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Of course, we take full responsibility for any errors of fact or judgment contained in this report.

Executive Summary

This report contains the final findings and recommendations of a three-person Strategy Assessment Team assigned to recommend to USAID a strategy for improving access to justice in the Philippines. The team consisted of Stephen Golub (the team leader), a California-based attorney and consultant; Antonio G.M. La Vina, a University of the Philippines law professor; and Eugenio Gonzales, an independent Manila-based consultant. We conducted our work from October 1993 through February 1994, with the bulk of our activity taking place during Mr. Golub's two trips to the Philippines in October-November 1993 and January-February 1994. The result is a proposed Improving Access to Justice Program (IAJP).

The team carried out its assignment guided by both official and informal instructions provided by USAID's Philippines Mission. The former were summarized as follows by Mr. Golub's consulting contract:

The contractor's analysis will recommend a strategic course of action for implementation of a major improvement of access to justice activity to be financed by the USAID over the next 5 years. The plan will include detailed recommendations regarding the sequencing of activities as well as the proposed mix of implementation vehicles.

Discussions with Office of Voluntary Cooperation Chief John Heard and other Mission personnel fleshed out the assignment in very useful ways. Mr. Heard expressed a preference for a practical document that could guide the Mission. Most basically, he asked the team to advise the Mission on "what to do" regarding access to justice. In our discussions with him and other Mission officials, this request translated into a number of subsidiary questions. We summarize our conclusions and recommendations by briefly answering those questions here:

1. What specific activities should USAID support?

An underlying rationale for our recommendations regarding USAID support is that in a weak, patrimonial state such as the Philippines, justice is privatized in a manner that excludes disadvantaged persons and groups from participating in the formulation of laws, regulations and other policies. This has powerful implications for access to justice. An extension of this is that the implementation or enforcement of those policies occurs very selectively or not at all, to the disadvantage of most Filipinos. In addition, accountability in the legal system is extremely low in such a polity.

In light of the above, access to justice consists of the capacities and opportunities of affected groups and individuals, particularly disadvantaged populations: 1) to have a meaningful voice in and actual impact on the formulation of laws, regulations, major development programs and other policies; 2) to understand, participate in and receive fair and expeditious treatment in the implementation of those laws, regulations, programs and other

policies; and 3) to press for and achieve greater accountability in the legal system. The general purpose of the Improving Access to Justice Program, therefore, is to strengthen those capacities and opportunities.

The Mission accordingly should support the following objectives: 1) promote innovative legal services that reach beyond traditional legal aid to affect policy formulation and implementation, and 2) encourage efforts to bring about greater accountability in the legal system.

The team attaches highest priority in the IAJP to supporting developmental legal services NGOs, which constitute the Philippine equivalent of a public interest law movement and contribute to the pursuit of the first objective. Regarding that objective, it also recommends supporting other legal services that complement comprehensive development efforts, as well as the establishment or strengthening of special funds that target disadvantaged Filipinos' legal needs regarding agrarian reform, environmental defense and decentralization.

As for the second objective, we feel that greater accountability in the legal system could be encouraged through support for pertinent media activities, nongovernmental monitoring groups, survey research, research on legal reform and--looking toward the future of the legal profession--legal education. **In terms of the overall IAJP, we accord second highest priority to activities pertaining to media, nongovernmental monitoring and survey research.**

2. How should USAID support be structured? To what extent should the Mission fund activities directly, and to what extent through intermediary organizations that in turn monitor and provide subgrants to other groups that actually implement the activities?

The Mission should work mainly or exclusively through intermediary organizations because they have the expertise, experience and contacts necessary to do effective programming in the legal field. In doing so, the Mission should continue to be as flexible as possible, so that the intermediary organizations and the subgrantees can concentrate on the substance of development work and not get bogged down by bureaucratic requirements. In fact, the flexibility of the Philippine Mission's 1993 grant to the Asia Foundation for a Democratic Development Project is a model for other USAID offices to emulate regarding democratic development and legal systems development.

3. To the degree that USAID works through intermediaries, should it continue to rely mainly on the Asia Foundation (TAF) regarding access to justice programming? Should it rely exclusively on TAF?

The Mission should work mainly but not exclusively with the Asia Foundation. TAF has a very good track record in this field. Along with the Ford Foundation, it is the leading organization working on legal systems development in the Philippines and much of Asia. Nevertheless, other potential intermediaries also may have the capacities to program effectively in this field, although with more modest levels of funding.

4. What sequence of activities should the Mission anticipate supporting? For example, at what point might "demand side" programming create a critical mass of public awareness and consensus that would move the government to pursue "supply side" judicial administration reforms that USAID could support?

Given the nature of the Philippine polity in particular and most nations' legal systems in general, it is unrealistic to predict a linear sequence of activities leading to achievements that in turn lead to further activities and achievements. Indeed, predicting that promoting public awareness and consensus will bring about wholesale reform efforts by the government or opportunities for the Mission to fruitfully work with government, assumes far too much about the capacity of any donor to affect attitudes, values and practices that go to the core of the way in which a society (and not just its legal system) functions.

But this is not to say that a donor's work should simply be a matter of "playing it by ear." A sequence can be planned--but it is sequence as a learning process, rather than a specific set of substantive activities. USAID is better off learning from experience and applied research, and modifying its approach based on the lessons that emerge.

