3.3.3 *Electronic Discovery*

The Philippines does not have rules that govern electronic discovery. However, electronic discovery can be inferred from existing rules. Based on the functional equivalence principle, it is possible to correlate the current rules of discovery, originally applicable to paper documents, with the discovery of electronic documents. Rule 2, Sec. 1 of the Rules on Electronic Evidence: “(w)henever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules.” Dizon and Disini argue that although the current rules on discovery are not located within the Rule of Evidence, its provisions speak of evidentiary matters and the application of this deemed inclusion can be readily inferred.

### 3.3.4 *Electronic Evidence*

Under the Rules on Electronic Evidence, electronic documents are treated as the functional equivalent of written documents, and any reference in the rules of evidence to “writing, document, record, instrument, memorandum or any other form of writing” applies to an electronic document.[27, Rule 3] An electronic document is admissible in evidence assuming: 1. It complies with the rules of admissibility in the Rules of Court; and 2. It is authenticated under the rules on electronic evidence [27, Rule 3]. Authentication can be carried out through:

1. Evidence that it had been digitally signed by the person purported to have signed the same;
2. Evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
3. Evidence showing its integrity and reliability to the satisfaction of the judge

### 3.4 Digitization of Filing and Service

#### 3.4.1 *Electronic Filing and Service*

**OPTIONAL ELECTRONIC FILING FOR EXPEDITED CASES** For cases that are covered by the Rule on Expedited Procedures, the rule allows, with the consent of the parties, electronic filing and service of documents, as well as notices from the court through email, SMS, or messaging services.[22, Rule IV, Sec. 11, and Rule III, Sec. 1]

**MANDATORY ELECTRONIC FILING OF COPIES** Starting September 1, 2024, first and second-level courts cannot act upon any pleading, motion, or other court document, unless there is a parallel filing, service, or offer through electronic transmittal (through email) of such document. However, the court may waive electronic transmittal for documents not easily digitized or confidential, upon motion. These transitional rules contemplate: 1. A primary manner of filing, service, or offer of the document (by personal filing/service, or by registered mail, accredited courier) 2. Within 24 hours of this primary mode, electronic submission through email.[28, Sec. 1] Service of orders, other outbound documents shall also be transmitted electronically (via email using the court's official email address). This secondary notice would indicate the primary method of service.[28, Sec. 2]

**MANDATORY ELECTRONIC FILING AS PRIMARY METHOD** Starting Dec. 1, 2024, electronic transmittal (via e-mail of PDF copies) will be the primary and mandatory method for filing and serving court documents within certified judicial regions. This applies to: 1. Outbound court documents (except for summons); 2. All filing and service of pleadings, motions, and other documents to the parties and their counsels on shall be through e-mail of PDF copies.[28, Sec. 3] However, Initiatory pleadings shall continue to be governed by the old rules (i.e. in person filing as primary method, with parallel filing of digital copy via email.) Note that the effectivity of this rule is limited to a certified judicial region. Certification of the judicial region is based on satisfaction of the following requirements:[28, Sec. 7]

1. Having the necessary infrastructure and equipment to receive electronic transmittals of pleadings or other court submissions;
2. Having sufficiently trained personnel for the reception of electronic transmittals, (such as email management, file management). Includes designation of staff primarily accountable;
3. Judges are able to make judicial issuances (decisions, orders), through the electronic case record.
4. Website is available for public access to the records

**MANDATORY ELECTRONIC FILING IN THE SUPREME COURT** Beginning October 1, 2025, lawyers are required to file pleadings and motions electronically through the Philippine Judiciary Platform. Lawyers will be issued accounts to this online filing portal upon request. Filings originating from a registered account are conclusively presumed to have been made by the person under whose name the account is registered (even if such person's signature does not appear in the filed document)[29, Sec. 1]

### 3.4.2 *Electronic Filing and Service*

**ELECTRONIC FILING FOR PRELIMINARY INVESTIGATIONS** For criminal proceedings under the prosecutor, the preliminary investigation is initiated by a written complaint. For virtual preliminary investigations (initiated upon order of the prosecutor), subsequent filings (counter-affidavit, reply affidavits) can be submitted as PDF documents via email.[6, Rule IV, Sec. 11]

