



**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, 2006 – June 30, 2006

#### SUMMARY

This semi-annual report covers activities from January 1, 2006 to June 30, 2006 under the Legal Accountability and Dispute Resolution (LADR) program, a grant from the U.S. Agency for International Development to The Asia Foundation. LADR, along with its predecessor program, Reforming the Administration of Justice through Coalition Advocacy (RAJCA), runs from September 14, 1998 to September 30, 2007.

Between January 1, 2006 and June 30, 2006, The Asia Foundation (the Foundation) continued to work with its existing partners and also forged several agreements with new partner institutions. With the approval of the program expansion in September 2004 and September 2005, the Foundation is further advancing the program to expand the coverage of docket decongestion, access to justice, and judicial capacity building activities. A major development is increased public information and access to justice activities in Muslim Mindanao with focus on the Code of Muslim Personal Laws.<sup>1</sup>

With greater emphasis on solidifying impact and addressing sustainability issues, **initiatives on alternative dispute resolution (ADR) processes** undertaken during this period ranged from continued skills enhancement for mediators to accreditation of new mediators in the expanded areas for court-annexed mediation. A study on organizational and financial systems for court-annexed ADR was also accomplished during this period. Further, efforts within and outside the courts that seek to expand the scope of promoting sustained use of ADR among stakeholders were also undertaken. The value of ADR as an alternative paradigm to a traditional litigious framework has begun to take root in the law academe and is being explored in small and medium business enterprises.

The Foundation's partners on ADR initiatives during this period include the following:

- § Philippine Judicial Academy for the expansion of court-annexed mediation and establishment of Philippine Mediation Center units in General Santos, Tacloban, and Ormoc, and in the Court of Appeals; and in connection with a conference on court-annexed arbitration;

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<sup>1</sup> The Code of Muslim Personal Laws (Presidential Decree No. 1083) provides rules governing the personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations of spouses in Muslim communities.

- § Institute of Social Studies and Action on the integration of PhilJA mediation curriculum and training programs;
- § Office of the Government Corporate Counsel in partnership with the Institute of Social Studies and Action for building the capability of the Office for ADR;
- § Ateneo Human Rights Center's *Adhikain Para sa Karapatang Pambata* (Child Rights Desk) on the conduct of ADR sessions for family court judges in its regional workshops;
- § Asian Institute of Journalism and Communications on the development of a communications plan as well as information, education, and communication materials for court-annexed mediation;
- § Center for Public Resources Management for an organizational and financial study of the Philippine Mediation Center and its units;
- § Conflict Resolution Group and the Department of Justice on a workshop discussing institutionalization of mediation in the justice department;
- § Conflict Resolution Group and the Social Weather Stations on the research about conflict resolution systems in small and medium enterprises.
- § Council of Engineering Consultants of the Philippines for its awareness drive on the ADR law of 2004 in the construction industry;
- § Philippine Mediation Foundation on the effort to re-orient the legal profession about its role in dispute resolution; and
- § University of the Philippines College of Law Development Foundation on the establishment of the Law Center Institute on Dispute Resolution;

Activities to **advance judicial transparency and accountability** were pursued by the Foundation during this period by providing initial support to the Judicial and Bar Council, the body tasked to search, screen, and select nominees to judicial posts. The Council will hold dialogs with various sectors in order to address the problem of delay in the delivery of justice due to high vacancy rates in the courts, particularly in less urbanized areas, and to encourage the public to participate in the search and recruitment of members to the judiciary. Partnership with a consortium of legal professionals and civil society organizations in enhancing citizen participation in the process of appointing Justices of the Supreme Court was sustained. Court monitoring initiatives in three Mindanao cities, review of gender and development in the justice system, and law student apprenticeship program at the Office of Ombudsman were also pursued. Partners for these efforts include the *Paglilingkod Batas Pangkapatiran Foundation* (Service in Law for Solidarity), University of the Philippines Center for Women Studies Foundation, and the Far Eastern University Institute of Law.

Further, production of e-learning modules on remedial law and civil law was carried out as a court capacity enhancement activity geared towards achieving judicial accountability. Two other relevant studies were undertaken during this period: (1) a diagnostic study of the challenges in the judiciary in response to the results of previous public perception surveys; and (2) an assessment of the case flow management (CFM)

system piloted in Pasay City in view of plans to enhance the CFM software for nationwide implementation.

To **build constituencies for the judicial reforms**, the Foundation continued its efforts to strengthen the relationship between the judiciary and media by supporting the Asian Institute of Journalism and Communication in publishing guide materials for journalists covering the courts and for manuals on judiciary-media relations. Support was also provided to the Asian Institute of Management Policy Center in its conduct of a forum with the Supreme Court Chief Justice about the role of civil society in advancing economic development. Both initiatives were 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. On a more significant level, these efforts have progressively involved more Muslim partners and Mindanao-based organizations. Among the current partners include the following:

- 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 completion of teaching exemplars on the judiciary and the rule of law;
- Ateneo Human Rights Center on its initiatives concerning law student internship and alternative lawyering as means to strengthen access to justice of vulnerable groups, as well to understand the impact of its internship program;
- Alternative Law Groups, Inc. for the conduct of a national paralegal conference;
- Upholding Life and Nature for the production of video materials on legal topics useful for paralegal training activities;
- Sentro ng Alternatibong Lingap Panligal (Alternative Legal Assistance Center) for the establishment of a consortium of Bangsamoro (Muslim) lawyers and training support to Western Mindanao State University law students;
- Social Weather Stations on the conduct of a study on the administration of the Code of Muslim Personal Laws; and
- Integrated Bar of the Philippines (National Office and Quezon City Chapter), Ateneo Human Rights Center, and the Humanitarian Legal Assistance Foundation on jail decongestion efforts, including studies on the country's penal system and the new dangerous drugs law (the *Comprehensive Dangerous Drugs Act of 2002* or *Republic Act No. 9165*) as it relates to prison condition.

During the period covered by this report, The Asia Foundation awarded 11 new grants to 9 partners. Of the 41 grants issued in 2005, twenty-four are ongoing and seventeen were completed as of this date.

## HIGHLIGHTS AND OUTCOMES OF SIGNIFICANT ACTIVITIES

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

The Asia Foundation's strategy on institutionalizing alternative dispute resolution processes involves working with the courts through the court-annexed mediation project as a means of decongesting court dockets; working with various non-judicial institutions by sifting cases that will go to the courts; and working with law schools in changing the dispute resolution framework of future lawyers.

#### *Court-Annexed Mediation*

***Regional Mediation Training and Establishment of Philippine Mediation Center Units in General Santos and Tacloban Cities.*** This project seeks to expand the pilot areas for court-annexed mediation and establish Philippine Mediation Center (PMC) Units in General Santos and Tacloban City, including its adjacent court stations. Combined case load in both cities were considered significant, with General Santos and Tacloban cities having 15 courts each burdened with 8,789 and 5,618 cases, respectively.<sup>2</sup>

Following the mediation training and internship activities held in the preceding period, this period saw the accreditation by the Supreme Court of a total of 80 mediators from the two cities. Re-orientation seminars for the newly-accredited mediators, their oath-taking, and the inauguration of the Philippine Mediation Center units in Tacloban and General Santos cities took place in March and June 2006, respectively.<sup>3</sup> New PMC units were also opened in the adjacent court areas located in Koronadal City (Marbel) and Lake Sebu (both in the province of South Cotabato). PhilJA reports show that from January to May 2006, 344 out of the 590 referred cases in Tacloban City went through actual mediation, with 146 cases settled and 198 failed; while in General Santos City, 259 cases were referred for mediation. Of this number, 132 cases were mediated, with 87 reaching settlement and 45 cases unsuccessful.

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<sup>2</sup> The caseload for General Santos City is broken down as follows: 7 Regional Trial Courts – 5,245 cases; 4 Municipal Trial Courts – 997 cases; and 4 Metropolitan Circuit Trial Courts – 2,547 cases. The caseload for Tacloban City is as follows: 7 Regional Trial Courts – 4,323 cases; 3 Metropolitan Circuit Trial Courts – 1,386 cases; and 6 Municipal Trial Courts – 245 cases.

<sup>3</sup> The construction of the PMC building in Tacloban City was funded by Tacloban's member of Congress Remedios Petita; while the designation of the two rooms in the Hall of Justice of General Santos City as PMC Units for its regional and municipal trial courts was made by its Executive Judge Oscar P. Noel. The equipment and furnishings of these PMC units were provided either through PhilJA's mediation fund or by private donations.

By the end of this period, the project duration was extended to enable PhilJA to implement its court-annexed mediation program in Ormoc City. A training session for prospective mediators has been scheduled in July 2006.