5. How much funding is enough to make a difference in the quality of Philippine justice?

There is no dollar figure which represents a dividing line between achieving significant impact and failing to do so. In fact, there are instances in the Philippines where very modest inputs of funds have yielded significant impact and where large infusions have proven pointless. The Mission already has made a difference through its current support (through TAF) for developmental legal services NGOs that have had an impact on legislation, executive agency regulations and enforcement of the law on behalf of disadvantaged communities. Though such accomplishments are relatively modest compared to the overly ambitious goal of wholesale reform of the legal system, they are nevertheless significant. Continued efforts along these lines are therefore justified.

In addition, the consensus among the wide variety of individuals we consulted, including donor personnel and attorneys, is that any donor that sets a target of widespread systemic change over the course of five years is bound to fail. Furthermore, by virtue of aiming far too high, such a donor is likely to miss or undersell any reasonable accomplishments flowing from its support.

The appropriate amount of funding for the IAJP, therefore, does not mainly hinge on what level can make a difference, since USAID is already contributing to significant impact. Instead, it depends on the capacity of grantee organizations to identify and manage potentially effective activities. A very inexact calculation of this capacity suggests that annual funding initially should be up to \$750,000, and that it could later rise as high as \$1.75 million.

6. How can these activities and the program as a whole be evaluated so that in five years USAID/Philippines knows whether its investment has been worthwhile?

We and the donors we have consulted suggest that the best method for documenting, assessing and building on the success of Improving Access to Justice Program activities are case studies carried out by academic institutions. The Mission could blaze trails for democratic and legal systems development work in the Philippines and elsewhere by employing and refining this device.

What do we mean by a "case study"? Regarding the work of a specific USAID grantee or subgrantee, it is a report that: a) focuses on how that organization tried or is trying to address a specific development issue (e.g., mobilizing public opinion in favor of judicial reform, contributing to a coalition seeking passage of a piece of legislation, training members of a farmers' organization to undertake paralegal tasks in pursuing agrarian reform); b) confirms the grantee's contribution to whatever accomplishments have taken place by drawing on available documents such as government reports or newspaper articles and by interviewing individuals (including but not limited to grant beneficiaries) who are familiar with that contribution; and c) draws conclusions for future use, based on the success(es) or failure(s) of the organization.

On the broader level of program assessment (or, more usefully, evaluation of success regarding the IAJP's two objectives), case studies could look at how a range of activities have contributed to some general trends or developments.

I. INTRODUCTION: THE ASSIGNMENT OF THE STRATEGY ASSESSMENT TEAM

A. Background

This report contains the final findings and recommendations of a three-person Strategy Assessment Team (hereinafter referred to as "the team") headed by Stephen Golub, a California-based attorney and consultant retained by the Arlington, Virginia office of Coopers & Lybrand under U.S. Agency for International Development (USAID) Prime Contract No. PDC-2028-Z-00-7186-00. The other two members of the team, whose services have been directly retained through contracts with the USAID/Philippines Mission, are Antonio G.M. La Vina, a University of the Philippines law professor, and Eugene Gonzales, an independent Manila-based consultant.¹ We conducted our work from October 1993 through February 1994.

The team's efforts build on those of a group led by Dr. Harry Blair of the USAID Center for Development Information and Evaluation (CDIE), which visited the Philippines from March to April of 1993. More specifically, it takes into account the conclusions presented by the June 7, 1993 Second Draft of the CDIE report, "A Strategic Assessment of Legal Systems Development in the Philippines" (hereinafter referred to as "the CDIE report"). As summarized by Mr. Golub's Consultant Agreement with the American consulting firm Coopers & Lybrand, that study's advice to USAID/Philippines "recommended commencing [the Mission's work regarding legal systems development] with a 'demand side' activity associated with strengthening advocacy through NGOs as well as scrutiny through 'watch' mechanisms and the media including investigative journalism and selected research and survey activity." The Mission concluded that the CDIE report's basic findings and suggestions were sound (Coopers & Lybrand 1993, 9).

As again summarized by the Consultant Agreement, the CDIE report further advised that USAID-supported "'supply side' activity such as working with the court system or other delivery vehicles of government should probably be kept at a low level initially" until "an adequate climate for reform" was created at an unspecified future date (9). This question of "sequencing"

¹ The three team members assume joint authorship of this report. We nevertheless have decided that Appendix 1, which builds on the analysis presented in the main body of the report to flesh out our suggestions in the form of a Strategic Course of Action, should be authored solely by Mr. Golub. Similarly, Mr. Golub also is the sole author of Appendix 2, which considers why support for judicial administration activities should not be undertaken at this time and suggests how the Mission could approach working on judicial administration if and when circumstances become appropriate. Prof. La Vina and Mr. Gonzales do not disagree with these appendices. The team feels, however, that as team leader contracted to put substantially more time into this project and specifically charged with responsibility for the Strategic Course of Action, it is appropriate that Mr. Golub assume responsibility for the detailed recommendations presented in Appendix 1. And as the individual with the most experience regarding judicial administration, it also is appropriate that Mr. Golub be the sole author of Appendix 2.

(i.e., whether supporting nongovernmental "demand side" activities necessarily will lead to opportunities for the Mission to work with government on the "supply" of justice) is a matter we discuss later in this report. For now, we should emphasize that we fully endorse the consensus among CDIE, the Mission and other donors consulted by us and CDIE that USAID should mainly work with nongovernmental bodies for at least the next few years.

To the credit of the Mission's Office of Voluntary Cooperation (OVC), in recent years that office took several steps in support of NGO "demand side" activity even before that path was endorsed by CDIE in 1993. This occurred through discussions with and grants to organizations such as the Asia Foundation (TAF) for national legal services, the Ramon Aboitiz Foundation, Inc. (RAFI) for a "Barefoot Media Initiative" and the Free Legal Assistance and Volunteers Association (Free LAVA) for legal services in Cebu.