## 3.5 *Laws Addressing the Digital Divide*

**DIGITAL WORKFORCE ACT** Through the law, the Philippine Government recognized the transformation of work through digital technologies. Through programs under the act, it aims to develop the competitiveness of the Filipino workforce in this new arrangement. To this end, the law establishes a government body to drive programs for the promotion, development, and competitiveness of the Philippine digital workforce.[30, ]

**ESTABLISHMENT OF THE DICT** The DICT law created the Department of Information and Communications Technology (DICT) as the primary government entity responsible for planning, developing, and promoting the national ICT development agenda. Its mandate includes: Ensuring universal access to quality, affordable, reliable, and secure ICT services; Promoting digital literacy, ICT expertise, and knowledge-building among citizens; Empowering disadvantaged segments of the population (e.g., elderly, PWDs, indigenous groups) through ICT.[31, ]

## REFERENCES

- [1] Myrna S. Feliciano. The Legal System of the Philippines. In Linda L. Schlueter, editor, *Modern Legal Systems Cyclopedia*, volume 9. Hein & Co.



- [2] Raul Pangalangan. The Philippine Judicial System. (5).
- [3] Dante Gatmaytan. *Legal Method Essentials 2.0*. University of the Philippines College of Law.
- [4] Supreme Court of the Philippines. 1997 Rules of Civil Procedure As Amended.
- [5] Supreme Court of the Philippines. 2020 Guidelines for the Conduct of Court-Annexed Mediation (CAM) and Judicial Resolution (JDR) in Civil Cases.
- [6] Department of Justice. 2024 DOJ-NPS Rules on Preliminary Investigations and Inquest Proceedings.
- [7] Supreme Court of the Philippines. Re: Draft Department of Justice - National Prosecution Service [DOJ-NPS] Rules on Preliminary Investigations and Inquest Proceedings.
- [8] Supreme Court of the Philippines. Revised Rules of Criminal Procedure.
- [9] Congress of the Republic of the Philippines. Local Government Code of 1991.
- [10] Congress of the Republic of the Philippines. Alternative Dispute Resolution Act of 2004.
- [11] Department of Justice. Rules on Mediation in the National Prosecution Service.
- [12] Supreme Court of the Philippines. Re: Rule of Procedure for Small Claims Cases.
- [13] Congress of the Republic of the Philippines. Electronic Commerce Act.
- [14] Commission on Audit. Guidelines on the use of Electronic Documents, Electronic Signatures, and Digital Signatures in Government Transactions.
- [15] Congress of the Republic of the Philippines. Internet Transactions Act of 2023.
- [16] Congress of the Republic of the Philippines. Cybercrime Prevention Act of 2012.
- [17] Congress of the Republic of the Philippines. Data Privacy Act.
- [18] Congress of the Republic of the Philippines. Telecommuting Act.



- [19] Congress of the Republic of the Philippines. Philippine Identification System Act.
- [20] Supreme Court of the Philippines. Re:Proposed Guidelines on the Conduct of Videoconferencing.
- [21] Philippines. 1987 Constitution.
- [22] Supreme Court of the Philippines. Rules on Expedited Procedures In The First Level Courts.
- [23] Supreme Court of the Philippines. Rules on Notarial Practice of 2004.
- [24] Supreme Court of the Philippines. 2020 Interim Rules on Remote Notarization of Paper Documents.
- [25] Supreme Court of the Philippines. Rule on Electronic Notarization.
- [26] Supreme Court of the Philippines. Rule on Cybercrime Warrants.
- [27] Supreme Court of the Philippines. Rules on Electronic Evidence.
- [28] Supreme Court of the Philippines. Re: Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Being Filed Before the Lower Courts Pursuant to the Efficient Use of Paper Rule/Moving Towards Digital Courts: Component One: Transition to Electronic Filing and Service of Pleadings, Motions and Other Documents as Well as Digital Service of All Orders in Civil Cases.
- [29] Supreme Court of the Philippines. Transition to Electronic Filing in the Supreme Court.
- [30] Congress of the Republic of the Philippines. Philippine Digital Workforce Competitiveness Act.
- [31] Congress of the Republic of the Philippines. Department of Information and Communications Technology Act of 2015.