***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<sup>4</sup> and those areas under the Justice Reform Initiatives Support or JURIS project funded by the Canadian International Agency for Development (CIDA). Since June 2005, all first and second level trial court judges in the covered areas were directed to consider the possibility of amicable settlement of all civil cases, settlement of estates, and cases covered by the Rules 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.

Between January and May 2006, a total of 7,627 cases were referred for mediation. Of this number, 4,180 cases completed mediation, out of which 1,931 were settled, while the rest failed due to the complicated circumstances of the case and inability of the parties to reach an acceptable agreement. Among the main reasons that cases initially referred for mediation were returned to the court include non-appearance of the parties and refusal by either of the parties to go through mediation. PhilJA further reports that most of the cases mediated under this project are in the nature of either violation of the bouncing checks law, sums of money, damages, estafa, and reckless imprudence resulting to damage to property. (See Annex A for a complete statistical update on the court-annexed mediation project.)

***Court of Appeals Mediation Project (Phase Two).*** Beginning in January 2004, The Asia Foundation provided support to PhilJA for the institutionalization of mediation in the Court of Appeals by offering litigants in the appellate court the opportunity to resolve their disputes outside the regular court proceedings.<sup>5</sup> To pursue this objective, a core of trainers was developed and mediation skills-building workshops were organized. Further support was provided by the Foundation in 2005 for the establishment of a Philippine Mediation Center – Court of Appeals Unit, conduct of an internship program for the trained mediators, and promotion of the appellate court mediation to key stakeholders.

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<sup>4</sup> The Asia Foundation's court-annexed mediation project areas are Metro Manila, Metro Cebu, Metro Davao, Cagayan De Oro, General Santos, and Tacloban. Project areas include the adjacent court areas.

<sup>5</sup> A total of 22,587 cases were pending in the Court of Appeals at the beginning of the year 2002. During the year, 12,672 new cases were filed while 11,752 cases were disposed of. In 2003, 11,745 new cases were filed and the court disposed of 11,729. By the end of the year, a total of 22,603 cases remained. In 2004, 12,370 new cases entered the system with 11,785 disposed by the Court, leaving a total of 23,098 still pending at the close of the year. In short, 511 cases were added to the backlog of the appellate court between 2002 and end of 2004.

After the project's launch in August 2005, a total of 1,126 cases were selected by the 17 divisions of the Court of Appeals for possible mediation (exceeding the original target of 1,020 cases). Out of the cases selected by the divisions, 782 cases qualified for mediation and were sent notices based on the nature of cases, residence of parties, and accuracy of the contact information for the parties. Of the 782 cases that were sent notices, 693 received the notice. Of this number, parties in 621 cases appeared before the Division Clerks of Court, while those in 72 cases did not appear despite notice. Of the 621 cases that appeared, parties in 279 cases agreed to undergo mediation, 283 cases refused to mediate, 55 cases were already decided by the *ponente*, and 4 cases had ongoing initial conferences with the Division Clerks of Court until the end of the grant period.

With the closing of the project by the end of this period, PhilJA demonstrates that of the 279 cases that agreed to undergo mediation, 118 cases or 42% reached settlement, 155 did not succeed, and 6 are still going through mediation. Initial findings show that mediation was effective in settling cases relating to sums of money, labor, and ejectment.

A consolidation of the project evaluation forms revealed that appellate court mediation was positively regarded by most users. The process undertaken enabled the parties to express their feelings, understand other parties' views, as well as explore options and alternatives. Mediators were noted to be patient and impartial who actively listened to the views of the parties, encouraged generation of ideas, and did not pressure the parties to settle. In terms of the outcome of mediation, most parties expressed satisfaction with the agreement reached, intended to fully comply with the settlement terms, trusted that the other party will likewise comply, and believed that relationship with the other party has been repaired.

It is realized that while the settlement rate is relatively high from among those who have agreed to use mediation during the project's introductory phase, the results did not yet significantly affect the over-all backlog of the appellate court. A more intensive awareness campaign of the merits of mediation within the Court of Appeals (Justices and clerks of court) and its stakeholders (particularly the lawyers) is found to be necessary. Among the recommendations submitted by PhilJA relate to the following issues: (a) guidelines for the accreditation of mediators; (b) direct mediation instead of the two-step process where parties are still required to sign an agreement or refusal to mediate form; (c) non-appearance of counsel in mediation proceedings to generate higher acceptance rate based on PhilJA's finding that the acceptance rate is lower when parties appeared with a counsel; (d) PMC-Court of Appeals budget and manpower requirements; (e) higher mediators' fee *vis a vis* those in trial courts; and (f) implementation of mediation training in Court of Appeals – Cagayan de Oro and Cebu City.

***Workshops on Dispute Resolution for Family Court Judges.*** *Adhikain Para sa Karapatang Pambata* (Child Rights Desk), in partnership with the Philippine Judicial Academy and the United Nations Children's Fund, conducted regional workshops on "Juvenile Justice, Domestic Relations, and Dispute Resolution" for family court judges,

court social workers, and selected members of the civil society. The Asia Foundation supported the portion of the workshops on dispute resolution skills building. The workshops also served as venue for consultation with the judges about the expansion of mediation among family courts nationwide.

A total of three regional workshops have been organized with support from LADR since the project's start in August 2005, the last being in January 2006 with stakeholders from Region 4 and Manila family courts. The workshops benefited approximately 181 family court judges, branch clerks of court, and court social workers in the covered regions.

During the workshops, the participants identified the skills needed in mediating family-related disputes and the types of family law cases that may be referred for mediation. These include cases on liquidation and partition of properties, custody and visitation rights, child support, possible reconciliation of spouses within the cool-off period, and *habeas corpus* in relation to custody cases. Training activities on diversion and mediation of family cases for branch clerks of courts and court social workers were also recommended. The institutionalization of mediation in the family courts is still being discussed within PhilJA.

***Conference on Arbitration for Judges.*** Despite its inclusion as one of the ADR mechanisms under the new Alternative Dispute Resolution Law of 2004, arbitration<sup>6</sup> remains relatively underutilized. PhilJA notes that there is a need for better understanding of arbitration as an ADR mechanism, especially in international contracts and cross-border transactions. The courts need to be aware that they may issue interim measures pending an arbitral proceeding, and that they have an important role in the recognition, confirmation, and enforcement of arbitral awards.

With support from the LADR program, the Philippine Judicial Academy conducted a two-day conference in March 2006 on arbitration as an ADR mechanism. The conference aimed to provide a better understanding of domestic and international arbitration, with emphasis on how domestic courts can assist arbitral tribunals and how they can enforce or vacate arbitral awards. The lectures, which included sessions on court-annexed arbitration, litigation tactics affecting arbitration, and arbitration process, were conducted by Malaysian lecturers from the Kuala Lumpur Regional Centre for Arbitration<sup>7</sup> and Filipino lecturers engaged by PhilJA. The activity was attended by a total of 41 appellate court justices, regional trial court judges, PhilJA professors, and local arbitration practitioners.

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<sup>6</sup> Arbitration is defined as a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to the new ADR law, resolve a dispute by rendering an award.

<sup>7</sup> The Kuala Lumpur Regional Centre for Arbitration (KLRCA) is a Malaysian organization established under the auspices of the Asian-African Consultative Organization to provide an understanding of arbitration as an ADR mechanism, especially in international contracts and cross-border transactions. KLRCA lecturers rendered *pro bono* professional services for this project.



The conference was well received and generated some interest among the members of the judiciary. In order to build on the foundation laid during the activity, a special ADR meeting was called in April 2006 to discuss the steps needed to pursue a court-annexed arbitration program for the Philippine judiciary.

***Integration of Mediation Curriculum and Training Programs.*** In order to improve the mediation training programs of PhilJA for judges, mediators, court personnel, and lawyers, The Asia Foundation partnered with PhilJA, the Justice Reforms Initiatives Support project of the Canadian International Development Agency, and the Institute of Social Studies and Action for the integration of all court-annexed mediation curricula and training programs. The output of this integration project is the development of a course process format with accompanying materials and teaching notes. The material will become the standard for all ADR training necessary for accreditation by the Supreme Court.

Meetings and workshops at various levels were held within the months of March and April 2006 to discuss, analyze, and pre-test seven different curricula for diverse audiences. These were: (1) Training Course for Trainers on Mediation; (2) Orientation for Justices/Judges on Court-Annexed Mediation; (3) Orientation for Lawyers on Court-Annexed Mediation; (4) Orientation for Court Personnel on Court-Annexed Mediation; (5) Integrated Basic Mediation Course; (6) Advanced Mediation Course; and (7) Training Course for Judges on Judicial Dispute Resolution. Resource manuals for each course were also prepared.