Therefore, neither the Strategy Assessment Team nor the Mission are starting from scratch in addressing access to justice. The team builds on a programming base established by OVC and an analytical base provided by CDIE and other donors. The team also draws on its members' in-country experience with Philippine democratic and/or legal development: six years for Mr. Golub and many more for Professor La Vina and Mr. Gonzales.

In view of the above, the Improving Access to Justice Program (IAJP or "the program") that we propose here and that embodies a strategy for improving access to justice should be seen as growing out of work that is already under way. In addition, the Mission recognizes that it could lead to subsequent legal systems development assistance at the end of the anticipated five-year time frame for the program and strategy.

B. Mandate

The team has carried out its assignment guided by both official and informal instructions provided by the Mission. The former are summarized by the Coopers & Lybrand Consultant Agreement's Scope of Work:

The contractor's analysis will recommend a strategic course of action for implementation of a major improvement of access to justice activity to be financed by USAID over the next 5 years. The plan will include detailed recommendations regarding the sequencing of activities as well as the proposed mix of implementation vehicles (9).

Discussions with OVC Chief John Heard and other Mission personnel fleshed out the Scope of Work in very useful ways. Mr. Heard made clear that the report need not be a scholarly, theoretical tome filled with footnotes. He expressed a preference for a more practical document that could guide the Mission. Most basically, he asked the team to advise the Mission on "what to do" regarding access to justice. In our discussions with him and other Mission officials, this request translated into a number of subsidiary questions:

1. What specific activities should USAID support?
2. How should that support be structured? To what extent should the Mission fund activities directly, and to what extent through intermediary organizations that in turn monitor and provide subgrants to other groups that actually implement the activities?²
3. To the degree that USAID works through intermediaries, should it continue to rely mainly on the Asia Foundation regarding access to justice programming? Should it rely exclusively on TAF?
4. What sequence of activities should the Mission anticipate supporting? For example, at what point might "demand side" programming create a critical mass of public awareness and consensus that would move the government to pursue "supply side" judicial administration reforms that USAID could support?
5. How much funding is enough to make a difference in the quality of Philippine justice?
6. How can these activities and the program as a whole be evaluated so that in five years USAID/Philippines knows whether its investment has been worthwhile?

As will become clear later in this report, the team members' prior experiences with democratic development³ couple with our investigations as a team to make us ask USAID to rethink assumptions that underlie #4 and #5. Nevertheless, the questions constitute a very constructive framework for approaching our assignment.

C. Work of the Team

The first stage of the Strategy Assessment Team's USAID consulting assignment, in the Philippines in October-November 1993, allowed us to build on our prior experiences with democratic development in the Philippines through interviews with approximately eighty-five NGO leaders, academics, attorneys, government officials, USAID personnel and other donor staff in Metro Manila, Davao City, Cebu City, Bacolod and Puerto Princessa. We also reviewed relevant documents. Mr. Golub worked full-time during that period; Prof. La Vina and Mr. Gonzales worked on a part-time basis.

² For the sake of simplicity, in this report, the funds provided to implementing organizations generally will be called "grants" (rather than "subgrants") and those organizations will be called "grantees." The only exception to this will be where a distinction needs to be made between intermediary grantee bodies and implementing subgrantee groups.

³ We will sometimes use the term "democratic development" where the points we raise pertain more broadly to such activity and not just to its subset, legal systems development. Furthermore, we recognize that in some societies it is more accurate or less controversial to employ the terms "political development" or "governance development" rather than "democratic development." This is not the case in the Philippines, however.

As a part of that process, Prof. La Vina and Mr. Gonzales both submitted to Mr. Golub (and to the Mission) papers that presented their own thoughts and findings on generally improving access to justice in the Philippines, as well as on the interface between access to justice and specific subjects that Mr. Golub had requested they focus on. For Prof. La Vina, these subjects included legal education, environmental issues and legal services NGOs; for Mr. Gonzales, other NGOs as well as local government. Environment and local government received particular attention because they are USAID/Philippines priority areas.

Mr. Golub drew on those papers in preparing the initial draft report in the United States. In December 1993 he submitted it to the Mission, Coopers & Lybrand, Prof. La Vina and Mr. Gonzales. Following the submission of the draft, his two colleagues prepared and forwarded comments on the document to the Mission and to Mr. Golub. He returned to the Philippines in January 1994 to finalize it in consultation with the Mission, Prof. La Vina and Mr. Gonzales.

II. DESCRIBING THE PURPOSE: WHAT IS "ACCESS TO JUSTICE"?

Though the CDIE report does not define "access to justice," its useful comments on related concepts can inform our discussion of the term:

A just legal system is one based upon laws formulated through decision-making that is open to public participation, one with remedial structures that are accessible to even the most disadvantaged sectors of society, and one that produces decisions in a timely and impartial manner. Justice in the Philippines, today, however, fails to meet even the most minimal of such standards (9).

"Better justice" would comprise these elements: a more legitimate legal system; a more autonomous and effective judicial system; greater social and economic equity; and economic development facilitated by the legal framework (52).

Apparently implied in these comments, and in any event fundamental to an understanding of access to justice in many or most developing nations, is the notion that the legal system and legal problems must be understood in ways that transcend conventional Western characterizations. Such characterizations tend to be limited to courts, judges and related actors in the judicial system. But any discussion of access to justice should acknowledge the roles played by executive agencies, Congress, local government units and NGOs in policy formulation (i.e., devising legislation, regulations and other policies) and implementation (actually putting such laws and other policies into effect in specific instances).

