

The Public Attorney's Office: Responding to the Call of Cross-Border Cooperation with *Pro Bono* Legal Services As Its Tool

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The vital importance of the rendition of free legal assistance as a human right goes beyond national boundaries and geographical borders. The Public Attorney's Office (PAO) has recognized this truism and has acted accordingly even during its infancy as to its establishment as the Philippine government's principal legal aid office. The PAO, formerly known as the Citizens Legal Assistance Office (CLAO),¹ was created in

¹ The Citizens Legal Assistance Office traces its roots to three offices: the Agricultural Tenancy Commission, the Tenancy Mediation Commission, and the Office of the Agrarian Counsel. The Agricultural Tenancy Commission was later renamed as the Tenancy Mediation Commission. With the passage on August 8, 1963 of Republic Act No. 3844, otherwise known as the "Agricultural Land Reform Code," the Tenancy Mediation Commission was further strengthened and renamed as the Office of the Agrarian Counsel. In 1972, this paved the way for the creation of the Citizen's Legal Assistance Office or CLAO, under P.D. No. 1 and Implementation Order No. 4. With the advent of the Administrative Code of 1987 (E.O. 292) on July 25, 1987, the Citizen's Legal Assistance Office was renamed the Public Attorney's Office or PAO.

1972. Two (2) years after its inception, the Public Attorney's Office started dispensing free legal assistance to indigent aliens. They are included in the roster of "Persons/Entities Qualified for Legal Assistance Pursuant to Memoranda of Agreement, Department of Justice directives and special laws," as stated in Section 5, Article II of the *PAO Operations Manual*. Such assistance stemmed from an Indorsement, dated March 25, 1974, to PAO by the then Undersecretary of Justice. This single referral, but with singular significance, started the dawning of the PAO's contribution to the formal administration of *pro bono* legal services to non-nationals in the Philippines.

The Need for Legal Aid and Assistance

*Certainly, "legal aid is an essential element of fair, humane and efficient justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including right to a fair trial."*²

"The term legal aid includes legal advice, legal assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for

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² Page 4, Paragraph 1, Introduction to United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Annex, E/CN.15/2012/L.14/REV.1, V.12-52823).

*those without sufficient means or when the interest of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.”*³

Clearly as stated in the 1987 Philippine Constitution that, *“No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”*⁴

Thus, whenever a person is in need of legal aid and assistance, whether as a Filipino national or a non-national, it is considered that the Philippines, as a State, has the obligation to provide any person of the needed, adequate and competent legal aid and assistance.

*“States should ensure the provision of legal aid to all persons regardless of age, race, color, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.”*⁵

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□ Page 5, Paragraph 8, , Introduction to United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Annex, E/CN.15/2012/L.14/REV.1, V.12-52823).

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□ Article III, Section 1, 1987 Philippine Constitution.

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As aptly pointed out, considered, and recognized through the pertinent United Nations Instrument,⁶ following the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, cross-border cooperation or mutual cooperation for legal aid assistance among nations had already earned synergies and responses all over the world, beginning the ratification and execution of extradition treaties for criminal cases.

The Need for Mutual Assistance Schemes

*“With advances in technology, and the ease of global travel, the world we live has become, in many ways, as Marshall McLuhan predicted “a global village.” This has had a dramatic impact on many aspects of life and society and law enforcement is no exception.”*⁷ Kimberly Frost wrote in 1998, the then Senior Counsel, Director of International Assistance group, Department of Justice, Canada.

⁶ Page 7, Principle 6. Non-discrimination, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Annex, E/CN.15/2012/L.14/REV.1, V.12-52823).

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⁶ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

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⁷ Frost, Kimberly, Breaking Down the Barriers: Inter-National Cooperation in Combating Transnational Crime, accessed through: www.oas.org/juridico/mla/en/can/en_can_frost.en.html.

She cited, among others, in the same document she wrote the 1989 case of *United States of America v. Cotroni*,⁸ where the Supreme Court of Canada made the following Statement:

*“The investigation, prosecution and suppression of crime for the protection of the citizen and the maintenance of peace and public order is an important goal of all organized societies. The pursuit of that goal cannot realistically be confined within national boundaries. That has long been the case, but is increasingly evident today.”*⁹

Hence, instruments, especially in cross-border criminal prosecution have always been helpful in combating skilled criminals *“using national borders to protect themselves and the evidence and profits of their crime from the detection of law enforcement.”*¹⁰

The Foremost Challenge in Cross-Border Cooperation

Accordingly, based on the same study by Ms. Kimberly Frost, *“the challenge for law enforcement authorities in every nation is sovereignty, a fundamental principle which grounds the relations of states, is also a*

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② 488 C.C.C. (3d) 193 at 215 (1989).