As of this date, PhilJA and the Institute of Social Studies and Action have already finished the printed versions of four resource manuals. Upon completion of the project output, the materials are expected to be launched at the Supreme Court.

***Communication Program for Court-Annexed Mediation.*** This project takes off from past 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 the attitude of mediation stakeholders that affect the quality of support for ADR. In coordination with PhilJA, the Foundation is working 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. It is hoped that with greater information, education, and communication on the value of mediation, party litigants and their lawyers will be more accepting of the process.

Specific project activities include: (1) preparation of a Communication Plan for Court-Annexed Mediation; (2) development of information, education, and communication materials, including news articles and feature stories on mediation; and (3) case studies of

successful mediation cases and outstanding mediators which will be utilized as inputs for media stories, training tools, or case presentations in future mediation conferences.

During this reporting period, mediation processes in Manila, Davao, Cebu, Cagayan de Oro, and San Fernando cities were observed as input in writing case studies and feature stories on mediation. As of this date, most of the expected output have been drafted and forwarded to PhilJA for initial comment. The materials include: (a) posters on the mediator's prayer and commandments, court-annexed mediation flow chart, and choosing mediation; (b) brochures or primers on court-annexed and appellate court mediation, glossary of mediation terms and directory of PMC units; (c) five case studies on mediation; and (d) a draft Communication Plan.

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

The Asia Foundation, after a competitive bidding process, contracted the services of the Center for Public Resources Management Consultants, Inc. (CPRM) to undertake a study on the present organizational and financial structures of the Philippine Mediation Center (PMC) and its existing units. The study is part of PhilJA's efforts to implement an effective and sustainable expansion of court-annexed mediation in all the judicial regions in the country.

CPRM used various methodologies including capacity assessment, institutional review, SWOT<sup>8</sup>, focus group discussions, one-on-one interviews, review of literature, and system survey tools, to identify relevant issues. From the assessment, organizational directions were defined. These directions became the basis for principles and parameters that guided the pricing and organization framework as well as the formulation of the proposed full organization structure and business strategy.

The assessment report provides an overview of the situation of court-annexed mediation; a review of the mediation system's financial structure; an internal capacity assessment; and a proposed organizational framework. The systems design report, on the other hand, describes the financing and pricing policy, proposed organizational arrangements, key operating systems, and financial viability of the mediation operations.

In its assessment, CPRM posited that mediation is a "mixed good", meaning that it is both a public and private good in the sense that the benefits of its provision is not exclusive but has certain externalities. Since mediation is not a pure public good, the cost should be borne both by the public sector and the court users. A rethinking of the judiciary's currently uniform financing and pricing philosophy is recommended to make the mediation program sustainable. Further, CPRM noted that the judiciary has limited internal capacity to manage a nationwide mediation delivery system and thus, a rethinking of its organization model for the court-annexed mediation system is also recommended.

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<sup>8</sup> A tool for analyzing institutional strengths, weaknesses, opportunities, and threats,

The proposed organizational model sorts the functions of management and operation of the court-annexed mediation system. It also allocates the functions to the entity (public sector or private sector) that will provide the best service from the point of view of efficiency. The model works in such a way that the judiciary will provide the policies, establish operating standards and procedures for the operation of the court-annexed mediation, and engage in partnership with private sector mediation organizations for the delivery functions.

The table below summarizes the proposed organizational model for court-annexed mediation:

Who will be responsible	Plan / Policy	Advocacy	Training / Accreditation	Delivery	Monitoring / Evaluation
Private				X	
Public (PhilJA, OCA, PMC)	X	X	X		X

The Philippine Mediation Center, previously established by the Supreme Court, is proposed to be the oversight agency. To address sustainability issues, the study proposes a framework for determining the pricing policy for mediation services. The service is regarded as an impure or marketable public good, where portions of the fee for mediation are market driven and other portions are supported by government funds since the benefits accrue to purely government functions like the administration of justice.

Based on the December 2005 comments of the ADR Committee-Judicial Reforms Office of PhilJA on the draft report, CPRM proceeded to make the necessary revisions during the current reporting period. The latest revised version of the Assessment Report was submitted in March 2006, while the Systems Design Report was turned over to PhilJA in June 2006.

By the end of this reporting period, the Center presented its revised reports to PhilJA'S ADR Committee and responded to their questions. A validation workshop with relevant stakeholders on the Center's output will be organized in the succeeding period.

*Out-of-Court Mediation: Sifting cases that go to the courts*

***Workshop on Institutionalizing Mediation at the Department of Justice.*** The Conflict Resolution Group, in partnership with the Department of Justice, implemented three pilot mediation programs starting in 2001 that aimed to explore the effectiveness of the use of mediation in prosecution offices in the country. The theory was that mediating cases that carry a penalty of less than six years, particularly those involving bouncing checks and *estafa*, and other money claims, which constitute about 65% of cases that enter the courts,

will halt the rising number of cases that continue to clog the court dockets. The pilot initiatives succeeded in generating an average settlement rate of ninety-three percent and in providing significant learning experiences for the Justice Department.

During this reporting period, The Asia Foundation continued to support this initiative through the conduct of a workshop on institutionalizing mediation at the Department of Justice. The activity was held in June 2006 with thirty-four chief prosecutors and assistant chief prosecutors from various areas of Metro Manila. Top officials of the Department also attended the workshop. The activity generated comments on the benefits and challenges of using mediation in the prosecution offices, as well as recommendations for its institutionalization. Among the proposals that resulted from the action plan portion of the workshop were the following: (a) formation of a committee that will draft the rules on how to go about formalizing the mediation set-up at the prosecution office; (b) an intensive information drive about mediation in the pilot areas; (c) institutionalization of mediation in areas covered by the pilot program; (d) re-activation of trained prosecutors-mediators; and (e) provision of mediation training in relevant areas of the country. Key recommendations include institutionalizing mediation nationwide, launching a comprehensive mediation advocacy campaign within the prosecution offices and among its users, integrating the mediation fees in the filing fees, and providing compensation for prosecutors who perform mediation over and above their current responsibilities.

***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>9</sup> which handles all disputes of the more than 100 government-owned and controlled corporations, their subsidiaries, other corporate offspring, and government-acquired corporations on alternative modes of dispute resolution relevant to its mandate. In partnership with the OGCC, and with technical assistance from the Institute of Social Studies and Action, The Asia Foundation supported this project to introduce the different ADR mechanisms to OGCC lawyers and representatives; identify modes of ADR relevant to the mandate of the OGCC; draft related internal rules and regulations; provide necessary ADR skills to its lawyers; and conduct a pilot-test of the internal rules and regulations.

During this period, the publication of the OGCC implementing rules and regulations, with specific provisions on mediation and arbitration, has been accomplished and is expected to be launched in the next quarter. Three new cases were also identified for the

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<sup>9</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.

pilot testing and have so far completed preliminary conferences.<sup>10</sup> The Institute of Social Studies and Action has served as mentors of the arbitration panel during the pilot testing.

***Awareness Drive on the Alternative Dispute Resolution Act of 2004 in the Construction Industry.*** Following the enactment of the ADR law of 2004, which re-affirmed the jurisdiction of the Construction Industry Arbitration Commission (the Commission) over construction disputes and mandated the referral of all pending construction cases to the Commission for arbitration, the Council of Engineering Consultants of the Philippines successfully conducted an awareness campaign about the impact of the law to the construction industry beginning in late 2004 up to the end of this period.

The Commission's statistics show that within its 15 years of operation since it started to accept cases in 1989, there were only 424 cases in its dockets (408 by arbitration and 16 by mediation). That means only 29 cases per year, compared to courts, which get an average of over a hundred cases per year. Many construction disputes were not filed with the Commission but rather lodged in the courts due to the public's lack of awareness of its the existence, misperceptions about the jurisdiction of the Commission, and lack of understanding of the advantages of arbitration over litigation.

The awareness drive, which targeted the industry's stakeholders and decision-makers, stressed the need to re-direct the construction industry into resolving disagreements using other non-judicial means, such as mediation and arbitration.

During this period, the Council of Engineering Consultants of the Philippines printed 200 copies of the Revised ADR Handbook which was officially launched in April 2006. The launch was attended by approximately 80 construction industry stakeholders who at the same time had the opportunity to listen to lectures about the ADR law, revised rules on construction arbitration, and the Construction Industry Arbitration Commission mediation rules. Other publicity activities undertaken during this period included ADR sessions with the new civil engineers and board passers, members of the Philippine Institute of Civil Engineers, and small and medium enterprises during the Brunei-Indonesia-Malaysia-Philippines East Asia Growth Areas (BIMP-EAGA) meeting in March.