Consider, for example, CDIE's characterization of a just legal system as based on "laws formulated through decision-making that is open to public participation." This clearly reaches beyond the judiciary. As emphasized to the team by Harold Dickherber, Chief of the Decentralization and Local Development Division of the Office of Natural Resources, Agriculture and Decentralization (ONRAD), for participation in government decisions (such as

formulating laws or policies or allocating resources) to have real meaning it should involve more than concerned groups "just showing up at meetings." Instead, their voices should carry some weight. Moreover, participation should result in such groups actually influencing those decisions at least some of the time. In the Philippines, we cannot assume that effective participation and access to justice will necessarily exist unless the knowledge, skills and influence of historically marginalized populations are strengthened.

The formulation (as well as the implementation) of legislation is important because detecting effective access to justice requires making some admittedly subjective judgements about the quality of the resulting laws. Thus, even in a hypothetical society that has a remarkably efficient and impartial judiciary, access to justice for women would be severely constrained if the courts are applying laws that relegate females to second class status.

Furthermore, we should emphasize that the legal regime governing the Philippine state is by no means mainly a product of legislation passed by Congress. Orders issued by the Office of the President also play a part. And by far the most wide-ranging role is collectively played by executive agencies that promulgate regulations and other policies that outweigh legislation in terms of scope and impact. Thus, framing legislation is but a part of broader policy formulation that also embraces macro-level activities such as crafting executive agency regulations and planning major development programs (since such programs are often intertwined with laws and regulations, and can affect large populations).

Another reason that access should be viewed broadly pertains to policy implementation, by which we mean actions by the state or its designated actors that put into effect laws, regulations or other policies by recognizing, awarding or enforcing the rights of affected parties. Most conventionally, this includes court victories. But many decisions affecting many Filipinos' most vital legal needs are not in the hands of the courts, but rather are made by executive agencies and local government units. Municipal councils and the Department of Agriculture's Bureau of Fisheries and Aquatic Resources (BFAR) allocate rights and privileges for fishing in coastal waters. The Department of Environment and Natural Resources (DENR) similarly determines which individuals, communities and corporations may exploit (and be given the rights and responsibilities to manage) upland resources. Most legal decisions pertaining to land reform are made by the Department of Agrarian Reform (DAR). The Department of Labor and Employment (DOLE) and the National Labor Relations Commission (NLRC) are the entities that preside over most labor disputes.

The team's very partial, incomplete tabulation indicates that over two million persons were directly affected by these executive agencies' decisions in 1991 (La Vina 1993, 3-5). Many of these decisions did not involve adversarial processes, but rather applications by individuals, communities or associations to manage and control local natural resources.

In light of the above, access to justice consists of the capacities and opportunities of affected groups and individuals, particularly disadvantaged populations: 1) to have a meaningful voice in and actual impact on the formulation of laws, regulations, major development programs and other policies; 2) to understand, participate in and receive fair and expeditious treatment in the implementation of those laws, regulations, programs and other policies; and 3) to press for and achieve greater accountability in the legal system. The general purpose of the Improving Access to Justice Program, therefore, is to strengthen those capacities and opportunities.

Are we casting our net too broadly in proposing such an encompassing characterization of access to justice? We think not. Most fundamentally, in an impoverished nation such as the Philippines, most citizens' vital concerns are primarily economic. And most government decisions affecting their livelihoods are made by agencies such as DENR, DAR, BFAR and DOLE. An upland resident or community looking for security of tenure against outside encroachment will look to DENR for justice rather than the courts, and certainly will not view just or unjust application of the law as falling solely or mainly within the purview of the judiciary. **In other words, many Third World citizens accurately see access to justice as hinging on effective access to the agency making the legal decisions that affect them most, be it judicial, executive or legislative.**

The team also approaches access to justice programming with a practical consideration in mind: as discussed below, democratic and legal development work involves seizing opportunities where they exist. In the Philippines right now, those opportunities to affect the legal system reside mainly outside government. Furthermore, as also discussed below, the Philippine legal system is intertwined with personalism, patronage and politics. To tackle the system's problems involves getting at the core of how the society operates. Simply focusing on the judiciary means ignoring the influences that dominate its operations.

Finally, we characterize access to justice broadly because it is in keeping with the overall economic development emphasis of USAID. A narrow focus on judicial performance will at best yield incremental change that trickles down, if at all, to minimal impact on economic progress. While this report by no means holds out the promise of wholesale improvement in access to justice, conceiving of the program as addressing Filipinos' economic needs makes it more consistent and easier to integrate with USAID/Philippines' other general thrusts.

In closing this section, we should identify what our admittedly expansive concept of access to justice does not involve. We exclude broader democratic development activities such as voter and values education, as well as a whole range of training activities that do not pertain to enhancing and putting into effect understanding of the law and proposed policies. We also exclude support for explicitly political activities, such as electoral campaigns, even if their results may eventually influence policies.

III. THE NATURE OF THE PROBLEM

Over the past year OVC has received a number of analyses of the Philippine legal system and its ills.⁴ These studies and reports have been fairly consistent in their diagnoses and prescriptions regarding what ails the system. We will summarize the thrust of those analyses here, but will not reiterate in detail the information contained in those previously submitted documents.

