



## Legal Accountability and Dispute Resolution (LADR) Program

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**The Asia Foundation**

**Legal Accountability and Dispute Resolution (LADR) Program  
(Grant Agreement No. 492-G-SS-98-00032-00)**

**January 1, 2005 – June 30, 2005**

**SUMMARY**

This semi-annual report covers activities from January 1, 2005 to June 30, 2005 under the Legal Accountability and Dispute Resolution (LADR) program, which is part of the U.S. Agency for International Development's \$ 4,315,051 grant to The Asia Foundation.<sup>1</sup> LADR, formerly Reforming the Administration of Justice through Coalition Advocacy (RAJCA), runs from September 14, 1998 to September 30, 2006. LADR maintains the original goals of RAJCA, which are: increased popular participation in and impact on the formulation of laws and policies; increased popular participation in ensuring accountability in the enforcement of laws and policies; and strengthened individual and organizational capacities. Specifically, LADR program aims to promote alternative dispute resolution processes within and outside the formal judicial system, ensure transparency and accountability in the judiciary, build stable constituencies for judicial reform, and strengthen public access to information in order to increase transparency and improve access to justice. Drawing on its long-standing partnerships with the courts, lawyers' groups and other Philippine stakeholders in addressing important legal and judicial reform issues, The Asia Foundation implements LADR through four major components, namely: (1) institutionalizing alternative dispute resolution processes; (2) ensuring judicial transparency and accountability; (3) building constituency for reform; and (4) strengthening public information and access to justice.

Between January 1, 2005 and June 30, 2005, The Asia Foundation (the Foundation) continued to work with its existing partners and also forged several agreements with new partner institutions. The Foundation partners with these organizations in order to conduct activities that promote alternative dispute resolution processes within and outside the formal judicial system as a means to decongest court dockets, ensure transparency and accountability in the judiciary, build stable constituencies for judicial reform, and strengthen public information to increase transparency and access to justice. With the approval of the program expansion in September 2004, the Foundation is further advancing the program's objectives through case clearance and jail decongestion initiatives, enhancing the court's capacity through the use of *amicus curiae*, conducting gender training for the judiciary, and improving judicial accountability through clinical legal education programs.

Initiatives on *alternative dispute resolution (ADR) processes* undertaken during this period notably vary depending on the level of awareness or support and previous ADR work of the concerned institutions and stakeholders. For instance, the Philippine Judicial Academy, which

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<sup>1</sup> The Asia Foundation submitted a copy of the LADR Semi-Annual Report covering the period from July 1, 2004 to December 31, 2004 to the Development Experience Clearinghouse on April 12, 2005, as instructed under the Office of Regional Procurement (ORP) No. 18 dated August 19, 2003 and ORP No. 20 dated February 24, 2004.

piloted court-annexed mediation in 2001, has now embarked on the expansion of the initiative to the Court of Appeals and to several other judicial regions. The Philippine Judicial Academy is now intensifying the impact of its ADR projects through public information support programs and is assessing its current structures and mechanisms towards improved court-annexed mediation. On the other hand, the potential of ADR has just sparked the interest of other institutions such that initiatives range from promotion and capability-building efforts to moves towards institutionalization.

The Foundation entered into partnership with several organizations, such as the: (1) Philippine Judicial Academy on the expansion of court-annexed mediation in all first- and second-level courts in the cities of Tacloban and General Santos, and in the Court of Appeals; (2) Asian Institute of Journalism and Communications on the development of a communications program for court-annexed mediation; (3) Conflict Resolution Group on working with the Department of Justice for the mediation of estafa and bouncing checks cases as well as on the promotion of mediation in business and creating ADR champions from among eminent personalities; (4) Institute of Social Studies and Action in partnership with the Office of the Government Corporate Counsel on its capability-building project on ADR; and (5) Council of Engineering Consultants of the Philippines for its nationwide awareness drive on the ADR law of 2004 and its impact on the construction industry, with a focus on promoting arbitration.

Efforts to advance *judicial transparency and accountability* were pursued by the Foundation during this period by supporting the second phase of the “Civil Society Engaging the Courts” project of the Paglilingkod Batas Pangkapatiran Foundation (*Service in Law for Solidarity*), which is a court monitoring initiative. Examination of the gender responsiveness of family courts as well as the decisions of the Supreme Court on gender issues are also being undertaken through partnership with the University of the Philippines – Center for Women Studies Foundation. Court capacity enhancement activities geared towards achieving judicial accountability were also carried out through the following initiatives: (1) video production on the conduct of pre-trial in civil and criminal cases and use of deposition-discovery measures; and (2) development of a manual on judicial writing for the Supreme Court. These are being prepared in coordination with the Supreme Court’s Office of the Court Administrator and the Program Management Office, respectively.

To build *constituency for the judicial reforms*, the Foundation, in partnership with the Supreme Court, facilitated a second round of dialogs between the judiciary and the business sector. This expanded the “Chamber to Chamber” project’s reach to the foreign business community as well as included discussions about integrating mediation in business. Previous efforts to strengthen the relationship between the judiciary and media sectors will be bolstered through publication by the Asian Institute of Journalism and Communication of guide materials for journalists covering the courts and for readers on judiciary-media relations. Both initiatives are being carried out in coordination with the Supreme Court’s Program Management Office.

Finally, efforts to strengthen *public information to increase transparency and access to justice* focused on three areas: (1) promoting citizen awareness and participation in rule-making, the judicial reform process, and the rule of law; (2) clinical legal education; and (3) jail decongestion initiatives. Partnerships were entered with the following organizations:

- Cyberspace Policy for Asia-Pacific on an eRuleMaking pilot project with the National Telecommunications Commission;
- Lawyers' League for Liberty in collaboration with the Department of Education and the Philippine Supreme Court for the development of education materials on the judiciary and the rule of law;
- Supreme Court – Program Management Office for the reproduction and dissemination of the Action Program for Judicial Reform tarpaulin banners to be displayed by the Integrated Bar of the Philippines in its chapters nationwide;
- Al-Mujadilah Development Foundation for the popularization of the Code of Muslim Personal Laws in the Autonomous Region of Muslim Mindanao;
- Women's Legal Bureau for the conduct of dialogs between Muslim and Christian lawyers on laws affecting women's rights;
- Ateneo Human Rights Center on various initiatives concerning law student internship and alternative lawyering as means to strengthen access to justice of vulnerable groups; and
- Integrated Bar of the Philippines and the Humanitarian Legal Assistance Foundation on jail decongestion efforts.

During the period covered by this report, The Asia Foundation awarded 25 new grants to 18 partners. Of the 32 grants issued in 2004, nine are still ongoing and thirteen were completed at the close of this reporting period. The rest were concluded in the preceding period.

## **HIGHLIGHTS AND OUTCOMES OF SIGNIFICANT ACTIVITIES**

### **Towards the Institutionalization of Alternative Dispute Resolution Processes**

#### *Court-Annexed Mediation*

***Regional Mediation Training and Establishment of Philippine Mediation Center Units in General Santos, and Tacloban Cities.*** The success of court-annexed mediation in selected courts in Metro Manila, Cebu, and Davao City encouraged the Philippine Judicial Academy (PhilJA) to pursue expansion of court-annexed mediation in other judicial areas of the country.<sup>2</sup> In the previous reporting period, The Asia Foundation provided support for the implementation of a regional mediation project that commenced in Cagayan de Oro City where interest in mediation among the local stakeholders, specifically its business chambers and the local government units, was high. Activities undertaken included a basic mediation seminar, an advocates forum, internship program, and setting up of a Philippine Mediation Center (PMC) Unit in the city. The internship program revealed a success rate of 83.7% for cases actually mediated.<sup>3</sup>

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<sup>2</sup> In 2003, a total of 12,821 cases were referred by the pilot courts to the Philippine Mediation Center. This achieved a success rate of 75.16% from those actually mediated. In 2004, some 20,277 cases were referred to mediation, which is a 33% increase from the previous year. Of that, 6,273 were referred back to the court. This leaves some 14,004 cases that were diverted from the courts and processed by mediators. Of these 14,004 cases, 6,400 are still in process, while 7,600 were finalized (80% settled).