Among the recommendations generated during the implementation of the project include activities that will address the need for training and accreditation of Commission arbitrators, particularly in the provinces. This was raised in consideration of the fact that approximately 5,827 local contractors are geographically dispersed in all parts of the country and that construction disputes normally arise in implementing contracts for projects in growth areas located in the provinces.

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<sup>10</sup> The three new cases refer to disputes about damages and sums of money involving two cases between the Philippine National Construction Commission and the Bases Conversion Development Authority and one case between the National Tobacco Administration and the Development Bank of the Philippines.

**Research on Conflict Resolution Systems in Small and Medium Enterprises.** This project cites a study of the National Statistics Office indicating that small and medium enterprises (SMEs) comprise 99.6% of the over 800,000 total companies registered in the Philippines. It is predicted that improved productivity of the SMEs can generate potential revenue to the country. A well-developed conflict resolution system within and among the SMEs could be a key requisite for its growth and development.

This project will conduct a study of the SMEs in the country that will facilitate the designing of an effective conflict resolution system for the industry. This will be undertaken by the Conflict Resolution Group through table research, focus group discussions, and personal interviews. The interviews will be conducted with entrepreneurs, employees, relevant government agencies, and trade associations. In addition, Social Weather Stations will conduct a representative survey of 200 respondents coming from the top-level management of SMEs in Metro Manila, as well as inclusion of five rider questions about SMEs and dispute resolution issues within a quarterly Social Weather Report.

As of this period, the Conflict Resolution Group has already conducted initial interviews with the Department of Trade and Industry as well as focus group discussion sessions with the handicrafts and drugstore industries. Similar sessions will be held in July and August 2006 with members of the furniture industry manufacturers, food processors and exporters, Filipino-Chinese women's chamber of commerce, herbal and oil industry, spa and wellness industry, and business process outsourcing sector. The rider questions for the quarterly Social Weather Stations survey have also been finalized and pre-tested.

***Online Dispute Resolution Project (Implementation Phase).*** Following the launch of the Philippine Dispute Resolution website<sup>11</sup>, the Cyberspace Policy Center for Asia-Pacific proceeded to deploy the online dispute resolution (ODR) software and to implement the recommendations of the initial phase. One of the components of the implementation phase included an information campaign to familiarize users on the utility of the software and its advantages. Efforts undertaken by the Center revealed that there remains a significant lack of awareness and understanding on the existing ODR service among stakeholders. Since its launch, only a few cases have been submitted to the ODR process and most have been unable to proceed. Under the current arrangement, the parties seem to hesitate due to lack of familiarity with the system and a need for personal interaction with the other disputants. The project will take a fresh look at the methodology and determine if adjustments are needed.

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<sup>11</sup> <http://www.disputeresolution.ph>

Working with Law Schools on the Alternative Dispute Resolution Framework

***From Litigation to Mediation: Re-Orientation of Lawyer's Role.*** Philippine Mediation Foundation, Inc. conceptualized this project in response to a Supreme Court guideline calling for a change in the orientation of lawyers during mediation and considering the results of a survey identifying lawyers as one of the hindrances to successful mediation. This project is designed to encourage lawyers, starting with law students who are the future lawyers of the country, to participate constructively as problem solvers and providers of prompt, appropriate and affordable justice in court-annexed mediation proceedings. With support from The Asia Foundation, this project reviewed the current law school curriculum with the goal of instituting revisions on ADR, and to develop a core of ADR trainers in selected law schools in Metro Manila who will assist in the training and re-orientation of prospective lawyers.

Following the completion of the revised law curriculum and orientation of potential change agents from pilot law schools<sup>12</sup> in December 2005, the Philippine Mediation Foundation conducted its re-orientation seminar/workshop on dispute resolution in March 2006. The seminar workshop, which was attended by approximately 15 law school deans and representatives from the Philippine Association of Law Schools and Philippine Association of Law Professors, discussed topics on mentoring non-adversarial lawyers, counseling and negotiation techniques, ethical issues in ADR practice, current ADR laws and policies, the mediation process, caucus and breaking impasse. A resource person from the Hamline School of Dispute Resolution<sup>13</sup> was tapped by the Foundation to share American law school experiences in transforming legal education and practice. The activity concluded with the signing of a Memorandum of Agreement by the heads of the Philippine Mediation Foundation, the Philippine Association of Law Schools, and the Philippine Association of Law Professors. The Memorandum of Agreement provided, among others, the active participation of the signatory organizations in the advocacy to incorporate negotiation, mediation, and other modes of ADR in the law school curricula, and delineated the role of these organizations in the move to establish an Academy of Law Teachers to properly train law professors how to teach negotiation skills and ethical standards to all law students.<sup>14</sup>

***Establishment of the U.P. Law Center Institute on Dispute Resolution (IDR) and Other Related Projects.*** Despite developments in the field of ADR in the Philippines, no institution has yet been established that focuses on ADR pedagogy and research, particularly as this relates to law school instruction and the practice of law. The Asia

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<sup>12</sup> The pilot law schools are as follows: University of Santo Tomas, University of the Philippines, San Beda, Ateneo, Far Eastern University-La Salle, and Manuel Luis Quezon University.

<sup>13</sup> Atty. Salvador P. Panga is a post-graduate fellow in Alternative Dispute Resolution, Hamline University School of Law, Minnesota.

<sup>14</sup> The Memorandum of Agreement dated March 31, 2006 was signed by Presiding Justice Ruben T. Reyes of the Philippine Association of Law Professors (PALP), Dean Mariano F. Magsalin Jr. of the Philippine Association of Law Schools (PALS), and Dean Eduardo D. Delos Angeles of the Philippine Mediation Foundation, Inc. (PMFI).

Foundation currently supports the initial activities of the University of the Philippines - Institute on Dispute Resolution (IDR) as it attempts to become a vehicle for improving the theory and practice of all forms of dispute resolution, discussing ADR ideas and practices, increasing public awareness of ADR modes, and providing ADR services to the general public. It further aims to establish a national network of ADR academics and practitioners which can guide the development of ADR in the country and coordinate efforts on a national basis to afford a level of uniformity in ADR instruction. It targets the legal community starting from law students, practitioners, law professors, lecturers, and researchers. Specific component activities of this project are: (a) publication of an ADR Quarterly Newsletter; (b) organizing an ADR Conference; and (c) ADR Courseware Development.

As of this reporting period, the Institute has already printed the second issue of its quarterly newsletter, *Consensus*, which contains articles on ADR as it relates to constitutional and criminal law, barangay justice, and court-annexed mediation. It also features negotiation in cases of kidnapping and sexual harassment in the university. As part of its component activities, the Institute has already completed the first draft of the ADR textbook, which will be offered to law schools nationwide, and has finalized two of the five negotiation cases for role simulation exercises.

## **II. Judicial Transparency and Accountability**

***Supreme Court Appointments Watch.*** A consortium of legal professionals and civil society organizations<sup>15</sup> banded together to ensure active participation in the Judicial and Bar Council's process of selecting nominees for the vacant posts.<sup>16</sup> Starting in July 2005 in anticipation of the vacancies then occurring in the seats of the Chief Justice and Associate Justice of the Supreme Court, the consortium conducted a series of public information campaigns and forums directed towards increasing public awareness about the appointment process, educating the public on how they can participate in the process, and informing the public about the candidates to the vacant positions. Attempts were also made to engage the Judicial and Bar Council in this initiative.

In February 2006, the consortium attended the first public interviews of the nominees for the Associate Justice post which was conducted by the Judicial and Bar Council at the

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<sup>15</sup> The Supreme Court Appointments Watch Consortium is led by the Transparent Accountable Network (TAN) and the Alternative Law Groups, Inc. together with the Lawyers' League for Liberty, Integrated Bar of the Philippines, Philippine Association of Law Schools, and the Association of Law Students of the Philippines.

<sup>16</sup> The 1987 Constitution of the Republic of the Philippines vests the authority to nominate appointees to the judiciary in the Judicial and Bar Council. From a list of at least three nominees, the Philippine President makes appointments to vacant judicial posts without requiring any further confirmation. Direct citizen participation in the judicial appointment process may be seen in the presence of four regular members of the Council, namely, a representative of the Integrated Bar of the Philippines, a professor of law, a retired member of the Supreme Court, and a private sector representative.