A. The Societal Context: a Weak, Patrimonial State

Any attempt at assisting legal systems development needs to place its strategy in the societal context in which a given legal system operates. In the Philippines, the context and the central problem is a weak, patrimonial state in which state resources, decisions and priorities are dominated by narrow segments of society on local and national levels. Despite promising initiatives and a positive example set by President Ramos, patronage, politics and other forms of personal ties permeate the ways in which the society and government operate. Sources as diverse as University of the Philippines political scientist Alex Magno, American scholars Benedict Anderson and Paul Hutchcroft and Singapore Senior Minister Lee Kwan Yew have lamented the degree to which Philippine democracy functions in form more than substance, nominally open to popular participation but dominated by oligarchic interests.⁵

B. The Legal Context: Personalized, Privatized Justice

This societal reality is reflected in the legal system and legal practice. In fact, it is crucial to an understanding of the Philippine legal system to see it not mainly as a set of institutions, laws and processes, but rather as a web of personal connections that guide the legal superstructure's operations. The enforcement and implementation of laws under these circumstances are often the exception rather than the rule. Most notably, affluent Filipinos virtually never go to prison.

⁴ In addition to the aforementioned CDIE report, these analyses have included the Asia Foundation (1993), Golub (April 1993), Jensen (1993) and La Vina (1993).

⁵ This is not to say that intra-elite competition cannot become intense. Nor is it to suggest that NGOs and the low income populations with which they work are always powerless. Environmental groups have won some significant victories, for example. For better or worse, such NGOs have occasionally helped delay the completion of high priority power generating plants where government bodies such as the National Power Corporation have failed to abide by laws regarding community consultation and environmental protection. But it should be understood that such successes in the Philippines are the exception to the rule. Furthermore, they are far easier to achieve in the weak Philippine state if they block government action rather than compel it. For every power plant delayed despite government desire to see it operating, dozens of forests and coral reefs are destroyed as a result of government officials' indifference to or control by parties that benefit from illegal logging and fishing practices.

Either they are too well-connected to officials who can exercise influence on their behalf, or their attorneys are able to manipulate the law to preclude trial or punishment, or both. The rare exception occurs when public outrage and/or press scrutiny subjects their cases to the continuing glare of publicity.

Similarly, Article III, Section 12 of the Philippine Constitution actually surpasses the American "Miranda warning" protection ensuring the right to counsel for those accused of crimes, stipulating that "these rights cannot be waived except in writing and in the presence of counsel." Yet the enforcement of Section 12 is extremely spotty, at best. The more general upshot is that many laws are enforced by the government only to the extent that private parties press for or even take the lead in such action.

This privatization of justice is epitomized by the "private prosecutor" system, through which counsel retained by the victim of a crime (or by the victim's family) plays the lead role in prosecuting a criminal case. The fact that many victims resort to private prosecutors says much about the plight of those who cannot afford their own attorneys. Too often, criminals are not charged or the government prosecutor approaches the case in an indifferent, superficial manner. And with justice privatized in this way, graft grows: government prosecutors are more likely to proceed diligently when victims or their families compensate them for their efforts. Conversely, they may refrain from proceeding at all, at the behest of criminals who can pay the appropriate fees.

C. The Economic Context: the Necessity of Personalism

Before proceeding further, it is necessary to emphasize that the ways in which Philippine society and its legal system operate are to a great extent rationally grounded in the day to day economic realities of most Filipinos' lives. The farmer who refuses to press for land reform or to challenge a landlord's unfair, illegal division of crop proceeds may depend on that landlord/patron for loans to buy seeds or fertilizer, or for funds to purchase medicine if a child falls ill. That same farmer (or laborer, or business person) may see local and national officials become rich, favor relatives and other supporters, and escape punishment for abusing the public purse. He or she may conclude that this is the way it is and always will be in the Philippines, so why not sell one's vote or turn to the local power broker for favors? A factor that exacerbates this situation is the severe societal income inequality that places the poor at the mercy of their economic betters even more than in more economically egalitarian nations.

Government employees are by no means immune to this economic calculus in carrying out their duties. Retaining their jobs, obtaining promotions and avoiding transfers to undesirable locations or positions may hinge on how well connected they are inside or outside their bureaucracies. Thus, even putting aside the influence of corruption, there is often a rational economic basis to favoritism and personalism in the operations of government, including legal institutions.

D. Implications for the Judiciary

The degree to which personal and economic interests permeate the state apparatus also infects the judiciary. Judicial corruption clearly is not subject to scientific scrutiny, but by almost all accounts it is widespread and may even have grown worse in recent years. Former Chief Justice Marcelo Fernan has claimed that "courts have become a marketplace where rights and liberties are for sale to the highest bidder." Vice President Joseph Estrada, who heads the Presidential Anti-Crime Commission, has repeatedly referred to some judges as "hoodlums in robes."

Throughout 1993, press reports have tended to confirm that substantial corruption exists. Several judges in Makati, the central business and commercial district of Metro Manila, were accused of connivance with drug dealers and other forms of graft. A Supreme Court justice resigned in response to press revelations suggesting corrupt conduct by him.

In a sense, however, discussing judicial corruption in terms of bribery understates the problem. Favoritism flows not just from funds changing hands, but from judges' personal bonds. As lawyers and prominent members of their communities in a society that places a premium on establishing utilitarian personal ties, Filipino judges amass a far greater array of such connections than their Western counterparts: law school fraternities, social clubs, honorary sponsorships of weddings and baptisms, and links from their home provinces and regions. Any of these can be employed to secure favorable judicial decisions (that repay or generate utang na loob, debts of gratitude) without any money being paid. As a judge said in a discussion with one author of this report, "friends can get some judges to do things that the judges would not do for a million pesos or more."