<sup>3</sup> Out of 376 cases that were referred to the PMC Cagayan de Oro Unit, 184 underwent actual mediation. Of this number, 154 cases were successfully settled.

With the encouraging developments on mediation in Cagayan de Oro City, PhilJA recently carried out a set of activities to showcase the establishment of the PMC-Cagayan de Oro Unit and to spur the use of court-annexed mediation in the city as part of the judicial process of de-clogging court dockets and expediting case disposition. With support from The Asia Foundation's LADR program, 39 previously-trained and accredited mediators of the city took a mediation enrichment course in May 2005 to enhance their skills in resolving disputes based on initial mediation experiences. The PMC Cagayan de Oro Unit was also inaugurated.

Guidelines for the selection of areas where PMC Units could be established were formulated by PhilJA as requests for expansion to other cities continue to surge. Among the criteria for the selection included the geographical location, case load of the courts, and leadership of the executive judges in the proposed areas. This reporting period thus saw the subsequent implementation of the mediation project in General Santos City and Tacloban City, including its adjacent court stations. Foundation support will cover a one-day public information campaign on court-annexed mediation in each of the cities, a five-day basic mediation seminar for 120 prospective mediators, a one-day mediation training activity for lawyers who would be expected to become advocates of court-annexed mediation, and a month-long internship program that will provide the participants with an opportunity to mediate actual cases. The concerned local government units and local courts are expected to contribute office space, computers, and other fixtures for use during the mediation sessions.

As of this reporting period, PhilJA has accomplished the preparatory work for both cities which included meetings with concerned judges and court personnel, orientation meetings with key stakeholders, recruitment of prospective mediators, and identification of possible PMC Units.

***Court of Appeals Mediation Project (Phase Two): Internship Program for Newly-Trained Mediators in the Court of Appeals.*** From June 2004 to January 2005, the Philippine Judicial Academy with support from The Asia Foundation's LADR program strengthened its training capability in developing mediators for the Court of Appeals. A core of 20 well-screened trainers from the legal, academic and business professions was developed through the training assistance of the Singapore Mediation Center.<sup>4</sup> Curriculum review and case development workshops were held to determine the components of an effective mediation training program for the appellate court. Mediation skills-building workshops were further organized for selected retired Court of Appeals Justices, retired judges, senior members of the Philippine Bar, and senior law faculty members.

This project builds on the initial groundwork undertaken by PhilJA in institutionalizing the use of mediation in the Court of Appeals. In partnership with The Asia Foundation, PhilJA has established a Philippine Mediation Center – Court of Appeals Unit within the premises of the new appellate court building. The project will conduct an inventory and selection of cases for mediation as well as prepare case briefs that will be used by the Court of Appeals mediators. After the newly-trained mediators are briefed on the project, a three-month internship program will ensue to allow the trained mediators to directly mediate assigned cases. Consultative discussions will be organized with the Court of Appeals Justices, Division Clerks of Court, and

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<sup>4</sup> Singapore Mediation Center (SMC) is the flagship mediation center of Singapore. SMC was officially launched by Singapore's Supreme Court Chief Justice and guaranteed by the Singapore Academy of Law.

other relevant appellate court personnel to ensure the efficient flow of operations for the internship period. Dialogs with various stakeholders from the Court of Appeals' personnel and staff will also be conducted to increase their awareness of the benefits and advantages of making mediation a permanent process in the appellate court.

Starting in March 2005, consultation meetings have been held with the Presiding Justices and other Justices of the Court of Appeals. It was discussed during these meetings that 60 cases will be selected by each of its 17 divisions for mediation or a total of 1,020 cases. Out of this number, 70% (714 cases) are targeted to be successfully mediated. A meeting with the clerk of court and division clerks of court of the Court of Appeals was likewise conducted in May 2005 to discuss their roles in the implementation of the project. Selection of cases for mediation is underway.

**2005 Settlement Period.** This project seeks to enhance the impact of mediation in areas where it is already in place, particularly where PMC Units have been established with support from The Asia Foundation's LADR program, namely, Metro Manila, Cebu City, Mandaue City, Lapu-lapu City, Davao City, Digos City, Tagum and Panabo of Davao del Norte, and Cagayan De Oro, and those areas under the Justice Reform Initiatives Support or JURIS project funded by the Canadian International Agency for Development (CIDA). By virtue of a Supreme Court issuance, the months of June and July 2005 were declared as a Settlement Period. All first and second level trial court judges in these areas were directed to participate by considering the possibility of amicable settlement of all civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure (except those which by law may not be compromised), cases cognizable by the Peace Council under the Barangay Justice Law, civil aspects of the Bouncing Checks Law, civil aspects of quasi-offenses defined under the Revised Penal Code, and civil aspects of estafa and libel where damages are sought.

Foundation support for this project includes the cost of technical and administrative provision to ensure the successful implementation of the project. As of June 20, 2005, a total of 2,347 cases have been referred to the PMC Units for mediation. Out of this figure, 1,891 cases were accepted for mediation with 1,585 still pending and 306 completed mediation. Of the total number that completed the mediation process, 225 cases reached settlement thereby achieving a 74% success rate at this juncture.<sup>5</sup>

**Communication Program for Court-Annexed Mediation.** This project takes off from the results of previous studies supported by The Asia Foundation's LADR program that highlighted the value of information, education, and communication strategies in promoting court-annexed mediation, and indicated the need to address attitude and behavior of some mediation stakeholders, particularly judges, lawyers, and litigants, which affect the quality of support for alternative dispute resolution.

In coordination with PhilJA, the Foundation recently partnered with the Asian Institute of Journalism and Communication towards increasing disputants' awareness of their responsibility in deciding whether to use alternative dispute resolution mechanisms or the courts in resolving their disputes. The project is envisioned to cause a paradigm shift from lawyer-dependent to client-focused orientation in deciding options for dispute resolution. It will attempt to transform existing behavioral practice where given a specific dispute, litigants rely on their lawyers to

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<sup>5</sup> Philippine Judicial Academy Report dated June 22, 2005.

decide for them the legal course to take, and where lawyers often advise their clients to litigate in court when settlement efforts could have been more appropriately undertaken.

Specific activities that will be carried out include the following: (1) preparation of a Communication Plan for Court-Annexed Mediation which intends to systematize strategies and activities on court-annexed mediation, and introduce innovative and creative information, education, and communication strategies; (2) development of information, education, and communication materials, including news articles and feature stories on mediation that will be sent to national broadsheets and selected provincial and community newspapers for publication; and (3) case studies of successful mediation cases and outstanding mediators which will be utilized as inputs for media stories, training tool, or case presentations in future mediation conferences.

As of this reporting period, the existing information, education, and communication materials on mediation are being inventoried by the Asian Institute of Journalism and Communication with assistance from PhilJA to enable them to determine the scope of the materials that will be developed and to identify the target audiences for such. It is expected that the printed materials will be pre-tested among their intended audiences prior to actual production. Guidelines for its use and dissemination will also be prepared and discussed in a workshop.

***Organizational and Financial Study of the Philippine Mediation Center and its Units.***

Together with the designation in 2001 of the Philippine Judicial Academy as its component unit for court-annexed mediation, the Supreme Court also created a Philippine Mediation Center (PMC) which is tasked to set-up mediation units in court houses or near premises of the trial courts for court-annexed mediation proceedings. Since its inception, the number of PMC Units has grown to 27 in selected trial courts of Metro Manila, Cebu, Davao, Pampanga, Bacolod, and Cagayan de Oro with only four staff of the Academy's Judicial Reforms Office administering the units. Implementation of the court-annexed mediation initiative has thus produced various concerns relating to the organizational and financial aspects of the PMC.