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② *Ibid.*

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② *Ibid.*

major tool in the armoury of the criminal element in our societies. Criminals depend heavily upon the barriers of sovereignty to shield themselves and evidence of their crimes from detection. Organizations which orchestrate transnational crime and which disperse and conceal the proceeds of their illicit activities the world over, have no regard for national borders.” ¹¹

Today, it is a given that *“mutual assistance in criminal matters is a process by which states seek and provide assistance in gathering evidence for use in criminal cases. It is likewise a means of cooperation which had significantly advanced for the last decades.”* ¹²

With the increasing cross-border cooperation, the confinement of mutual cooperation for criminal cases must now necessarily complement the need for other proceedings involving parties within or outside the National borders.

“The governing philosophy for mutual assistance must be to provide the widest scope of assistance possible and to provide that assistance in a usable form for a requesting state.” ¹³

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□ *Ibid.*

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□ *Ibid.*

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□ *Ibid.*

Success of the mutual cooperation is however limited. Legal parameters by the requested state must always be taken into consideration. Anything prohibited by the requested state remains prohibited.

*“For mutual assistance to succeed, the operative principle must be that requests will be executed in accordance with the law of the requested state and to the extent not prohibited by that law, will be provided in the matter sought by the requesting state.”*¹⁴

The European Integration, for one, heightened the need for guaranteed cooperation on the basis of practicality.¹⁵

Homogeneity¹⁶ of legal basis may be one of the long term effects of mutual cooperation upon ratification of certain legal instruments that will bind State Parties or the participating states.

This is, aside from the fact that machinery and strategy for pursuit of persons under the jurisdiction of a legal process may likewise be eased.

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▯ *Ibid.*

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▯ Gabbe, Jens, Legal Status of Cross-Border Co-operation Structures – past, present and prospects, accessed through: admin.interact-eu.net/downloads/40/AEBR_FactSheet_Legal_Status_Of_Cross-Border_Cooperation_Structures:_Past_Present_and_Prospects.pdf.

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▯ *Ibid.*

Concerns in Cross-Border Cooperation: Philippine Setting

Provision of Free Legal Aid in the Philippines is generally done by the Public Attorney's Office (PAO),¹⁷ the Department of Justice (DOJ), the Integrated Bar of the Philippines (IBP), and/or such other Legal Aid Offices/Organizations sanctioned by the proper government authorities.

In the advent of Republic Act No. 9999 or the "Free Legal Assistance Act of 2010," individual lawyers in the country are mandated to render free legal services for a minimum of sixty (60) hours per year to indigent litigants in conjunction with the provisions of BAR Matter No. 2012, and at the same time, encouraged the latter to render free services to the extent of having up to ten percent (10%) allowable deduction to the gross income derived from the actual performance in the legal profession.¹⁸

The free legal aid and assistance offered by the above-mentioned institutions and professionals are available to all persons needing legal advice, assistance or representation, whether a Filipino national or non-national.

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¹⁷ Note for the the enabling law for the Public Attorney's Office, as amended by Republic Act No. 9406 or the New PAO Law.

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¹⁸ Section 5, R.A. No. 9999.

While it may be a requirement that for persons to avail of free legal aid services in this law is that they should be an indigent according to the parameters of the relevant Philippine Law defining what is an indigent or a pauper litigant, instances when immediate need for legal services based on emergent and exigent situations becomes the exception.

Bureau of Immigrations Commissioner, Hon. Siegfred B. Mison, however confirmed that one of the difficulties encountered in attempts to provide legal aid services to non-nationals is the fact that there is a tendency for some non-nationals to outrightly refuse assistance due to language barriers and trust issues.¹⁹

For the “stateless persons” or more commonly referred to as refugees, aside from the evident language barriers, verification about the person through their country representative or embassy are likewise rendered difficult for the lack of identity documentation or bilateral arrangements between the countries.

Should the situation of a non-national differ however, such that when s/he is not a considered resident and his/her legal problem is not

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□ This was cited during an interview/conversation with Bureau of Immigrations Commissioner, Hon. Siegfred B. Mison, dated 22 August 2014. He said, this was the case on the recent apprehension of Chinese Poachers in the Philippine Jurisdiction.

emergent and exigent, and s/he is in need of legal aid, how then can the s/he prove his or her indigency? To be sure, this is also another challenge, which must be directly addressed.

Considering that sovereignty, which is inherent in every State, is an important concern in any mutual cooperation, reconciliation of laws on Evidence and Legal Remedy (Remedial Law and Procedure) must at least find some uniformity and integration among state parties or participating states.