Coupled with these characteristics is pakikisama, a Filipino value embodying smooth personal relations. Judges and opposing counsel regularly agree to lawyers' motions for postponement based on the flimsiest of reasons, due to professional courtesy. And judges who hear rumors of colleagues' graft might merely tell them to "be careful"--ambiguous advice that could mean "desist," but might be interpreted to imply "keep a low profile" or "tone down the acceptance of bribes for now."

This array of influences tends to undercut internal efforts to improve judicial operations. Clearly, there are some honest, dedicated judges. But to suppose that they could overcome the dominant practices and attitudes among colleagues may be akin to imagining that the tail can wag the dog. The pressure to avoid creating problems in the extremely fraternal legal profession--and in Philippine society at large--is too great.

E. Implications for Legal Practice

Complementing the situation on the bench is that of the mainstream bar. It has been rocked by scandal twice in recent years--most notably in 1989, when competing slates of candidates for national leadership of the Integrated Bar of the Philippines (IBP) engaged in an orgy of expenditure in order to garner support in the IBP election. The Supreme Court finally had to

take matters in hand by invalidating the election results and barring the competing candidate from running again that year. And in 1991, the Court removed the president of the IBP from office due to alleged financial irregularities.

More generally, the existence of many honest, dedicated attorneys does not prevent many others including some leading practitioners, from indulging in unethical practices. This often includes finding ways of eluding reforms and rules of court designed to purge graft from the system. Some practitioners who also teach at law schools even pass on the "tricks of the trade" through informal, joking advice they give during class.

As with the judiciary, however, there are respects in which indifference and unethical conduct reaches beyond graft. Favoritism and personal influence is of course a factor. And even more generally, many lawyers use court delay to both generate fees (since attorneys typically charge on a "per court appearance" basis) and serve their clients. Delay is a very valuable tool, for memories fade or witnesses disappear over time.

Finally, many private practitioners taking on the cases of low income groups and individuals have a disappointing track record. When representing impoverished, legally ignorant clients, many attorneys perform poorly or even act in collusion with the opposing sides in a law suit.

IV. THE NATURE, LIMITS AND POTENTIAL OF DEMOCRATIC DEVELOPMENT ASSISTANCE

What can USAID realistically hope to accomplish? Before responding to that question raised by USAID/Philippines Deputy Director Richard Johnson and recommending a strategy for the Improving Access to Justice Program, we feel that it would be useful to clarify for USAID the nature, limits and potential of donor impact on legal systems development. We draw our lessons from the information summarized in the previous sections and from our own development experiences. We present some of these lessons in very general terms because they apply to democratic development work in general and not just to the facet known as legal systems development, and because they may well apply beyond the Philippines. In any event, we are confident that the lessons apply to this society.

A. Implications of the Weak, Patrimonial State for Programming

While potentially helpful, simply introducing reforms through the Constitution (such as the expanded "Miranda warning" described above) or rules of court does not necessarily translate into implementation of those new policies. The roots of the legal system's problems involve attitudes and influences that reach far deeper than inappropriate rules. Moreover, winning legal victories in the courts, executive agencies or elsewhere and actually getting them enforced is a drawn-out process that takes considerably longer than equivalent battles would in the United States.

Nor do those battles only take place in the legal arena, with the government necessarily playing a central role. The privatized nature of Philippine justice means that the law often is enforced only to the extent that the specific parties affected persistently push for this to occur. This reality weighs in favor of donor assistance for legal advocacy by NGOs, rather than support for government activities that may be neutral in theory but not in practice. And given the interface between law and politics, enforcement often requires that advocacy be political as well as legal.

B. Systemic Change is Likely to Take At Least a Generation

Since the problems of the legal system are intertwined with the nature of Philippine society, lasting changes will only result from long-term evolution of the society as a whole. As a responsible donor, USAID naturally can and should expect to develop some ways of gauging success over a five-year span. But the consensus among the wide variety of individuals we consulted, including donor personnel and attorneys, is that any donor that sets a target of widespread systemic change over the course of such a relatively short period is bound to fail. Furthermore, such a donor is likely to miss or undersell any reasonable accomplishments flowing from its support by virtue of aiming far too high.

C. Absolute Versus Relative Impact

In view of the long-term nature of legal systems development, the Mission has an understandable concern regarding whether work in this field is worthwhile if USAID is able to support pertinent programming for only five years. Should the effort not be undertaken at all, given the relatively modest impact that can be expected during that time?

Section VII of this report, which considers how to define success, addresses the issue of "relatively modest impact" both directly and indirectly. At this point, however, we should emphasize that modest impact regarding the entire Philippine legal system nevertheless is of absolute importance regarding particular facets of the system. In other words, even just a five-year investment is justified if it permanently affects enough policies and communities for the better. Such absolute impact becomes significant once a donor's view of success is no longer clouded by the impossibly ambitious goal of changing the entire legal system.

Of course, another point is that the Mission will likely continue support beyond five years if it accepts, as it seems to be doing, that its contribution to legal systems development can be justified even without affecting the entire society.

D. Sustainable Impact

A related issue is whether organizations supported by the Mission can become sustainable after five years. First, it should be noted that even if the organizations themselves do not become self-sustaining, their impact can be. That is, policy changes that flow in part from the work of such organizations may become permanent. Communities that are assisted by them also may see lasting changes in the economic, environmental or political factors that affect them most.