There is a need to study the present organizational and financial structures of the PMC and its existing units as a requisite of an effective and sustainable nationwide expansion of court-annexed mediation. The Asia Foundation after a competitive bidding process contracted the services of the Center for Public Resources Management Consultants, Inc. to undertake this study. The study will present recommendations to improve the organizational structure and financial status of the PMC, and look at the feasibility of establishing PMC units nationwide, including the organizational and financial requirements.

The Center for Public Resources Management has conducted site visits and is currently in the process of drafting an assessment report. In consultation with PhilJA, it is scheduled to conduct focus group discussions with relevant stakeholders in July. These focus group discussions are part of the analysis of demand "market" of PMC services and its implications in defining the structure, staffing, and resources of PMC.

### *Out-of-Court Mediation*

***Institutionalizing Mediation at the Department of Justice (Focus on Bouncing Checks and Estafa Cases).*** This activity aims to institutionalize the gains and lessons learned from the past pilot Department of Justice mediation projects initiated by the Conflict Resolution Group with support from The Asia Foundation's LADR program in 2001 and 2003. One of the primary objectives of the pilot initiatives was the handling of Batas Pambansa (BP) 22 (bouncing checks) and estafa cases, which constitute 65% of cases that enter the metropolitan trial courts. In the 2001 activity, sixty new mediators from the Department of Justice and the private sector were trained. After a two-month period of mediating cases in Manila, Quezon City, and Valenzuela, 93% of the mediated cases reached settlement. In 2003, the project was expanded to Baguio, Cebu, Davao, Pasig, and Makati. Approximately 170 new mediators consisting of prosecutors and public attorneys were trained. Out of the more than 700 cases mediated, 95% was settled.

This current activity of the Conflict Resolution Group aims to institutionalize the use of mediation in Metro Manila prosecution offices, with a strong emphasis on the use of mediation for BP 22 and estafa cases, in order to prevent further entry of these cases into the court system. Components include mediation training for 120 prosecutors and public attorneys from Manila and Quezon City areas; a refresher course for previously trained prosecutors in Makati and Pasig cities; and a month-long settlement period in all the four cities where at least 90% settlement rate is the statistical goal.

A Memorandum of Agreement with the Department of Justice is currently being drafted by the Conflict Resolution Group to ensure the Department's support to the project. Meetings with the Justice Secretary as well as with the chief prosecutors in the above areas are also being arranged.

***OGCC Alternative Dispute Resolution Capability-Building project*** The overall objective of this project is to develop the capacity and skills of the Office of the Government Corporate Counsel (OGCC)<sup>6</sup> on alternative modes of dispute resolution relevant to its mandate. This is critical considering that their approximately 1,000 clients, corporations and their subsidiaries such as the local water districts and power corporations, are providing vital public services nationwide. The total number of cases currently pending before the OGCC and those it filed in the courts is 6,802. With the use of alternative modes of dispute resolution, many of the cases handled by this Office are predicted to be resolved, to the ultimate benefit of the public and the economy, without reaching the courts at all. This project specifically aims to introduce the different alternative dispute resolution mechanisms to its lawyers and the representatives of its client government-owned and controlled corporations; identify modes of ADR relevant to the mandate of this office; draft related internal rules and regulations; provide necessary ADR skills to its lawyers; and conduct a pilot-test of the internal rules and regulations on ADR.

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<sup>6</sup> The Office of the Government Corporate Counsel (OGCC), an attached agency of the Department of Justice, provides legal services to all government-owned and controlled corporations, their subsidiaries, other corporate offsprings and government-acquired corporations. Under Presidential Decree No. 242 (1973), cases involving mixed questions of law and of fact or only factual issues, with respect to disputes or claims or controversies between or among government-owned and controlled corporations or entities being served by the OGCC, shall be submitted to and settled by the Government Corporate Counsel. It is also authorized under the law to refer to an arbitration panel the determination of questions of fact.

With support from The Asia Foundation through the LADR program, this activity is currently implemented by the Office of the Government Corporate Counsel with technical assistance from the Institute for Social Studies and Action through the conduct of research on relevant national laws, rules and regulations; needs assessment and orientation seminars on different ADR modes; a writing workshop for the drafting of the internal rules and regulations on the appropriate ADR mechanism for the office; a skills-training seminar on ADR for its lawyers; and pilot-testing of internal rules and regulations on ADR using actual cases. It is expected that the activity will ultimately pave the way for the institutionalization of ADR within the Office of the Government Corporate Counsel.

A ceremony that marked the signing of the project was held on June 8, 2005. Initial meetings between the Office of the Government Corporate Counsel and the Institute for Social Studies and Action have also taken place during this reporting period. The needs assessment meeting with government-owned and controlled corporations, Department of Justice, Department of Interior and Local Governments, and the Court of Tax Appeals, as well as the Orientation Seminar for the concerned lawyers have been scheduled in July 2005.

***Nationwide Awareness Drive on the Alternative Dispute Resolution Act of 2004 and Its Impact on the Construction Industry.*** Following the enactment of the ADR law of 2004, which re-affirmed the jurisdiction of the Construction Industry Arbitration Commission over construction disputes and mandated the referral of all pending construction cases in courts to the Commission for arbitration, the Council of Engineering Consultants of the Philippines is conducting a nationwide awareness campaign on the impact of the law to the construction industry.

The Asia Foundation notes that during the period from January 1989 to August 2004, a total of 409 cases were filed with the Commission for arbitration. Of this number, 294 have been resolved by the Commission. In fact, many construction disputes were not filed with the Commission but rather lodged in the courts due to the public's lack of awareness of the existence of the Commission, misperceptions about the jurisdiction of the Commission, and lack of understanding of the advantages of arbitration over litigation.

The awareness drive was first launched in November 2004 in Manila and was well-attended by arbitrators and members of the business sector and construction industry. The campaign is being carried out in the regional centers of the country in coordination with the Commission, the Philippine Constructors Association, the Philippine Technological Council, and the Confederation of Filipino Consulting Organizations.

The latest forum on the ADR law was held in May 2005 in Davao City where approximately 100 stakeholders from the construction industry and the legal profession attended. Among the issues raised during this activity relate to the selection of arbitrators, enforceability of decisions reached in arbitration, arbitration clause in contracts, training of arbitrators, and the establishment of a CIAC office in Davao.

***Alternative Dispute Resolution in Business and Its Expansion to Other Areas.*** Beginning in 2003, the Conflict Resolution Group, with support from The Asia Foundation's LADR program, strongly advocated the use of mediation in business as a cheaper and swifter alternative to court litigation. In 2004, it held a series of forums and workshops on mediation for the members of major trade and business organizations which eventually led to the signing of a covenant among

nine leading business organizations<sup>7</sup> that signify their commitment to advocate, promote, and encourage the use of mediation in business disputes and to refer these disputes to the business mediation units in the covered areas of Metro Manila, Cavite and Davao.

During the period covered by this report, The Asia Foundation provided support to the Conflict Resolution Group to expand the scope of the business mediation initiative to four more areas, namely, Baguio, Clark/Subic, Bacolod/Iloilo, and Cagayan de Oro cities, and to re-visit Cebu City where mediation of family business-related disputes has already been initiated. Specifically, this project will conduct a series of five-day mediation training activities for a total of 120 mediators from the business sector in the covered areas, offer a two-day refresher course for previously-trained mediators based in Cebu City, set up Business Mediation Units in each of the covered areas, and advocate the use of mediation by participating in business forums.