PAO's Participation in Cross-Border Cooperation

In spite of the abovementioned difficulties that are being encountered in cross-border cooperation, the PAO has been forging on with its efforts toward this endeavour. The discussion below provides illustrative cases relative to this undertaking, *viz*:

1. Angelica's case (2002) – Angelica (not her real name) was a 13-year-old deportee from Sabah, Malaysia, who was raped in a detention camp there. Her harrowing experience angered many Filipinos. The Department of Foreign Affairs of the Philippines even filed a diplomatic protest, and former President and current member of the House of Representatives, Honorable Gloria Macapagal-Arroyo conveyed the outrage of the Filipino people to then Malaysian Prime Minister Mahathir Mohamad.

Angelica's father was a Malaysian, and her mother was of Filipino origin. Therefore, from the point of view of the Philippines, Angelica was a Filipina, and from Malaysia's, a Malaysian.

This author, who was only a year in her position as Chief Public Attorney, was joined by two (2) Malaysian lawyers, when she personally informed former President Arroyo of the veracity of the minor's statement regarding the said rape case. (Prior to this, the Chief Public Attorney and the Malaysian lawyers interviewed Angelica and found her answers congruent with the medico-legal findings.)

2. Gwen Aguilar's case (2006) - Gwen was a Filipino domestic helper, who was convicted of Homicide in Singapore, for killing Jane La Puebla, also a Filipino domestic helper.

This author rendered free legal aid to Gwen, by coordinating with the Department of Foreign Affairs and the latter's Singaporean lawyer in working for the reduction of the crime that was initially charged against her, which was Murder. This was downgraded to Homicide due to her mental state. A psychiatrist in Singapore testified that Gwen suffered from "masked depression".

Gwen has already been released from incarceration.

3. Cases of Chinese nationals (2014) - Chinese and Vietnamese nationals are among the foreigners who have been assisted by the PAO.

Its district office in Puerto Princesa City, Palawan, assisted twelve (12) Chinese nationals for the violation of *Republic Act No. 10067* or the *Tubbataha Reefs National Park (TRNP) Act of 2009*, specifically Sec. 26f (Poaching by Foreigners), from May 14, 2014 to August 14, 2014. On May 14, 2014, PAO-Puerto Princesa City became the lawyer of the said Chinese nationals, when their private counsel withdrew his appearance from their case. On August 5, 2014, they were convicted of the crime charged. On August 14, 2014, the said district office filed a Notice of Appeal after conferring with the accused through an official from the Chinese Embassy and their bondsman. For purposes of Appeal, the accused engaged the services of a private counsel.

4. Cases of Vietnamese nationals (2014) - In its communication, dated September 3, 2014, to the PAO-Central Office, the PAO-Palawan District Office reported that during the arraignment for its eleven (11) Vietnamese clients, it would propose to the prosecution and the court that the accused be allowed to enter a plea-bargaining agreement to a lesser penalty. As of this writing, no comment has been received yet regarding the proposal. The accused were charged for the violation of *Republic Act No. 9147* or the *Wildlife Resources Conservation Act*, specifically its Sec. 27 (f), for “collecting, hunting or possessing wildlife, their by-products and derivatives.”

5. Cases of Filipino accused, deportees, and evacuees in connection with the armed conflict between the alleged Royal Sultanate of Sulu Forces and Malaysian Forces in Lahad Datu, Sabah (2013 up to the present) - 27 Filipino nationals were accused of multiple offenses before the High Court in Sabah and Sarawak in connection with the armed conflict between the alleged Royal Sultanate of Sulu Forces and Malaysian Forces in Lahad Datu, Sabah. 38 accused were charged with Inciting to War, Illegal Possession of Firearms and Violation of the Commission on Elections Gun Ban before a regional trial court in Bongao, Tawi-Tawi, Philippines, in connection with the said armed conflict.

The Filipinos who were charged in Sabah and Sarawak have Malaysian lawyers in their defense team. Sometime in August 2013, the Regional Public Attorney of PAO-Zamboanga Peninsula (joined by the District Public Attorney of PAO-Jolo District Office) conferred with them regarding the defense strategy for the accused. Meanwhile, the cases of 37 accused (originally 38. One died while in detention at Bongao Provincial Jail) are on-going trial in a regional trial court in General Santos City. (Prior to this, the motions to post cash bail bond in a reduced amount filed by them was granted by the court. Hence, they were all released from incarceration pending trial, except for the one

already mentioned, who died while in detention before he could post bail.)

The public attorneys of PAO-General Santos City, who have been assigned to handle their cases reported last September 5, 2014 the manifestation they made in open court:

“... (W)e manifested in open court that the accused have requested their counsels to file a petition for change of venue to the Supreme Court nearer to the Court of Origin, Bongao, Tawi-Tawi, considering the distance they have to travel from Tawi-Tawi to General Santos City, which would take days, taking into consideration also that these accused do not have the financial means to cover their travel, food and lodging expenses....”