Supreme Court. A public forum which tackled the developments in the selection process was subsequently organized by the consortium in Ateneo de Manila University. Dean Amado L. Dimayuga, a regular member of the Judicial and Bar Council, was an important resource person during this forum as he discussed the mandate and proceedings of the Council.<sup>17</sup>

During this period, meetings were also organized by the consortium to discuss the group's proposed amendments to the rules of the Judicial and Bar Council. Among the proposals include broader representation (to include geographical and sectoral considerations) in the regular membership of the Council, manner and causes of removal from office of Council members, and the Council as recommending body with respect to judicial appointments with specific provision on non-interference by the President in identifying the short-list of nominees. The consortium also intended to propose that the confirmation of the Commission on Appointments be required for appointments to the Supreme Court, Sandiganbayan, Ombudsman, and the Commission on Elections.

The grant was recently extended to enable the consortium to pursue its objectives, in the light of the vacancy in the High Court occurring anew in December 2006. This will be done through press conferences and media appearances on the judicial appointments process, dialogs with the Judicial and Bar Council on its rules, and publication.

***Civil Society Engaging the Courts II.*** In its effort to design an effective tool for court monitoring and to develop civil society court monitors in three key cities in Mindanao<sup>18</sup>, *Paglilingkod Batas Pangkapatiran* Foundation (Service in Law for Solidarity) is in the process of improving the research and groundwork for the development of a Civil Society Manual for Court Monitoring.

During this period, the following activities were conducted: (a) focus group discussion with lawyers who commented on the court monitoring tool and design; (b) orientation and court exposure of interns in two regional trial courts; (c) finalization of questionnaires, research, and coordination with the courts; and (d) pre-field training activities. Researchers' visits to the courts in the key cities started in June 2006.

***Law Student Apprenticeship at the Office of the Ombudsman.*** With the endorsement of the Philippine Supreme Court<sup>19</sup>, a pilot law student apprenticeship program was conducted beginning in 2004 with the participation of selected law schools in Metro Manila. The program was implemented under the leadership of the Far Eastern University Institute of Law in coordination with the Supreme Court's Program Management Office, Metro Manila law school deans, and selected courts in Manila,

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<sup>17</sup> Then Court Administrator of the Supreme Court Presbiterio Velasco was subsequently appointed to the Associate Justice post. Earlier in December 2005, then Senior Associate Justice Artemio V. Panganiban was appointed Supreme Court Chief Justice to fill the vacancy caused by the retirement of then Chief Justice Hilario G. Davide Jr.

<sup>18</sup> Areas covered are the cities of Davao, Cagayan de Oro, and General Santos.

<sup>19</sup> *En banc* Resolution A.M. No. 04-04-08-SC dated April 27, 2004

Quezon City and Makati City. The program trained law students in legal research and exposed them to court proceedings. The program further provided training of future officers of the court for clerkship and assistance to the selected courts in resolving cases hastily and in reducing their caseload.

During this period, a shift in the program's focus happened with the involvement of the Office of the Ombudsman, particularly in organizing the law student summer apprenticeship program. An orientation of the program with more than 100 law students from the Metro Manila law schools and signing of a Memorandum of Agreement with Ombudsman Merceditas Gutierrez was conducted in April 2006 prior to the actual apprenticeship with the various departments of the office. The apprentices were asked, among others, to draft decisions, orders, and resolutions; evaluate complaints; draft investigative plans and reports; monitor cases; issue clearances; pre-evaluate cases; and prepare subpoena. An evaluation of the program is slated for the next period.

***Davide Watch Gender Review project.*** Through a grant to the University of the Philippines Center for Women Studies Foundation, this project reviewed the Action Program for Judicial Reform and the Davide Watch (Chief Justice Davide's inaugural statement of priorities) in terms of gender and development in the justice system. Supreme Court policies and programs on gender, its gender sensitivity trainings, and related jurisprudence were analyzed during this period. The research results, which will be published in book format, will document the term of Chief Justice Hilario Davide Jr. (November 1998 to December 2005) to serve as a benchmark for the Supreme Court's gender mainstreaming efforts. This is expected to contribute to judicial reform, 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 terms of 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.

The research team has completed the draft and is presently undertaking the needed revisions. A camera-ready copy of the report is expected to be accomplished and eventually launched to the public in the next period.

***e-Learning Modules Production on Remedial Law and Civil Law of the Philippine Judicial Academy.*** Following the 2004 Pilot Project for the Judiciary (Modules on Electronic Evidence and Psychological Incapacity), PhilJA and its information technology consultant Go Vida Studios are currently developing the following e-learning modules: (1) Remedial Law, specifically on Investigation, Arrest, Search and Seizure; and (2) The Developing Jurisprudence in Civil Law. The subject matter of the modules was chosen based on the present needs of the judges to be informed and updated on the relevant laws and jurisprudence. The modules are expected to be offered online via the internet to 200 judges per module (a total of 400 judges).

As of this reporting period, Go Vida's instructional designers are awaiting the transmission of the course contents for the two modules from PhilJA. The Asia Foundation notes that PhilJA experienced some snags in appointing primary module writers who could devote time in accomplishing its task. PhilJA has recently hired full-time junior writers who will assist the primary module writers in drafting the contents for the courses.

***Survey of the Judiciary and the Legal Profession.*** This project is a replication of the Social Weather Stations' 1993-1996 series of statistically representative surveys of the opinions and attitudes of judges and of lawyers on the state of the judiciary and of the legal profession. That material was previously published in a monograph. The current project aimed to find out if there have been changes in attitudes and opinions on the state of the judiciary and the legal profession, particularly on the administration of justice and judicial problems and solutions.

The conduct of focus group discussions, mail survey of judges, and face-to-face interviews with private lawyers nationwide were completed in 2004. Results of the survey have also been presented to the Supreme Court, judges, lawyers, academe, and the general public in 2005. The grant was extended to enable the Social Weather Stations to accomplish the publication of a monograph on the "Survey of the Judiciary and the Legal Profession", which to this date is being edited.

***Survey of Judges: A Diagnostic Study of the Challenges in the Judiciary.*** Based on the Social Weather Stations survey on the "Survey of the Judiciary and the Legal Profession" the Supreme Court proposed that an in-depth scientific survey among the judges and law practitioners be conducted to specifically identify the underlying causes of the problems in the judiciary. The over-all objective of the survey is to provide qualitative and quantitative diagnostics to the challenges facing the judiciary as seen from the point of view of the respondent-judges. The project includes: (a) focus group discussions nationwide; (b) dissemination of survey questionnaires to first and second level courts; and (c) presentation of survey results to the judiciary.

In April 2006, the Social Weather Stations retrieved 1,072 completed questionnaires out of 1,512 mailed in the previous months, or a return rate of 71%. The data were subsequently processed and analyzed. Pre-test of the completed nationwide survey results were presented to The Asia Foundation in June 2006, and will be presented to the Supreme Court and USAID in the next period.

***Assessment of the Case Flow Management System and Software.*** In its efforts to address the problem of docket congestion and case delay, in 2001 the Supreme Court implemented a pilot project on case flow management (CFM) which aimed to develop a system of managing cases that will result in expeditious resolution through effective monitoring and strict observance of time and case events or stages in the movement of

cases through the court.<sup>20</sup> The Asia Foundation in 2002 provided a grant to the Supreme Court through the Philippine Judicial Academy for the establishment of a CFM committee, development of draft training modules, rules, and guidelines. The grant also supported orientation seminars for the CFM committee members, Pasay Regional Trial Court and Metropolitan Trial Court judges and their court personnel, lawyers, and warrant officers, as well as representatives of external court users.

Following the conclusion of the pilot project in June 2005, and in view of plans to roll-out the CFM to first- and second-level courts nationwide, the Foundation supported the conduct of an evaluation of the CFM Pilot Project. Preliminary findings of the evaluation team revealed that CFM generally worked in the pilot-tested area, raised the awareness of the court personnel on the value of docket decongestion, and facilitated easier tracking of status of the court's "day forward" cases.<sup>21</sup> The CFM process, however, did not create a remarkable impact in docket decongestion in the pilot-tested courts because of several factors, such as, fast turn-over of judges and court personnel, their level of computer literacy, and loose monitoring of implementation of the process. Software and resource-related challenges were also experienced. Recommendations about its expansion to case management system, strengthened implementation mechanism, clearer legal framework, training needs, and other resource requirements were also put forward.

A CFM Action Planning workshop with stakeholders was subsequently held in May 2006 to determine the enhancements needed in the CFM software, discuss the operational issues, and develop an action plan. This was attended by judges and clerks of court of the sites where the enhanced CFM software will be piloted.<sup>22</sup> The desired enhancements will be implemented by a software development team that will be selected through a bidding process commenced during this period.