The Conflict Resolution Group is presently involved in the preparation of the training activities for the new areas. A communications campaign through radio and television interviews, press releases, and news features aimed at heightening public awareness, acceptance, and increased support for the use of ADR in business is also being launched by the Conflict Resolution Group as part of its original terms of agreement with the Foundation.

***Multi-Door Courthouse and Online Dispute Resolution Project (Implementation Phase).*** This project seeks to apply in the Philippine setting the complementary concepts of “multi-door courthouse” and “online dispute resolution (ODR)” in the areas of franchise, e-commerce, and consumer-related disputes.<sup>8</sup> In September 2003, The Asia Foundation provided support to the Cyberspace Policy Center for Asia-Pacific for the program design phase of this project.

With the completion of the program design in 2004, another grant was provided to the Cyberspace Policy Center for the deployment of the ODR software developed under the initial grant and the implementation of the recommendations for the establishment of the technical infrastructure, as well as the legal and regulatory environment required by an ODR service. This phase also includes an information campaign to familiarize users on the use of the software and its advantages.

Early this year, the Philippine Online Dispute Resolution (PH-ODR)<sup>9</sup> website was launched in Cebu City with around 40 lawyers, mediators and businessmen gracing the event. The activity

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<sup>7</sup> Signatories to the covenant include the following: Employers’ Confederation of the Philippines (ECOP), Personnel Managers’ Association of the Philippines (PMAP), Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. (FFCCCII), Philippine Chamber of Commerce and Industry (PCCI), Federation of Philippine Industries (FPI), Philippine Exporters Confederation (PHILEXPORT), Chamber of Commerce Philippines Foundation (CCPF), Management Association of the Philippines (MAP), and Philippines, Inc.

<sup>8</sup> Multi-door courthouse is an alternative dispute resolution (ADR) concept that envisions a large courthouse with multiple ADR “doors” or a process of referral to an appropriate dispute resolution process, including conciliation, mediation, arbitration and social services. Online Dispute Resolution, on the other hand, specifically utilizes the Internet and related technologies to resolve disputes, or at least assist in their resolution.

<sup>9</sup> <http://www.disputeresolution.ph>

featured an overview of the ODR, the ADR Act of 2004, and a walk-through of the PH-ODR website. Interesting questions regarding fees, security of parties, enforcement of settlement, and competency of mediators serving in the site were raised. The website was also featured in the Cyberweek 2005, an annual online event organized by the Center for Information Technology and Dispute Resolution of the University of Massachusetts. Preparations for a separate launch of the website in Davao City are in progress. It is expected that with sustained efforts to promote ODR, more cases within the project's focus areas will be referred to the ODR website for resolution.

***Eminent Mediators Training.*** This activity endeavored to fast track the development of public interest in mediation through the training of eminent personalities who could best promote its use in government, business, and other areas where disputes commonly occur. Standard criteria used for the selection of participants include prominence, recognition, reputation, credibility, and eminence. Thirty-two eminent personalities from a cross-section of society representing business, labor, government, media, women, professional organizations, and the academe participated in this one-day exclusive event organized by The Conflict Resolution Group in May 2005.

The eminent trainees were provided with the most essential elements of the basic mediation course and were given opportunity to participate in simulation exercises with the aid of mediators previously trained by the Conflict Resolution Group. A press conference followed to give the participants the occasion to promote mediation through media and to articulate their concrete commitments in championing the use of mediation in their respective fields.

A summary of the proceedings, together with a description of the eminent mediators' concrete commitments and an analysis of the results of the evaluation of the training, is currently being finalized. Among the preliminary recommendations presented during the training are as follows: (1) a regional summit on conflict resolution to encourage more discussions from a broader market; (2) regular roundtable discussions among the training participants; and (3) use of the influence of the new mediation champions as an avenue to develop more mediators and mediation centers across the country.

### **Judicial Transparency and Accountability**

***Civil Society Engaging the Courts II.*** This project builds on the gains of the initial efforts of the Paglilingkod Batas Pangkapatiran Foundation (*Service in Law for Solidarity*) to design an effective tool for court monitoring and to develop civil society court monitors in three key cities in Mindanao: Davao, Cagayan de Oro, and General Santos. While a significant number of court monitors has been recruited under a previous grant from The Asia Foundation's LADR program, the current activity will address the identified need of improving the monitoring tool in terms of its capability to generate clear and verifiable comments using more tangible indicators and more incisive queries. The improved monitoring tool, including the conclusions derived from utilizing the new tool, is envisioned to lay the groundwork for the development of a manual for effective court monitoring by civil society.

The project will conduct a research that will refine the monitoring tool through a series of workshops with the previously trained court monitors, an in-depth study through the testing of the refined tool in 200 court visits in the three key cities, collation of the court observation findings from the court visits, and validation of the usefulness of the improved tool. It also includes a comprehensive report covering the experiences, lessons learned, monitoring results, and recommendations derived from the entire project. The project will likewise develop a Civil Society Manual for Court Monitoring which will be prepared on the basis of the output of the research component. The manual is expected to serve as a court monitoring guide for the civil society, including NGOs, church-based groups, schools, and barangay officials.

***Policy Action Research to Enhance the Gender Responsiveness of Family Courts.*** The Asia Foundation through the LADR program gave a grant in 2004 to the University of the Philippines Center for Women's Studies Foundation for the conduct of a comprehensive policy research on gender biases in the family courts. The study aims to identify the gender biases that permeate the disposition and resolution of cases and to determine the factors that impede or enable the family courts to address gender issues. The study will also recommend policies and programs that would enhance the gender responsiveness of the court officials and personnel, improve the physical condition of the courts, and ensure the implementation of rules and procedures.

The study included a survey of family court judges, lawyers, prosecutors, and court social workers directly involved in cases involving women and children; structured observation of court trials in nine selected family courts in the country; gender analysis of the physical condition of the court rooms in these family courts; and process documentation of the manner by which court rules and procedures are implemented. The results of this project are generally intended to make the court system more women- and children-friendly, as reflected in its rules, policies, practices, and decisions. In particular, it aims to provide the necessary data for the training programs of the Philippine Judicial Academy and the Supreme Court's Gender and Development (GAD) sessions, as well as in the preparation of training materials for the gender sensitivity training of family court judges, prosecuting lawyers, and court social workers.

In February 2005, partial results of the survey and case studies were presented at the Supreme Court Session Hall to members of the academe, judiciary, and non-governmental organizations for comments. A validation workshop on the results of the research also took place in April

2005. Based on the input generated from the activities, the research team is currently working on the final revisions of the study.

***Davide Watch Gender Review project.*** Through a grant to the University of the Philippines Center for Women Studies Foundation, this project will review the contributions of the Action Program for Judicial Reform and the Davide Watch during the term of the incumbent Chief Justice Hilario G. Davide, Jr., in terms of gender and development in the justice system. It will review the policies and programs of the Supreme Court on gender, as well as the effectiveness of its gender sensitivity trainings. It will also contain an analysis of the jurisprudence of the Supreme Court. The study will document the term of the current Chief Justice as a benchmark for the Supreme Court's gender mainstreaming efforts and will contribute to judicial reform by analyzing the Supreme Court decisions on violence against women and to contribute to the amendments of the Rules of Court, the Rules on Sexual Harassment, and the new Code of Judicial Conduct.

It is envisioned that a similar review of the succeeding Chief Justices will be done in the future as a useful way of tracking the judiciary's performance on gender mainstreaming from the perspective of women's rights advocates and independent writers. With openness to constructive criticism, the Supreme Court is expected to appreciate the study in its continuing efforts to ensure that women's rights are protected and that gender will be truly mainstreamed in the judiciary.

The project will be undertaken through the conduct of extensive research and focus groups discussions with key informants, and result in the publication of 1,000 copies of the research results in book format. To date, the Center for Women's Studies Foundation has organized preliminary meetings with the research team.