In any event, expectations for grantee sustainability should be modest. Even in the United States and other Western countries, most human rights and public interest groups are not truly self-supporting. They depend on funding from such sources as domestic foundations (analogous to donors in the Philippines) or donations by socially concerned, relatively affluent members of the general public (of which there is a much smaller pool in the Philippines). A more realistic expectation for recipients of Mission funds is that over time their track records will enable them to diversify funding so that they secure support from other donors, the government and/or, to a limited extent in some cases, from client populations.

E. Expect the Unexpected

In any society, but perhaps particularly in one such as the Philippines, unanticipated developments are as much the rule as the exception to the flow of events. This is not to say that there are not many unchanging or only slowly changing realities hindering Philippine progress. Quite the contrary. But on the level of detail that development projects operate, it is not possible to predict all of the variables that may make such projects succeed or fail.

One of the more successful types of activities that the Asia and Ford Foundations have supported in recent years, for example, has been developmental legal services groups (DLSGs).⁶ When some DLSGs were first launched in the mid and late 1980s by new graduates of the University of the Philippines and the Ateneo University law colleges, both they and the two donors anticipated that these new organizations would become deeply involved in precedent-setting cases, along the lines of American public interest litigation. But they have adapted to the reality that the pace of Philippine judicial processes and the orientation and sporadic enforcement of Philippine judicial decisions only rarely yield such widespread impact and that, far more fundamentally, the legal needs of client groups are usually better addressed by executive agency and local government actions. As a result, the DLSGs have focused successfully on contributing to executive agency policies (such as those of the Department of Environment and Natural Resources or regulations pertaining to the Local Government Code) and to helping client groups to get such policies enforced on a local level. But this focus and the resulting impact were not anticipated at the outset of their work.⁷

Another very successful TAF grantee regarding a wide range of issues has been the Philippine Center for Investigative Journalism (PCIJ). But neither TAF nor PCIJ anticipated that the Center would become involved in covering judicial reform issues until pertinent stories came to the Center's attention. (In fact, TAF assistance to PCIJ is structured so that the Center is

⁶ As discussed in Appendix 1, these are NGOs staffed by lawyers who mainly address social, economic and environmental concerns such as the status of women, upland indigenous communities, the urban poor and farmers. They also are distinguished by: 1) the fact that they generally work with groups of clients rather than individuals, and 2) their use of paralegal development and other training to make those client groups more capable of undertaking law-oriented work on their own, independent of lawyers.

⁷ Some examples of the DLSGs' success are documented in an evaluation report submitted to OVC: Golub (April 1993).

completely independent in its work, and need not discuss any of its planned investigative reports with the Foundation or even inform the Foundation of their nature prior to publication.) Yet the Center has had an impact in precisely this area.⁸

F. A Complex Array of Forces

With respect to DLSGs and other NGOs, we should strongly emphasize that success regarding both policy formulation and implementation typically flows from participation in coalitions of forces. In other words, an NGO in the Philippines--or in the United States, for that matter--rarely can claim sole credit for a given instance of impact. Rather, it achieves success on a local or national level in collaboration with client groups, other NGOs, church efforts and/or government officials. The DLSG (and OVC subgrantee) Saligan is involved with drafting implementing regulations pertaining to both the Urban Development and Housing Act and the Local Government Code, for example. But Saligan would be loathe to claim sole credit when it is cooperating with a wide range of other organizations in these endeavors.

G. The Limited Role of Donors: Contribution, Not Control

Given the deeply ingrained nature of the problems blocking access to justice in the Philippines and the reality that democratic development flows from a complex and often unpredictable interplay of a wide range of actors and factors, the most that any donor involved with the Philippine legal system can hope for is to contribute to specific positive developments in policy formulation and implementation. To assume otherwise, in the face of the profound political, economic and cultural constraints that influence the legal system, is to credit donor agencies with wisdom and foresight bordering on omniscience.

In fact, it is not such a bad thing that donors can make only relatively modest contributions to democratic development. The individuals and organizations that comprise a polity should be free to chart the course their society takes, for better or worse. Particularly in the Philippines, where the departure of U.S. military bases is finally dissipating the suspicion in some quarters that America controls the country's fate, USAID should be quite comfortable with the reality of a modest role in the nation's democratic evolution.

H. The Vital Role of Donors: Creating and Responding to Opportunities

If in fact democratic development is too complicated a process for any one actor to control or even guide, what role can donors best play? More specifically, what approach seems best suited to supporting such development, and why?

Though certainly not perfect in terms of design or performance, the best approach seems to be that adopted by the Ford and Asia Foundations. It includes the following elements:

⁸ For documentation of the PCIJ's impact in this regard, see the following document that was submitted to OVC last year: the Asia Foundation (1993).

1. Base an individual (whom we shall call a program officer) in the country where he or she is to operate.
2. Allow the program officer to gain the requisite knowledge of the society, the development issue(s) that should be addressed and the best grantee partners to work with.
3. Provide the flexibility for the program officer to shift programmatic emphases over time, rather than committing that person and the donor organization to certain grantees and/or activities at the outset of a multi-year period.