### **III. Building Constituency for Reforms**

***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 Supreme Court, embarked on a project that sought to strengthen the working relationship of the judiciary and media. As a result of this effort, prototype versions of a "Guidebook for Journalists Covering the Courts (with Glossary of Legal Terms for Journalists without Legal Background)"<sup>23</sup> and "Justices to

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<sup>20</sup> The Case Flow Management (CFM) software was developed in partnership with the USAID through the Economic Governance Technical Assistance and was pilot-tested from October 2003 to June 2005.

<sup>21</sup> *Day Forward Cases* are cases which are filed or submitted during the period that the CFM was implemented. Cases prior to the implementation of the CFM are not part of the "day forward cases".

<sup>22</sup> Selected courts in Davao del Sur, La Union, Las Pinas City, Zamboanga, Cebu City, and Pasay City.

<sup>23</sup> The *Guidebook for Journalists Covering the Courts* is a reference tool for journalists as they cover 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

Journalists, Journalists to Justices: A Reader on Judiciary-Media Relations<sup>24</sup> were produced, with its contents validated with the Supreme Court.

The Asia Foundation provided further 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 audience, 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.

During this reporting period, the Institute completed the lay-out and final corrections to the Guidebook, Glossary, and the Reader. It is now in the process of printing the materials for dissemination in August 2006.

***Forum with the Chief Justice of the Supreme Court: The Judicial Perspective on the Role of Civil Society in Advocating Economic Development.*** In partnership with the Asian Institute of Management Policy Center and the Supreme Court's Program Management Office, the LADR project supported a forum that focused on identifying the various ways, from the perspectives of the Philippine judiciary, in which civil society can get involved in economic development.<sup>25</sup> The forum tackled the potential benefits and possible limitations of civil society involvement and suggested ways in which civil society can contribute to effective, equitable, and democratic governance. The forum, which was held in March 2006, was attended by approximately 100 civil society leaders, members of the diplomatic corps, officials from the government, the academe, and media.

Supreme Court Chief Justice Artemio V. Panganiban, who was the main forum speaker, stressed three main points in his presentation: (a) a brief discussion on liberty and prosperity; (b) the stake and role of civil society in this egalitarian philosophy; and (c) specific ways in which civil society can contribute to the promotion of political liberty and economic prosperity. He explained that civil society can initiate the judicial process by prosecuting and defending cases and causes that bear upon economic development; push legal empowerment or the use of the

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watchdog role, it can act more responsibly toward the Judiciary. The *Glossary of Legal Terms for Journalists without Legal Background* is a companion volume which was developed as an articulated need from media practitioners who participated in the nationwide consultation 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>24</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.

<sup>25</sup> The forum received co-funding from the World Bank's Judicial Reform Support Program and the Konrad Adenauer Foundation.

law by the poor to exercise more control over their lives; and advocate collective cooperation in solving poverty.

#### ***IV. 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 coordination 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.

Following the project's launch in June 2005, The Asia Foundation through LADR provided support to the pilot implementation of this eRulemaking project. The eRulemaking facility is accessible from the National Telecommunications Commission's website by invitation, and will ultimately be available to the public.<sup>26</sup>

A refresher session for the National Telecommunications Commission staff was held in January 2006 to prepare them for the use of the facility. Live simulation with fourteen directors of the Commission was also undertaken in May 2006. Meetings to discuss the proposed on-line hearing and other administrative rules and procedures are being scheduled with the Commissioners. In the meantime, the Center met with the Working Group on a draft rule relating to the "use and operation of radio frequency identification (RFID)". Matters discussed include online and offline hearing dates, powers of the administrator, access to the administration page, and basic administration rules. The draft rule has now been uploaded on the e-rule making site, and five key players responded to the online invitation to join the working group. It is expected that the RFID Working Group will be the first live working group discussion using the facility.

***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 aims to educate the general public, specifically students from public elementary and high schools, about the judiciary and the rule of law (which includes modules on elections and anti-corruption) 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

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<sup>26</sup> [www.ntc.gov.ph](http://www.ntc.gov.ph)

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.

Research and consultative workshops on the content and core messages of the exemplars were conducted in the preceding period with the legal and education professions. The first batch of exemplars was submitted to the Supreme Court and launched during the November 2005 international judicial reform conference. The Lawyers' League for Liberty is currently finalizing the Student Handbook for High School Students. In partnership with the United Nations Children's Fund, a small pilot project that will train teachers on the use of the exemplars was discussed with the Department of Education and the Supreme Court.

***Study on the Administration of the Code of Muslim Personal Laws.*** This study is part of The Asia Foundation's overall efforts to develop and implement initiatives towards the promotion and strengthening of the implementation of the Code of Muslim Personal Laws in the Philippines. The long-term goal of the study is to strengthen respect for the rule of law and institutions of law and justice, for Muslim Filipinos to be integrated into the mainstream Philippine society, and to facilitate the realization of peace and development in Muslim Mindanao. Even as there are different laws and means of providing Islamic justice, this study will focus only on the Code of Muslim Personal Laws. In partnership with the Social Weather Stations, the study aims to assimilate the views of Muslim influential leaders, Muslim scholars, and Muslim opinion makers in selected areas<sup>27</sup> as to how the Code can be better implemented and/or be reformed to best serve the interest of Muslim Filipinos.

Among the activities that will be undertaken are the following: (a) creation of a prioritized list of some 1,000 Muslim influential leaders, Muslim scholars, and Muslim opinion makers in the selected areas; (b) workshops on the survey instrument; and (c) implementation of the agreed-upon survey instrument on some 600 Muslim influential leaders, Muslim scholars, and Muslim opinion makers, as well as 100 lawyers qualified to practice under the Code of Muslim Personal Laws.

By the end of this reporting period, the Social Weather Stations has finalized and pre-tested the survey questionnaires. Implementation of the survey began in June 2006, with a list of 435 respondents identified and 194 respondents<sup>28</sup> interviewed.

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<sup>27</sup> Isabela City, Basilan; Jolo, Sulu; Cotabato City, Maguindanao; Bongao, Tawi-tawi; Marawi City, Lanao Sur; Iligan City, Lanao Norte; Zamboanga City; Kidapawan, North Cotabato; General Santos City; Davao City, Davao del Sur; and Metro Manila (Taguig, Culiab, and Quiapo).

<sup>28</sup> 181 are Muslim influential leaders, scholars, or opinion makers; and 13 are Shari'a lawyers.

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

***Strengthening Access to Justice of Vulnerable Groups through Law Student Internship and Alternative Lawyering Programs, and Video Production and Training on Basic Legal Materials***

There are various forms of access to justice activities that alternative law groups and support organizations promote among marginalized communities, such as paralegal education, media campaigns, community-based efforts, and policy advocacy. These measures are geared towards enabling law students, lawyers, and grassroots leaders to respond to the identified legal needs of disadvantaged people to improve their access to justice.<sup>29</sup>

In line with this, the Foundation partnered with the *Ateneo Law School*, through the *Ateneo Human Rights Center* on its internship program,<sup>30</sup> which encourages 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. Towards the conclusion of the project, a summer internship program was initiated by the Center with 17 participating law student-interns from law schools in the country. An evaluation of the project revealed that most of the participating law students considered alternative lawyering as a future career.

An assessment of the Center's internship program was also conducted to determine the benefits of the program to the participating interns, organizations, and communities. The internship has been running for the past 18 years. It found that the program has produced lawyers who, regardless of their current professional affiliation, are applying alternative law principles in their chosen field of practice. Its replication program has developed commitment to alternative law among replicate interns, but was not totally successful in setting up replicate institutions. The program has also mainstreamed alternative law in some law schools, particularly in Metro Manila, but needs to be enhanced in regional law schools. The assessment recommended, among others, the development of continuing alternative law and human rights education and on-line support mechanisms for interns.

To further strengthen access to justice for vulnerable groups, the LADR project supported a national conference that brought together 84 paralegals from the different sectors nationwide. Organized by the *Alternative Law Groups* in June 2006, the conference provided a forum for exchanges among paralegals belonging to the poor and

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<sup>29</sup> Beyond mere formal legal representation in the courts, these projects broadly view "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.

<sup>30</sup> Internship programs vary: semestral, summer, graduate, or replication internships for law students coming from province-based law schools.



marginalized sectors regarding their experiences in enhancing their capacities to access and use mechanisms of justice to address their issues and concerns. The proposed policy recommendations culled from the experiences of the paralegals from various communities were presented to the Supreme Court during the *Lakbay Aral* (Study Tour) portion of the conference. These include proposals to increase citizens' access to the courts, designation of special courts, and training of various organizations within the justice system in handling gender-related and other special cases.