***Expanded Law Student Apprenticeship Program.*** With the sanction of the Philippine Supreme Court<sup>10</sup>, a pilot law student apprenticeship program was successfully conducted last year with the participation of four Manila-based law schools. With support from The Asia Foundation's LADR program, this project was implemented by the Far Eastern University Institute of Law in coordination with the Supreme Court's Program Management Office and selected courts in Manila, Quezon City and Makati City.

Due to positive response from the participating law schools, law students and court officials, in 2005 the program was expanded to include additional law schools in Metro Manila and other key cities in Luzon, Visayas, and Mindanao. The program aims to train law students in legal research and to adequately expose them to court proceedings. In addition, the program provides training of future officers of the court for clerkship and assistance to the selected courts in resolving cases hastily and in reducing their caseload.

The initially pre-screened law students, which reached a total of 79 in April 2005, have been assigned to selected first- and second-level courts during the summer program period. They were supervised by their respective law schools' apprenticeship supervisors and were under guidance by the courts concerned. Discussions are ongoing about the possibility of extending the project period in order to accommodate other law schools who would be interested to carry out the program during the regular school term.

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<sup>10</sup>*En banc* Resolution A.M. No. 04-04-08-SC dated April 27, 2004

***Video Production on the Conduct of Pre-Trial in Civil and Criminal Cases and the Use of Deposition-Discovery Measures.*** In order to promote effective and efficient disposition of cases through effective use of pre-trial and deposition-discovery methods, The Asia Foundation supported the Supreme Court's Office of the Court Administrator in producing five video presentations on the use of pre-trial procedures in civil and criminal cases in the first and second level courts and the use of depositions and other modes of discovery procedures. The video materials are intended to be used as demonstration materials in its future training activities.

During this reporting period, filming has been undertaken based on the research and scripts accomplished in the preceding period. Post-production work on the videos, including editing, is nearing completion and the Office of the Court Administrator is preparing to launch of the videos in the coming months.

***Manual on Judicial Writing for the Supreme Court of the Philippines.*** This material is intended to serve as a uniform reference guide for the Supreme Court justices, their lawyers, and legal researchers in the drafting of their decisions, memoranda, and other legal documents. With support from the Foundation, the Supreme Court-Program Management Office contracted a legal consultant to develop the guide material.

To date, drafts of the manual have already been submitted to the Technical Working Group formed under the project which reviewed and commented on the material. The project was extended this year to enable the Supreme Court-Program Management Office to conduct validation workshops for the approval of the manual by the Justices, lawyers, and legal researchers. The final version of the manual will also be reproduced for distribution to the Justices and concerned court personnel.

## **Building Constituency for Reforms**

***Chamber to Chamber Phase II: Dialogs with the Foreign Business Sector and Integration of Mediation in Business.*** In its effort to promote better understanding between the judiciary and the business sector, the Supreme Court, with support from The Asia Foundation's LADR program, conducted in 2004 a series of dialogs with chambers of commerce throughout the country. The dialogs succeeded in explaining the judiciary's role and its reform agenda as well as the business community's concerns regarding the administration of justice in the country.

Based on the recommendations raised in these activities, a second series of dialogs with the business chambers in the country was supported by the Foundation in partnership with the Supreme Court's Program Management Office. Similar to the first series, these dialogs discuss the role of the judiciary as the third branch of government, the judiciary's reform agenda, and the business sector's concerns regarding the administration of justice in the country. The dialogs however depart from the first initiative as these tackle the use of ADR mechanisms in resolving business-related disputes and included the participation of the foreign chambers of commerce, which have significant investments in the country.

As of this reporting period, dialogs with the local business chambers in six of the ten target areas have already been conducted, specifically in Palawan, Iloilo, General Santos, Bacolod, Cagayan de Oro, and Tacloban cities. Dialogs with the American, European, Japanese, and British chambers of commerce have also taken place within the period. As in the first series, the subsequent dialogs effectively facilitated understanding among the business community of the judiciary's role and its reform efforts, and by the court representatives of the business sector concerns in administering justice in the country. Among the pressing issues raised include court delays, court issuance of temporary restraining orders, and negative impact of court decisions on business cases.

***Publication and Dissemination of Materials Related to the Strengthening of Judiciary-Media Relations Initiatives.*** In 2004, the Asian Institute of Journalism and Communication, in coordination with the various offices of the Supreme Court led by its Program Management Office, carried out the project entitled "Strengthening Judiciary-Media Relations." The project sought to strengthen the working relationship of the judiciary and media which ensures a balance between transparency and judicial confidentiality and independence, toward sustained public information and substantive multi-sectoral support for an independent, effective, and efficient Judiciary. With support from The Asia Foundation under its LADR program, the project resulted in several major outputs, including prototype versions of a "Guidebook for Journalists Covering the Courts (with Glossary of Legal Terms for Journalists without Legal Background)"<sup>11</sup> and "Justices to Journalists, Journalists to Justices: A Reader on Judiciary-Media Relations."<sup>12</sup>

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<sup>11</sup>The *Guidebook for Journalists Covering the Courts* is a reference material for journalists as they go about their business of covering the courts for their newspaper, radio, and television stations, and electronic media. It is envisioned to foster greater understanding and appreciation of the judicial branch of government, so that as media fulfills its watchdog role, it can act more responsibly toward the Judiciary. The *Glossary of Legal Terms for Journalists without Legal Background* is a companion material which was developed as an articulated need from media practitioners who participated in the nationwide consultation

The Asia Foundation recently provided support to the Asian Institute of Journalism and Communication for the revision of the design, publication, and distribution of 1,000 copies each of the abovementioned materials. A dissemination plan will be prepared in connection with the distribution and utilization of the published materials among the targeted audiences, specifically journalists covering the courts in Metro Manila and in the provinces. The plan will include a feedback system to confirm that the materials reach their intended audience and to examine the effectiveness of the materials.

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workshops conducted under the past project. With this material, journalists are expected to become better-equipped in understanding the language and workings of the Judiciary.

<sup>12</sup>*Justices to Journalists, Journalists to Justices: A Reader on Judiciary-Media Relations* is a compilation of speeches and papers presented by the Supreme Court Justices, judiciary officials, and media executives during various forums organized under the past project. It is packaged in monograph form to serve as a handy reference primarily for journalists.

## **Public Information and Access to Justice**

*Promoting citizen awareness and participation in rule-making, the judicial reform process, and the rule of law*

***The National Telecommunications Commission eRulemaking Project: Pilot Implementation Phase.*** To demonstrate the potential of simple technological tools to enhance citizen participation in administrative rule-making, the Cyberspace Policy Center for Asia-Pacific in consultation with the National Telecommunications Commission developed a software system that allows the Commission to directly consult the public in drafting discussion papers or regulations through a website. The design phase, which also included a study on the administrative rule-making cycle of the Commission, its information system, and current infrastructure, was carried out last year with support from The Asia Foundation's LADR program.

Formally launched in June 2005, the Cyberspace Policy Center and the Commission will now undertake the pilot implementation of this eRulemaking project to provide a venue for improving the public's level and quality of participation in administrative rule-making as well as in increasing transparency in process and legitimacy of the outcomes. The project launching was attended by the Commissioner Ronald Solis, together with the directors and chiefs of the Commission, and several other representatives from the legal profession, government, and business community.

***Public Education on the Rule of Law Advancement and Support (PERLAS) project.*** A joint initiative of the Supreme Court's Program Management Office, the Department of Education, and the Lawyers' League for Liberty, this project will enhance the public understanding of the fundamental principles that govern the operation of the judiciary. The aim of the project is to educate and inform the general public, specifically students from public schools, both elementary and high schools, on the judiciary and the rule of law through the use of teaching and learning materials appropriate to their learning competencies. As such, the project will enrich the existing curricula of the Department of Education for public schools, and at the same time, broaden the community support base for the ongoing judicial reforms through the use of educational materials. Expected outputs from the project include: (a) Teaching Exemplars for Classroom Use for Elementary Students; (b) Teaching Exemplars for Classroom Use for High School Students; and (c) Student Handbook for High School Students. The World Bank has committed to the publication and distribution of the modules.