The said public attorneys then asked to be allowed to file the abovementioned petition. There being no objection from the state prosecutor, the court reset the hearing on February 2, 2015.

In connection with the incident in Lahad Datu, Sabah, there had been deportees, evacuees, and detainees from Sabah, which also needed legal assistance. This author in her capacity as the nationwide head of the PAO, together with her team, personally rendered appropriate *pro bono* legal aid services to them, while they were temporarily accommodated in a naval station in Tawi-Tawi.

In the rendition of free legal assistance in the above-enumerated cases, the PAO had to deal with sensitive diplomatic and security issues astutely (and still has to handle the same concerns in on-going cases and similar cases with the same caution and incisiveness). This author has taken upon herself to remind the handling lawyers of the PAO, the vital importance of the amity which the Philippines has painstakingly built through the years in the Asian region and beyond; hence, the same must be considered even as the Office observes the rule of law.

Aside from the free court representation which the PAO continuously renders to qualified foreign nationals, the latter also benefitted from the former's non-judicial services and other legal services without cost. This was in consonance with the Memorandum of Agreement which the Public Attorney's Office and the Bureau of Immigration had signed on February 4, 2009. The said services were available to the combined clientele of these two (2) offices from 2009 to 2013. (The same services could still be availed of from the PAO's main office as well as from its regional and district offices nationwide.)

As per the aforementioned agreement, the public attorneys formerly assigned at the Bureau of Immigration, rendered legal assistance and legal advice to the clients therein, both Filipinos and foreign nationals, in the processing of different visa applications.

They, likewise, provided them with free notarization of their immigration documents which, during the abovementioned public attorneys' detail, had greatly eradicated "fly-by-night" notaries who charged onerous amounts for such service. The foreign nationals trusted the free notarization service of the PAO, because their respective documents were done in their presence and within the vicinity of the bureau.

Equally important was the detailed public attorneys' rendition of legal representation (during administrative hearings in the bureau) to hundreds of foreign nationals who were confronted with deportation charges. Most of these charges sprung from overstaying in the Philippines beyond the period to which they were allowed, being undocumented aliens, becoming public charge within five (5) years after their entry, violation of any limitation or condition under which they were admitted as non-immigrants, and the like. Several of them were exonerated from the administrative charges filed against them, while those who opted for voluntary deportation were assisted by the PAO in coordinating with their respective embassies/ consular offices, as well as with Filipino local authorities, in the processing of their immediate expatriation.

In addition to the said foreign nationals, the PAO renders free legal assistance, counselling and representation to refugees, stateless

persons and those seeking recognition as refugees and/or stateless persons in the Philippine context, provided that such persons qualify as indigents. This is pursuant to the Memorandum of Understanding between the Public Attorney's Office and the Office of the United Nations High Commissioner for Refugees in the Philippines (UNHCR).

Establishment and Mechanisms for Mutual Assistance Schemes

Integration of nearby countries in the Asian continent is nearing and inevitable. Given the challenges as above-stated, there is a need for Legal Aid Organizations to establish Mutual Assistance Schemes for appropriate training on each country's or state's prevailing laws. It may likewise be an avenue for exchange of knowledge with respect to the most common cases, which maybe faced by each organization at any given time, to cater to the legal needs of both the nationals and non-nationals.

Multi-lingual trainings may likewise address problems of language barriers.

As in any other systems, good practice in execution of mutual cooperation agreements is the key for success.

In order to facilitate justice, mutual assistance schemes must have a determined or defined procedure and must be in the form of time-bound cooperation.

Time-bound cooperation simply means that there must be deadline suggestions or that the partnership should have a tested time limit for responses. There must likewise be prompt information to the requested state if the requested information is no longer needed.

Provisions on trial by supervised teleconferencing or such other media is likewise encouraged. The use of modern technologies may facilitate in the prompt disposition of every case.

In the establishment of mutual assistance schemes, the parties may have difficulties in addressing specificities on varying governing laws of each state, which may affect the totality of mutual assistance such as when a prohibitory law of one country affects the use of evidence being obtained by the requesting state or *vice versa*. Thus, disclosure of laws or alignment of the same among participating countries must be made in order to complement the need of each other and in order to render the mutual assistance schemes effective.

International mutual assistance schemes should include processes that encompass not just criminal prosecution of cases but such other civil and administrative cases, which are greatly numbered today. Mechanisms for these may be strived to be uniform in most ways, if the same cannot be made perfect.

Delegation of tasks and centralization of documentations should likewise be determined.

International mutual assistance schemes should likewise provide approaches in cases of refusal of state parties to disclose or allow certain requests, including but not limited to, listing of matters only tolerated for refusal and the elements or requirements needed to be satisfied to allow the same.

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