

Judiciary independence compromised under GMA

By PURPLE S. ROMERO
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On the 100th anniversary of the Supreme Court, President Gloria Macapagal-Arroyo declared that redemption for the Philippines is well within its grasp because the highest court of the land is imbued with integrity.

"We proudly proclaim, as the Bible's reading said today, that the kingdom of heaven is at hand, that God rules the Philippines, because we have a centennial Supreme Court that enjoys the great respect of our people because of its integrity," she said in a speech she delivered before the jurists in June 2001, months after she replaced deposed President Joseph Estrada.

She went on to say that the judiciary is key in uplifting the moral standards of the government; hence the need to carefully select its members.

"Improving moral standards in government and society mainly involves the judiciary. This is because it is the judiciary which interprets what is right or wrong and what is lawful and what is not," she explained. "Thus, it is essential that the process of the selection of the members of judiciary be in itself a model of high standards."

Not a few would say, however, that the president failed to give justice to her own words, almost nine years into her term.

Control over JBC

Court observers said that Arroyo's appointments to the Supreme Court have been determined more by loyalty to the Palace rather than independence and integrity.

Take the case of Sandiganbayan Justice Gregory Ong. In 2007, *Newsbreak* reported that the Judicial and Bar Council (JBC), the body which vets nominees for the judiciary to the president, sent a curiously long list of eight contenders for the replacement of retired Justice Romeo Callejo. Ong was one of the nominees.

Sen. Alan Peter Cayetano, a former JBC member, told *abs-cbnnews.com/Newsbreak* that a shortlist for the SC usually contains three

names; five at most.

Ong's brother, Andrew, was a classmate of the President's brother, Diosdado "Buboy" Macapagal Jr., at the Asian Institute of Management.

Arroyo eventually appointed Ong, but the SC nullified his appointment because his birth certificate showed that he is not a natural-born Filipino. The 1987 Constitution requires members of the judiciary to be natural-born Filipino citizens.

Court observers said that this showed the leaks in the selection process of the nominees, and the vulnerability of the JBC to the influence of Malacañang.

The JBC is composed of eight members: the chief justice, a senator and a congressman, the justice secretary, an SC retired jurist and representatives from the private sector, academe and Integrated Bar of the Philippines.

The last four, who serve as regular members, are appointed by the president.

So far, President Arroyo has re-appointed three of them — retired SC Justice Regino Hermosissima, UST law dean Amado Dimayuga and IBP representative J. Conrado Castro.

She put Hermosissima, who was scheduled to retire last July 9, back to the JBC for the third time, making him the longest-serving JBC member.

This system of appointment, which is stipulated in the 1987 Constitution, has been recently criticized by civil society groups, however, because it allegedly encourages political loyalty.

Cayetano admitted that this perception has a leg to stand on. He said that the president could always tap some of his colleagues if she wants her pick to be included in the shortlist.

"Usually they don't do that to members of Congress," he told *abs-cbnnews.com/Newsbreak*.

Decisions that divide

A porous appointment process invites questions on the independence of the justices ap-

pointed, Vincent Lazatin, executive director of Transparency and Accountability Network (TAN) said. TAN is a convener in Supreme Court Appointments Watch, one of the SC watchdogs along with Bantay Korte Suprema which have been pushing for a more transparent process of choosing SC magistrates.

Pacifico Agabin, former dean of UP Law, holds a similar view. He said that while not all those who have been appointed by Arroyo have dubious credibility, a number have obviously voted in the favor of the president especially in cases crucial to her political survival.

"Some of the appointees toed the line for her," he said.

The split between SC jurists on their decisions on key cases purportedly showed the dent that politics made on the independence of the highest court of the land.

He cited the case *Neri v. Senate*, where the SC, by a vote of 9-6, ruled that former socio-economic planning Romulo Neri can invoke executive privilege in the Senate inquiry on the anomalous NBN-ZTE deal.

The decision kept Neri from answering questions which would show if the president pressured him to approve the aborted \$300 million deal.

Lazatin, on the other hand, cited the *Lambino v. Comelec* case. The SC, in a vote of 8-7, declared the petition of Sigaw ng Bayan to revise the Constitution through people's initiative as unconstitutional. People's initiative, according to Sec. 2, Article 17 of the 1987 charter is a mode to amend, not overhaul, the Constitution.

The SC was recently faced with another case involving charter change. Lawyers Oliver Lozano and Louis Biraogo asked the SC to nullify House Resolution 1109, which allows the House of Representatives to amend the charter as a constituent assembly (con-assy).

The SC dismissed the petition for being

premature as the lower house is yet to adopt procedures for convening the con-assy and has not in fact, proposed any amendments.

However, moves to amend the charter would inevitably be questioned at the SC again as HR 1109 was intentionally passed to force the high tribunal to determine the voting requirement for a con-assy.

The 1987 Constitution states that amendments to the charter could be introduced by three-fourths of all the members of Congress. However, it does not specify if the Senate and the lower house should vote jointly or separately.

This set off the alarm bells for the legal community and the public as well as Arroyo would have appointed 14 out of the 15 SC justices by the time she steps down in 2010.

Bigger budget

While Arroyo may have paralyzed the appointment process to the judiciary, it was under her term, however, when judges and justices were granted special allowances. Arroyo signed the Judicial Compensation Act of 2003, which provided judges and justices allowances equivalent to 100 percent of their salaries.

In May 2008, she also brought the three branches of the government together to form the Judicial Executive Legislative Advisory and Consultative Council (JELACC). The JELACC aimed to increase the budget of the judiciary.

The president has also stated in her budget speech for the years 2008 and 2009 that the judiciary is one of the top 10 government departments given with the larger slice of the budget pie. For this year, the SC came in at tenth with P12.8 billion, while it ranked ninth in 2008 with P10.1 billion.

"Of the P12.1 billion allotted to the Judiciary, P423 million will be spent for the maintenance of 334 Halls of Justice; P600 million to fund 533 new positions for new court salar; and P20 million for the creation of positions for the third division of the Court of Tax Appeals," she said.