As of the writing of this report, the Lawyers' League for Liberty is in the process of finalizing the research on existing and related literature on the rule of law and scheduling the nationwide consultation workshops in order to determine the core messages in the exemplars and handbook.

***Reproduction of Tarpaulins to Disseminate the Action Program on Judicial Reform.*** In 2004, The Asia Foundation provided support to the Supreme Court's Program Management Office which allowed them to produce and disseminate 1,137 Action Program for Judicial Reform tarpaulin banners to all Halls of Justice and court houses in the country. This was done to publicize the numerous projects undertaken by the Supreme Court in reforming the judicial system to enable it to function effectively and to build public trust and confidence, and

acknowledging the importance of disseminating information on the judiciary and its reform endeavors. The project enhanced and strengthened support for the Action Program by making the stakeholders, court users, and the general public aware of the ongoing judicial reform initiatives. It is envisioned that by increasing public awareness of the judiciary's reform efforts, the Filipino people in general will be encouraged to contribute to, participate, and support the Supreme Court's initiatives, which in the long run, will help in improving the administration of justice in the country.

This project has been extended during this reporting period to allow the reproduction of additional 115 tarpaulin banners for distribution to the Integrated Bar of the Philippines chapters nationwide.

***Supreme Court-Initiated Studies on Improving Access to Justice and Court Efficiency and Consultations with the Bar and Bench.*** In 2004, the Supreme Court's Program Management Office, in collaboration with the Lawyers' League for Liberty, the Humanitarian Legal Assistance Foundation, and the Office of the Court Administrator conducted four studies on improving access to the justice system and increasing efficiency of court systems and procedures. The Asia Foundation under the LADR program supported three of the studies, namely: (1) *Addressing Affordability Constraints on Access to Justice by the Disadvantaged*; (2) *Expanding the Scope of the Rule on Criminal Procedure for Criminal Cases to Expedite Delivery of Justice*; and (3) *Study on the Expansion of the Rule on Recognizance*.

All the studies have been completed within this reporting period. However, in order to get feedback from the primary stakeholders on the validity of these studies, including the study made by the Office of the Court Administrator on the *Compulsory Submission of Memoranda*, The Asia Foundation provided support for the conduct of consultations with selected judges, lawyers, and other stakeholders throughout the country to substantiate the results and recommendations of the four judicial reform studies. Entitled *Consultations with the Bar and Bench*, these activities were successfully held in Manila, Pampanga, Cebu and Davao in March 2005. Comments generated from these activities are being incorporated in the research output of the concerned organizations.

***Popularization of the Code of Muslim Personal Laws in the Autonomous Region of Muslim Mindanao (ARMM) (Phase II) and Conduct of Focus Group Discussions with Shari'ah Court Judges, Lawyers, and Muslim Communities on the Shari'ah.*** The Al-Mujadilah Development Foundation received Foundation support in September 2003 to popularize the Code of Muslim Personal Laws<sup>13</sup> in five areas of the ARMM: Marawi City, Bongao (Tawi-Tawi), Lamitan (Basilan), Jolo (Sulu) and Sultan Kudarat (Maguindanao) through the translation of the Code of Muslim Personal Laws in Sama and Maguindanaon languages, and publication of illustrated primers in five local languages (Tausug, Maranaw, Yakan, Sama and Maguindanaon). The grant was revised to include the publication of the illustrated primer in English language for use of law students and researchers.

1,000 copies each of the Maguindanaon, Maranaw and English versions have been published and disseminated in selected schools and civil society organizations in Cotabato and Marawi cities

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<sup>13</sup> Presidential Decree No. 1083 (977), otherwise known as The Code of Muslim Personal Laws (CMPL), provides the rules governing the personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations of spouses in Muslim communities.

during the preceding period. The Sama, Tausug and Yakan versions, on the other hand, have now been prepared for final lay-out and printing. Community-based education sessions on the Code of Muslim Personal Laws are ongoing with attendees consisting of women leaders, community leaders, and representatives of non-governmental organizations and the academe. As of date, these sessions were held in Basilan, Jolo, and Tawi-Tawi which were attended by a total number of 120 participants.

***Creating an Environment for Dialogue and Cooperation among Muslim and Christian Women Lawyers: Engaging the Law to Foster Understanding and Advocacy for Women's Rights.*** An initiative of the Women's Legal Bureau, this project builds on previous studies on Muslim women's poor access to justice and complements the Supreme Court's Action Program for Judicial Reform, specifically its component on Access to Justice by the poor, women and children. An environment for critical dialogue and discussion between Muslim and Christian women lawyers on specific areas of law that promote or affect women's rights, as well as the barriers to their enforcement in Muslim Mindanao is sought to be created by this project.

To achieve this goal, a Two-Day Dialogue conference will be organized by the Bureau among fifty Muslim and Christian women lawyers and legal advocates in the country for an exchange of experiences as women lawyers and legal advocates in their respective fields of engagement. They will identify and review relevant laws that benefit Muslim women taking into account their peculiar geography, religious and cultural beliefs, identify the constraints to and propose action plans regarding the enforcement of Muslim women's rights in both the Shari'a and regular courts in Mindanao, and encourage Muslim lawyers and advocates to engage the law and the justice system in promoting Muslim women's rights. The Bureau will also convene a Technical Working Group composed of its current and prospective partners based in Mindanao for brainstorming on the appropriate content and process of the conference.<sup>14</sup>

The first Technical Working Group meeting for the Manila-based groups was held in June 2005. The meeting with Mindanao-based groups has been scheduled in the following month.

#### *Clinical legal education and access to justice by marginalized groups*

***National Conference on Law Schools and Alternative Lawyering.*** In an effort to sustain the justice reform work of alternative law groups in the country, The Asia Foundation through the LADR program co-funded with the Justice Reform Initiatives Support or JURIS project of the Canadian International Agency for Development (CIDA) the conduct of a three-day national conference on law schools and alternative lawyering. The project saw the need of law students who are interested in working with marginalized groups and in reforming the justice system to be provided with continuing guidance, formation, and training from lawyers engaged in alternative law work. Venues for interaction among the students, lawyers, and law school deans likewise need to be convened for a productive exchange of ideas and experiences about law school-based legal aid and internship programs, alternative lawyering, and its contribution to justice reform.

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<sup>14</sup> The partners of the Women's Legal Bureau include the Regional Commission on Bangsamoro Women, Sentro ng Alternatibong Lingap Panligal, Al-Mujadilah Development Foundation, and former Senator Santanina T. Rasul, who is a member of the Advisory Council of Muslim Women Peace Advocates.

With the Ateneo Human Rights Center as convenor, the conference was held in February 2005 in Tanay, Rizal. In attendance were around 100 law students, including lawyers of the Alternative Law Groups and law schools, from all around the country. An audio-visual presentation of the work of the Alternative Law Groups and its internship programs were prepared for the said activity.

***Strengthening Access to Justice of Vulnerable Groups through the Formation of Law Students and Lawyers Towards Alternative Lawyering and Legal Assistance.*** This project regards the value of law school-based institutions in harnessing law students, lawyers, and grassroots leaders in responding to the identified legal needs of disadvantaged people and in improving their access to justice.<sup>15</sup> In line with this, the Ateneo Human Rights Center is currently undertaking various modes of internship and legal assistance initiatives with support from The Asia Foundation's LADR program.