Support was also provided to the *Upholding Life and Nature* organization for the production of video materials on civil and criminal procedure, ADR law, and accountability of local government officials. The project availed of recent technological innovations for producing basic legal materials that could be used in reaching wider audience at a lesser time and manpower cost. A total of 100 copies each of the video materials will be distributed to target organizations, such as the Alternative Law Groups, Philippine Association of Law Schools, legal government offices through the Department of Justice, Supreme Court, local government units, non-governmental organizations, and other civic organizations. Writing of the scripts for the videos on civil procedure and ADR law was completed during this period, and filming for the civil procedure video has already commenced.

***Establishment of Bangsamoro Consortium of Lawyers and Training Support to Western Mindanao State University (WEMSU) Law Students.*** Recognizing that legal knowledge and skills are powerful tools that can be used in the protection and promotion of legal rights for Filipino Muslims, a select group of Muslim lawyers met in Cotabato City in 2004. The Sentro ng Alternatibong Lingap Panligal (SALIGAN) – Mindanao Branch has begun to facilitate the formation of a core group of Moro lawyers committed to improving access to justice of Moro communities.

Following the strategic planning held in Davao City in November 2005, the consortium has proceeded with its registration process in the Securities and Exchange Commission with the name “Bangsamoro Lawyers’ League” and has set up its physical office in Zamboanga City. Among the activities undertaken within the period include a lawyers’ forum on legislation affecting the Moro people, awareness and legal education training activities on basic human rights and the rule of law, website development, and editing of a translated primer on arrest, search, and seizure.

The second major component of the project is the training support and apprenticeship for the benefit of selected law students of Western Mindanao State University in Zamboanga City. This component aims to strengthen access to justice of Muslim communities by providing support to legal institutions, organizations and individuals based in Western Mindanao and the island provinces of Sulu, Basilan and Tawi-Tawi. Support was provided to the university by providing legal training to selected law students and exposing them to services provided by non-governmental organizations which aim to improve Moro communities’ access to justice. Paralegal training and internship of 14

law students from the Western Mindanao State University was organized during this period.

*Jail decongestion and access to justice by overstaying prisoners*

***Jail Decongestion Projects of the Integrated Bar of the Philippines and Other Institutions***

These projects consider the perennial problem of jail congestion in the country which has arisen due to inadequate prison facilities for the corresponding number of prisoners.<sup>31</sup> The situation 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. As a result, there are many “overstaying prisoners” in the Philippines.<sup>32</sup>

The *National Integrated Bar of the Philippines* has implemented jail decongestion projects since November 2003 up to this period where lawyers conducted trainings for paralegals and also provided legal representation to overstaying prisoners. The project sought to determine the prisoners eligible for release so appropriate legal service can be rendered towards that end. By the initial project’s end in April 2006, a total of 2,750 overstaying prisoners were released from Manila and Pasay City jails.<sup>33</sup> The Asia Foundation and the National Integrated Bar of the Philippines also discussed during this period the concerns in implementing the nationwide jail decongestion project that was coursed through its Board of Governors. A change in the strategy for effective project implementation from the IBP Governors to selected IBP Chapters is being considered.

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<sup>31</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.

<sup>32</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.

<sup>33</sup> As of June 2006, a total of 3,453 overstaying prisoners were released under the various jail decongestion projects of The Asia Foundation. This includes the IBP Quezon City jail decongestion initiative which was able to release 383 overstaying prisoners from March to June 2006; the initial IBP National jail decongestion initiative (*Baliklaya* or Return to Freedom) implemented in Manila and Pasay city jails, which has released a total of 2,750 overstaying prisoners from December 2003 up to April 2006; the Integrated Bar of the Philippines nationwide jail decongestion project that has released 45 overstaying prisoners since its inception in May 2004; and the Humanitarian Legal Assistance Foundation’s project in the Malabon, Navotas, Valenzuela jails which has so far released 17 overstaying prisoners.

In partnership with the *Integrated Bar of the Philippines – Quezon City Chapter*, the *Ateneo Human Rights Center*, and the *Humanitarian Legal Assistance Foundation*, The Asia Foundation launched similar jail decongestion projects in specific jails. The project being implemented by the IBP Quezon City Chapter arose from a previous project which successfully resolved cases of 916 people, thus reducing overcrowding in the city jail. It is now expanding its efforts to women and children detained in the Molave Youth Home and the Female Dormitory<sup>34</sup>. The project is being implemented by at least 30 volunteer lawyers of the Integrated Bar of the Philippines-Quezon City Charter, in cooperation with lawyers from the Public Attorney's Office and the Quezon City Public Assistance and Legal Affairs Office. A total of 500 overstaying prisoners are targeted to be released within the project period. As of June 2006, a total of 383 detainees were released, 493 cases dismissed, and 575 sentenced.<sup>35</sup>

In Makati City<sup>36</sup>, the *Ateneo Law School – Human Rights Center* and 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 to coordinate efforts to address the jail congestion problem in the city. A paralegal training course on topics like criminal law and procedure, evidence, and affidavit-making was implemented for the city's prisoners. A databank of individual cases was also undertaken by the Center's law student-interns with the assistance of the jail cell representatives. By the project's end in May 2006, 43 law students assisted in updating the databank of detainees' cases and made interventions, such as interviews with 45 jail inmates, preparation of affidavits and legal memoranda, coordination with the Public Attorney's Office, Department of Social Welfare and Development, and follow-up of case status in court.

Through the *Humanitarian Legal Assistance Foundation*, the Foundation is also securing the immediate release of qualified and eligible detainees in Malabon, Navotas, and Valenzuela jails.<sup>37</sup> To date, a total of 10 paralegal training activities were conducted for paralegal coordinators and other jail inmates. The activities focused on topics of constitutional law, criminal penalty, extinction of criminal liability, and the rights of the accused. A total of 57 cases of overstaying prisoners, 15 of which involve minors or children in conflict with the law, were monitored thus resulting to the dismissal of 17 of these cases.

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<sup>34</sup> There are currently 169 persons detained in the Molave Youth Home, and 611 in the Female Dormitory. Both facilities, though not as overcrowded as the Quezon City Jail, are filled beyond intended capacity.

<sup>35</sup> Data of released prisoners from the following jails were recorded from March to June 2006. (a) Quezon City: 273; b) Female Dormitory: 46 (c) Molave Youth Home: 64.

<sup>36</sup> The Makati City Jail, with a prison capacity of only 200 persons, currently houses around 1,700 detainees.

<sup>37</sup> Focus is made on these areas for the reason that their location also contributes to the worsening of the jails and prisoners' condition – the jails in these areas get flooded during high tide, and during these times, prison inmates could be witnessed standing for hours in flood waters.

### ***Auxiliary Jail Decongestion Initiatives***

To complement the Foundation's jail decongestion initiatives, support was provided to the *Humanitarian Legal Assistance Foundation* (HLAF) for the development of a *Detainee's Notebook*, a reference and guide material for all inmates that contains information of their personal and case profiles, including updates of their court cases. HLAF also undertook 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. Within the *Detainee's Notebook* component, the project completed during this period a total of 11 paralegal training activities for newly committed inmates in the Quezon City jail. Each paralegal training activity, which was attended by at least thirty inmates, provided information about the rights of the accused, criminal procedure, and the different modes of release. The activity aimed to educate the inmates of their rights so they can later make effective use of the *Detainee's Notebook*.

Another activity is a study of the Comprehensive Dangerous Drugs Act of 2002 (Rep. Act No. 9165). The violation of this law has been the topmost criminal charge filed against persons in detention since 2003 and has contributed to the increase in the number of persons detained considering that most of the offenses under the law are not bailable. The *Integrated Bar of the Philippines – Quezon City Chapter* is presently generating the statistics about detainees involved in drug-related cases as well as a matrix of proposed amendments to the law for further validation.

### **CHALLENGES IN IMPLEMENTING THE PROGRAM**

Over-all, The Asia Foundation's implementation of the Legal Accountability and Dispute Resolution (LADR) program during this period continued to achieve success in the pursuit of its main objectives. Institutionalization of alternative dispute resolution in the courts is rapidly gaining solid ground as the Philippine Judicial Academy began to sustain the previously externally-funded ADR efforts through the use of the mediation fund generated from the current filing fee system.<sup>38</sup> From August 2004 to June 2006, the Foundation notes that PhilJA has generated Sixty-Eight Million Pesos for the Mediation Fund which it has utilized to conduct of ADR training activities and acquisition of computers, printers, air-conditioning units, and other equipment for the pilot areas.