In the internship program (semester, summer, graduate, or replication internships for law students coming from province-based law schools), law students and lawyers are assigned to non-governmental organizations nationwide where they are asked to accomplish a host of activities, such as legal research, drafting of pleadings, field investigation, community consultations, client interviews, paralegal training seminars, and litigation. This is envisioned to encourage participants to consider alternative lawyering as a career, and particularly during the replication internship, to set up and strengthen legal aid centers in law schools around the country. Current participating law schools include the University of Notre Dame in Cotabato City, Ateneo de Davao in Davao City, University of St. La Salle in Bacolod City, University of San Agustin in Iloilo City, Pamantasan ng Lungsod ng Maynila in Manila, and University of San Carlos in Cebu City. The legal assistance program, on the other hand, mainly provides legal assistance to indigent clients in Metro Manila and its immediate vicinity, and in the provinces with the help of partner law schools.

As of this reporting period, the summer internship program has just been concluded with 16 participants from various law schools in the country. Positive ratings, with suggestions for improved implementation, were garnered from the law students during an evaluation of the program held in June 2005.

***Public Interest Law Internship Program Impact Assessment.*** Eighteen years since its inception in 1987, the public interest law internship program of the Ateneo Human Rights Center has produced more than 600 student-interns from the Ateneo School of Law and selected law schools nationwide. After passing the bar examinations, a number of the lawyers engaged in alternative law practice, while others decided to undertake private legal practice, teach in educational institutions, or enter government institutions.

This project will assess, quantitatively and qualitatively, the program's impact on the society in general, human rights and developmental advocacy, developmental legal institutions, legal

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<sup>15</sup> Beyond mere formal legal representation in the courts, this project broadly views "access to justice" as the ability of the disadvantaged people to obtain legal assistance (including information, basic legal advice, initial legal assistance and legal representation); participate effectively in the legal system (including access to courts, quasi-judicial bodies, and alternative dispute resolution mechanisms); and participate effectively in law reform processes.

education, law schools, partner communities, and legal aid clients. The result of the assessment is expected to assist the Ateneo Law School - Human Rights Center in its organizational and strategic planning on public interest law and will also benefit law schools and other members of the Alternative Law Groups, Inc. currently implementing public interest law internship or apprenticeship programs.

As of the writing of this report, the Center is in the process of updating the database of interns and has commenced focus group discussions as well as personal interviews with selected interns.

*Jail decongestion and access to justice by overstaying prisoners*

***Jail Decongestion Projects of the National Integrated Bar of the Philippines.*** This project considers the perennial problem of jail congestion in the country which has arisen due to inadequate prison facilities for the corresponding number of prisoners. As of March 2005, there are 32,000 national prisoners throughout the country and approximately 82,000 more detained in provincial, city, municipal, and district jails.<sup>16</sup> Many of these prisoners and detainees may be considered as “overstaying prisoners”.<sup>17</sup> This is attributed to various factors, such as numerous court vacancies nationwide, decisions rendered after lapse of excessive time, and practice of jacking up bail bond premiums. The primary reason however is the lack of adequate legal representation available to the accused, particularly the impoverished who could not afford to post bail or to appeal a court sentence.

The Integrated Bar of the Philippines thus launched a pilot project in November 2003 entitled *Balik Laya* or Return to Freedom project which was subsequently implemented nationwide. Through these projects, lawyers are mobilized to train paralegals and to provide legal representation to overstaying prisoners. Paralegal training covers the basic principles of criminal law and procedures, including drafting of motions and pleadings for the release of overstaying prisoners. An objective of the project is to determine who are eligible for release so appropriate legal service can be rendered towards that end. Legal representation is provided through the filing of appropriate petitions and taking the necessary actions to effect the release of overstaying prisoners.

As of March 2005, a total of 1,221 overstaying prisoners were released through these initiatives, above the original targets totaling 1000.

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<sup>16</sup> Based on official estimates of the Department of Justice as gathered by the Humanitarian Legal Assistance Foundation, there are 32,000 prisoners at the Bureau of Corrections, 15,000 from the provincial jails, 57,000 from the city, municipal and district jails, and 10,000 in municipal detention centers as of March 2005.

<sup>17</sup> “Overstaying prisoners” are the following: (a) those who have already served the maximum penalty imposable by law for the crime for which a detainee has been accused or is being tried; (b) those who have already served the maximum period of the penalty imposed by the court; and (c) those who are qualified for parole, commutation of sentence, or pardon, as may be determined by the Board of Pardons and parole of the Department of Justice.

***Makati City Jail Decongestion Project.*** Recognizing the need for a coordinated effort to address the problem of jail congestion in Makati City,<sup>18</sup> representatives of the city's Regional Trial Court, Public Attorney's Office, Prosecutor's Office, and representatives of Caritas Manila and Barangay Bel-Air in Makati formed the Makati Integrated Jail Group. In partnership with the Ateneo Human Right Center, a paralegal training course on topics like criminal law and procedure, evidence, and affidavit-making is currently implemented for the city's prisoners. A databank of individual cases for easier facilitation and monitoring of cases by public attorneys and detainees is also being undertaken by the Center's law student-interns with the assistance of the jail cell representatives.

During this period, the Ateneo Human Rights Center has already conducted a total of nine paralegal training sessions on various topics for 24 selected detainees of the city's jail.

***Strengthening Legal Representation Services to Quezon City Jail Inmates.*** The Public Attorneys' Office of the Department of Justice recognizes that lack of lawyers is a major problem that adversely affects the quality of Office's performance and service to its indigent clients, including persons in detention. Hence, The Asia Foundation provided support to the Quezon City Chapter of the Integrated Bar of the Philippines in order to provide the more than 3,512 persons detained in Quezon City Jail with access to adequate and effective legal representation and to facilitate the early release of qualified detainees in accordance with law. This project is being implemented by volunteer lawyers from the city, in cooperation with lawyers from the Public Attorneys' Office and the Quezon City Public Assistance and Legal Affairs Office.

As of this reporting period, the project proponent has already identified twenty volunteer lawyers for the project and engaged the services of paralegals to assist in the implementation of the project. Apart from holding meetings with the city's chief prosecutor and chief attorney, the project also conducted initial jail visitations together with the Supreme Court Administrator, Quezon City Regional Trial Court Executive Judge, and Executive Vice President of the Philippine Judges' Association. Cases requiring the assistance of volunteer lawyers have likewise been identified.

***Decongesting the Philippine Jails: Development of a Defender's Notebook and Research on the State of the Philippine Penal System.*** This project likewise takes cognizance of the alarming increase in jail inmate population in the Philippines.<sup>19</sup> In order to address the current jail situation, the Humanitarian Legal Assistance Foundation will develop a *Defender's Notebook*, a reference and guide material for all inmates that will contain information regarding their personal and case profiles, including updates of their cases after every court hearing. This is expected to be a sustainable empowerment tool for prisoners because reliance solely on free legal aid and lawyers is diminished. The *Defender's Notebook* will be designed in coordination with concerned agencies, such as the Supreme Court, Bureau of Jail Management and Penology, Commission on Human Rights, and the Public Attorney's Office, and will be pre-tested in Quezon City jail. The

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<sup>18</sup> The Asia Foundation notes that the Makati City Jail, with a prison capacity of only 200 persons, currently houses around 1,700 detainees

<sup>19</sup> With an annual increase of 12% in the number of inmates based on the records of the Bureau of Jail Management and Penology, existing prison facilities have been severely cramped over the years. Nationwide congestion rate has been pegged at 200%, with the urban jails having as high as 400% of rated capacity, with inmates being terribly crowded together.

project will also conduct a research on the *Philippine Penal System and Its Implications on the Administration of Justice*, which will essentially provide a larger picture of the penal situation of the country. This component takes off from a previous research initiative on a specific city jail and will generate conclusions on the prevailing practices inside Philippine prisons, jails and detention centers nationwide. The research output will also be a rich material for policy formulation and could be a ready reference for penal reform advocates as they press for issues that need to be addressed by lawmakers and penal administrators.

Within the *Defender's Notebook* component, the project is currently holding seminars on the rights of the accused, criminal procedure, and the different modes of release every Friday at the Quezon City jail. This activity aims to educate all the inmates of their rights so they can later make effective use of the *Defender's Notebook*. As of this date, a Memorandum of Understanding expressing commitment to support the implementation of the *Defender's Notebook* has been drafted as a result of the series of seminars and is in the process of being signed by the agencies involved in this project

### **Related International Activities**

During this reporting period, the Foundation through LADR supported the participation of *Supreme Court Justices Antonio T. Carpio and Angelina Sandoval-Gutierrez* to a technical visit of selected courts and centers in Spain, specifically in Madrid, Valencia and San Sebastian from June 29, 2005 to July 10, 2005.<sup>20</sup> The Asia Foundation recognized that recent judicial reforms in Spain included the decentralization of administrative functions, training of judges, and changes in jurisdictional structure and court proceedings. The courts and centers to be visited were chosen because of the judicial infrastructures that highlight efficiency in work flow, change management and operational systems. These features are considered relevant to the ongoing judicial reform efforts in the Philippines. Specifically, the technical visit exposed the Justices who are involved in the implementation of judicial reform initiatives to the best practices in other jurisdiction; provide opportunities for better understanding of the reform process, including the implementation issues, by observing similar reform initiatives in other jurisdiction; and provide a collection of relevant best practices which the Judiciary may develop and adapt to Philippine judicial system.

Finally, the Foundation's *Senior Program Officer for Law, Attorney Carolyn Mercado*, who manages the LADR program, traveled to the United States from June 13, 2005 to June 17, 2005 to join the Sandiganbayan (Anti-Corruption Court) Study Tour Group for an observation of court and case flow management in selected courts in Madison, Wisconsin and Washington D.C. The study tour also provided an opportunity for the participants to gain valuable lessons that may be useful to the enhancement of the Sandiganbayan. The study tour group was composed of the Sandiganbayan Presiding Justice Teresita de Castro, three Associate Justices and a Director. Attorney George Carmona of the USAID's Rule of Law Effectiveness project and Mr. Paul Simonette of the American Bar Association – Asia Law Initiative likewise joined the group.

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<sup>20</sup> Supreme Court Justice Artemio V. Panganiban was also scheduled to participate in this technical visit, but had to cancel at the last minute due to illness.

## **CHALLENGES IN IMPLEMENTING THE PROGRAM**

The Asia Foundation takes pride in its tradition of collaborating with both public and private partners towards the achievement of mutually-shared goals. In this manner, the Foundation is able to successfully implement the Legal Accountability and Dispute Resolution (LADR) program objectives while considering the important processes of its partner institutions. This is the approach that the Foundation has maintained throughout the period to ensure effective and meaningful implementation of the LADR program.

In this reporting period, the Foundation launched significant projects with strong support from partners within and outside the judiciary. An interesting development of this period was the forging of partnerships with new institutions in the government, legal profession, academe, and civil society sectors. Major projects undertaken within the period were well-attended not only because of the novelty of the activity, but also due to their strong potential to create a substantive impact in the current reform efforts. Among these initiatives relate to the eRulemaking project that is being piloted with the National Telecommunication Commission, the training of eminent personalities who are now expected to champion the use of mediation in their respective fields, the jail visits conducted by Supreme Court officials, and the capability-building of lawyers involved in resolving disputes related to government-owned and controlled corporations. This however does not discount the constant success of ongoing initiatives, such as the court-annexed mediation where mediation units are currently being inaugurated in different localities as well as the productive dialogs between the judiciary and the business chambers.

One challenge encountered during this period pertains to the management of the LADR program. As partnerships with various organizations multiply and with the growing complexities allied with program management, administering each of the sub-grantees and monitoring their respective activities prove to be an enormous task. The Foundation hired an additional legal consultant who rendered substantive assistance in LADR management. The engagement of a permanent legal staff and administrative personnel is being considered by the Foundation to complement the current LADR workforce.

With respect to program implementation, the Foundation continues to manage the problem of delay in the prompt execution of specific project deliverables by some of the Foundation's partners. For instance, the nationwide implementation of the jail decongestion project by the Integrated Bar of the Philippines suffered some setback brought about by delays in fund release to its regional chapters as well as by controversial changes in the national leadership of the Integrated Bar of the Philippines. Another instance was the difficulty experienced in defining final dates of activities where the target participants or the regional implementing partners have equally tight schedules. This was particularly noticeable in the Chamber to Chamber dialogs with the foreign business chambers and in the promotion of ADR in the construction industry in Davao City where the activities have been thrice postponed.

In all cases, however, the work plans and bi-monthly progress reports submitted by partners nonetheless enabled the Foundation to keep track of project activities and ensure prompt resolution of sub-grant management concerns.

As the Foundation pursues the implementation of the program in the succeeding period, it anticipates the major challenge of sustaining the push for judicial reforms currently valued under the robust leadership of Supreme Court Chief Justice Hilario Davide Jr. With the retirement of the incumbent Chief Justice in December 2005 and the perceived politicking within the Court on succession and other reform issues, The Asia Foundation is actively positioning itself to respond to this event, as well as respond to any potential challenges, in order to be able to make perceptive adjustments to its program strategies.

## **PLANS FOR THE NEXT PERIOD**

In the next reporting period, the Foundation will continue to build upon previous accomplishments and institutionalize ADR within and outside of the courts system, while seriously reflecting on how current lessons can be culled towards improved and sustained ADR mechanisms. This includes the holding of a national conference for court-annexed mediators and other activities that will help shift attitudes towards dispute resolution orientation among lawyers, law students, and other mediation stakeholders, from adversarial to the search for mutual gains. With the ongoing organizational and financial study of the Philippine Mediation Center critical in addressing issues of sustainability of ADR initiatives, The Asia Foundation through LADR will conduct a parallel software systems study that will ultimately develop a mediation software portal that can address the current information system needs of the mediation center. Mediation of cases lodged in family courts and the Court of Tax Appeals will also be explored. Outside of the courts, ADR will continue to be pursued among members of the business community and the legal profession, particularly in the law academe where the ADR pedagogy, by itself and in relation to law school curriculum, can be best developed.

The Asia Foundation will also take steps to ensure that the reform efforts will continue to be pursued, implemented, and sustained by whoever would be the successor of the incumbent Supreme Court Chief Justice Hilario Davide Jr. Through the LADR program, The Asia Foundation plans to partner with a network of non-governmental organizations and legal professionals in launching a campaign for a transparent and credible appointment process in the Supreme Court, with focus on the importance of civil society vigilance in ensuring that persons of competence, integrity, and independence would be chosen for the posts to be vacated by the retirement of the incumbent Chief Justice. Active participation in the Judicial and Bar Council's process of selecting nominees for vacant positions as well as conduct of a public information campaign about the appointment process will be ensured through this initiative. This is apart from exploring the possibility of convening all the paralegals nationwide and expanding the reach of the alternative law groups in the country so that law reform initiatives can be consolidated and directed towards broader judicial reforms.

Considering the influx of new partner institutions during this period, another Grants Management Seminar with key Foundation partners is being planned in the coming months. The Grants Management Seminar serves as a venue to help partner institutions better understand how The Asia Foundation works with grantee organizations. Through this activity, LADR sub-grantees will be made to appreciate the Foundation's project management cycle, standard provisions, internal controls, financial reporting requirements, and the Quickbooks accounting software. This activity will certainly assist the grantees' compliance and help the Foundation in pursuing the implementation of its current scheme for monitoring project activities.