The near completion of the organizational and financial study of the Philippine Mediation Center has also reinforced preliminary reflections on the directions for court-annexed mediation in the country. Outside the courts, efforts to enlarge the promotion of ADR

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<sup>38</sup> Under Rule 141 of the Rules of Court on Legal Fees, which became effective on August 16, 2004, the Mediation Fund shall be used for the following: (a) establishment of PMC units; (b) training seminars, workshops, internship programs for mediators; (d) payment of operating expenses; (e) advocacy and promotion of court-annexed mediation and other relevant modes of ADR; and (f) such other expenses as authorized by Section 9, Rule 141 of the Rules of Court.

appreciation and use were considerable, as demonstrated in Foundation projects with the law academe and the construction industry.

Improvements in judicial transparency and accountability, particularly in the judicial appointments process, were remarkable as the Judicial and Bar Council started to enhance the public's engagement in the nomination and search processes for judicial posts through the conduct of public hearing for the position of the Supreme Court Associate Justice and support for its dialogs with various sectors. This positive development could be partly attributed to Foundation-supported civil society initiative to enhance public awareness and participation in the process. It will be further enhanced by future dialogs of the Judicial and Bar Council with the various sectors in areas where the rate of court vacancy is high.

Efforts to strengthen public information and access to justice amplified with the progressive involvement of more Muslim and Mindanao-based partner organizations in promoting citizen awareness on relevant legislation, focusing initially on the Code of Muslim Personal Law. Initial meetings were held by the Foundation with relevant groups in Mindanao for discussion of the mechanisms for consultations on the proposed legislation pertaining to the establishment of more courts in the Autonomous Region of Muslim Mindanao. Issues relating to proposals for the creation of more courts and for expanding jurisdiction of the Code of Muslim Personal Law have also been discussed initially with the Supreme Court's Office of the Court Administrator and will be the subject of a series of focus group discussions with various stakeholders in the next period. Preliminary steps towards judicial reform, through the Foundation's long-time partnership with the Philippine Judicial Academy and its newly-created Department of Shari'a and Islamic Jurisprudence, were also undertaken through the planned conduct of seminars for strengthening the implementation of the Code of Muslim Personal Laws.

A persistent challenge to LADR program implementation is 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 ultimately required a rethinking of implementation strategy after organizational concerns, such as the issue on the IBP Presidency and the election of the new IBP Board of Governors, hampered the project's progress. Other illustrations of this problem are demonstrated by the difficulties encountered by some partners in finalizing dates of meetings where important policy and program decisions need to be accomplished, or in obtaining substantive content or accurate data from relevant institutions. Progress, which is often dependent on such decisions or important data, is therefore affected. This was experienced by the Asian Institute of Journalism and Communications in the development of communication materials for court-annexed mediation, by the Center for Public Resource Management in its study of the financial and organizational structures of the Philippine Mediation Center, and Go Vida Studios on the production of eLearning modules on remedial and civil law. All these institutions have to rely on PhilJA for the completion of their deliverables, but PhilJA is slow in

acting on their requests. The Institute for Social Studies and Action, and the Cyberspace Policy Center encountered similar setback in their respective project coordination with their government counterpart institutions. Whenever circumstances warrant, however, the Foundation has endeavored to intervene in order to facilitate the resolution of sub-grant management concerns.

## **PLANS FOR THE NEXT PERIOD**

In the next reporting period, The Asia Foundation will focus on solidifying the impact and addressing sustainability of ADR efforts within the courts system. Continuing developments in the organizational and financial study of the Philippine Mediation Center, as well as progress in PhilJA's mediation fund system, will be monitored to guide the Foundation on the directions of court-annexed mediation in the country and consequent program work in this field. Outside of the courts, the Foundation will build on the results of the ongoing research on conflict resolution systems in small and medium enterprises. It will further expand the promotion of ADR in selected executive agencies.

With respect to increasing judicial transparency and accountability, the Foundation plans to support nationwide dialogs between the Judicial and Bar Council and various sectors on the search, screening and selection process for judicial posts. Similar activities, including those about improvements in the rules, proceedings, and systems of the Council will continue to be explored to facilitate an improved judicial appointments process. Dialogs with the stakeholders of the Office of the Court Administrator on the rules regarding conduct of pre-trial in civil and criminal cases in the first and second level courts and the use of deposition and modes of discovery will also be undertaken.

In order to improve efficiency in court administration, the Foundation will support the development of an enhanced case flow management software system that will enable the courts nationwide to effectively track the progress of its cases. Court capacity enhancement activities geared towards improving accountability of the judiciary will also be pursued with PhilJA through video conferences on recent legislation, such as the Juvenile Justice and Welfare Act, and with PhilJA's Department of Shari'a and Islamic Jurisprudence on seminar workshops on strengthening the implementation of the Code of Muslim Personal Law.

The Foundation will continue to exert efforts to increase public information and access to justice that will progressively involve significant Muslim partners and Mindanao-based organizations, particularly in the topic of the Code of Muslim Personal Laws. Through the LADR program, the Foundation plans to use the results of the current study on the administration of justice in Muslim Mindanao being undertaken by the Social Weather Stations as basis for future initiatives towards the promotion and strengthening of the Muslim Filipinos' access to the justice system. In the meantime, support will be considered with regard to the popularization of and training of Muslim women on the

Anti-Violence against Women and Children Act in the Autonomous Region of Muslim Mindanao. It will also explore partnerships for the crafting of a comprehensive communication plan on the Code of Muslim Personal Laws, including legal journals devoted to legal and policy issues in the implementation of the Code, legal education for communities in peace and development zones in Mindanao, legal scholarships in the field of Shari'a law, and roundtable discussions on legal education reform. Apart from initial talks with the PhilJA's Department of Shari'a and Islamic Jurisprudence on the conduct of judicial seminars on the implementation of the Code, an evaluation of the course curriculum used for the Code of Muslim Personal Law training seminars will also be considered through partnership with the Office of Muslim Affairs, the only accredited training institution for examinees intending to take the Special Shari'a Bar Examinations.

Other access to justice projects planned for the succeeding period are initiatives submitted as part of the World Bank's 2<sup>nd</sup> Philippine Development Innovative Marketplace or *Panibagong Paraan* (New Ways) 2006 project grant competition. The projects include providing equal access to communication for the deaf in legal proceedings and access to justice relating to conflicts between members of specific indigenous communities.

With the change in the implementation strategy for the nationwide jail decongestion project, the Foundation plans to explore possible partnerships with selected local chapters of the Integrated Bar of the Philippines in Mindanao and other parts of the country in order to help in the release overstaying prisoners.

An additional focus for the next period will be support for the implementation of the recently enacted Juvenile Justice and Welfare Act of 2006 and the activities of the Juvenile Justice Network. The Asia Foundation plans to integrate these activities with its current jail decongestion projects.

### Over-all Court-Annexed Mediation Program

	2004	2005	2006 (January – May)
<b>LADR (USAID)</b>			
Referred	18,494	22,626	7,252
Actually Mediated	6,330	9,427	4,068
Settled	4,987	6,538	1,873
Failed	1,343	2,889	2,195
<b>JURIS (CIDA)</b>			
Referred	1,783	3,119	375
Actually Mediated	1,160	2,290	112
Settled	912	1,088	58
Failed	248	1,202	54
<b>TOTAL</b>			
Referred	20,277	25,745	7,627
Actually Mediated	7,490	11,717	4,180
Settled	5,899	7,626	1,931
Failed	1,591	4,091	2,249



**ANNEX B**

**Summary of The Asia Foundation-Supported Jail Decongestion Project**

	<b>IBP- National Nationwide Jail Decongestion Project<sup>39</sup></b>	<b>IBP- National Pasay and Manila Jail Decongestion Project (Baliklaya)</b>	<b>IBP- Quezon City Chapter Phase I</b>	<b>IBP Quezon-City Chapter Phase II<sup>40</sup></b>	<b>HIAF MANAVA Decongestion Project</b>	<b>Total</b>
	May 2004 - August 2005	December 2003 - April 2006	June 2005 - November 2005	March 2006 — June 2006	October 2005 - April 2006	
A. Detainees Released	45	2,750	258	383	17	3,453
Men		2,525		333 <sup>41</sup>	15 <sup>43</sup>	
Women		225		50 <sup>42</sup>	2	
B. Cases Dismissed	-	-	302	493	-	795
C. Detainees Sentenced	-	-	339	575	-	914

<sup>39</sup> As mentioned in the report, progress of this project was affected by organizational challenges in the IBP.

<sup>40</sup> IBP Quezon City Chapter Phase II project includes working for the release of overstaying prisoners confined at the Quezon City Jail, Camp Karingal Female Dormitory, and Molave Youth Home.

<sup>41</sup> 60 are minors.

<sup>42</sup> 4 are minors.

<sup>43</sup> 9 are minors.