There are a number of reasons why this approach is sound:

1. Country conditions and priority needs can change, sometimes rapidly. To the extent that the program officer is not locked into commitments made years earlier, he or she can adjust accordingly.
2. A vastly underestimated ingredient in funding decisions is the quality and reliability of the grantee partners with whom the donor works. Even the most astute analysis of a development problem and identification of the grantee group apparently best suited to addressing that problem might not lead to ongoing funding if that grantee turns out to be corrupt, inept or ineffective. The best way to determine this is to work with grantees over time, separating the wheat from the chaff by ascertaining which are performing well, which have weaknesses that can be corrected or obstacles that can be overcome, and which do not merit continued support.
3. Ongoing involvement with an issue enables the program officer to gain expertise that permits him or her to bring more than just money to the table in discussing grants. A well-informed program officer can contribute ideas and provide avenues for grantees to strengthen their operations through training, exchanges, study or networking.
4. Especially in a personalistic society such as the Philippines, effective programming involves gaining the confidence of the individuals heading the organizations with whom the donor works. The resulting familiarity leads to far more frank discussions of those grantee partners' accomplishments, experiences and obstacles than might otherwise be possible. Especially in a conflict-averse culture, there is a tendency in a donor-grantee relationship for the latter to tell the program officer what he or she wants to hear. Only by building trust can this hindrance be overcome.
5. The bottom line for much of the above is that by providing funds and occasional suggestions, the program officer responds to and creates opportunities for appropriate grantee partners to try to address some elements of the development issue in which they share a concern. And given the complexity of democratic development, in which any attempt at policy formulation or implementation involves a range of actors and factors,

the grantees themselves often are creating opportunities for those groups with which they in turn work. Thus we present the following formulation of the donor's indirect, limited, but nevertheless vitally important role: a donor can create and respond to opportunities, but what grantees and their partner organizations make of those opportunities is largely beyond the donor's control.

1. Basic Funding Criteria

Terms such as institution building, system building, human resource development, law reform and structural reform are often employed in development literature and reports, and have their value. **But appropriate assistance for democratic development often boils down to investing in bright, dedicated grantees with good ideas, who are in a potential position to have some positive impact on the issue(s) the donor hopes to address.**

This assertion flows in part from the limited role that donors can play in this field, and the extent to which they can only aim to contribute to the mix of positive forces that might bring about progress. But it also is important because there has been a tendency in some donors' legal systems development work in certain countries, though not on the part of USAID/Philippines, to provide funding mainly on the basis of which persons and entities are ostensibly well-placed to bring about change. Thus, a minister of law or a chief justice may receive funding for favored projects on the basis of that individual's high office, presumed capability to effect change and willingness to accept aid and advice.

An approach that places excessive priority on working with well-placed grantees is flawed in a number of respects:

1. It overlooks the underlying causes of many legal systems' problems, assuming for example that technical "fixes" such as training judges or providing computers can cure a judiciary's ills.
2. It also assumes that when high officials accept funds for development projects they also are embracing reforms. But acceptance of funds simply may reflect a willingness to tolerate a new idea without the intellectual ownership or political will necessary to push it through a reluctant bureaucracy.
3. Finally, even a minister or justice who wholeheartedly embraces reform may not be able to overcome the political, economic, attitudinal and bureaucratic obstacles to putting it into effect.

In other words, simply being well-positioned is not enough.

In contrast, an approach that seeks out persons with ideas of their own (or who intelligently adapt suggestions and advice to their work) has a greater chance of seeing the funding applied with commitment. If sufficiently dedicated, those grantees are more likely to persevere in the

face of the obstacles they will inevitably face. And if they are in a potential position to help effect change--by contributing to coalitions working on policy or local levels, for example--the fact that they do not command entire government departments becomes insignificant.

J. Sequencing as an Inductive, Evolving Process

Given the nature of the Philippine polity in particular and most legal systems development in general, it is unrealistic to predict a linear sequence of activities leading to achievements that in turn lead to further activities and achievements. USAID is better off learning from experience and applied research, and modifying its approach based on the lessons it learns. (The case studies that could constitute such applied research are discussed in Section VIII of this report.)

But this is not to say that a donor's work simply be a matter of playing it by ear. A sequence can be planned--but it is sequence as a learning process, rather than a specific set of substantive activities.

K. Supply and Demand

The CDIE report posits a relationship between government bodies increasing the "supply" of justice in response to growing public demand sparked by external forces such as the press, polling outfits, NGOs and watchdog groups. Whether or not that analysis is correct, in the context of the Philippines, perhaps a more accurate and less controversial dichotomy would be external and internal forces, or governmental and nongovernmental.

V. PURPOSE AND OBJECTIVES

As defined earlier in this report, the overall purpose of the Improving Access to Justice Program is to enhance the capacities and opportunities of affected groups and individuals, particularly disadvantaged populations: 1) to have a meaningful voice in and actual impact on the formulation of laws, regulations, major development programs and other policies; 2) to understand, participate in and receive fair and expeditious treatment in the implementation of those laws, regulations, programs and other policies; and 3) to press for and achieve greater accountability in the legal system. The general purpose of the Improving Access to Justice Program, therefore, is to strengthen those capacities and opportunities.

In converting this very broad purpose into more focused objectives, the team kept in mind the preferences that Mission Director Thomas Stukel articulated at the outset of its work: that it would identify activities that could address some specific legal needs while also suggesting ways to achieve more systemic improvement in judicial operations. Based on those preferences and our analysis of societal needs and funding opportunities, we conclude that the purpose can be best served by pursuing the following two general objectives and their sub-objectives:

A. Promote innovative approaches to legal services by supporting:

- a. developmental legal services groups;
- b. legal components of broader development efforts; and
- c. targeted funds for legal services.

B. Encourage greater accountability in the legal system by supporting:

- a. media coverage;
- b. monitoring groups;
- c. survey research;
- d. research on legal reform; and
- e. legal education.

The activities that flesh out these objectives are described in Appendix 1, which sets forth a Strategic Course of Action for implementing the program.

VI. DEFINING SUCCESS

The team also kept in mind a question that Richard Johnson asked at the outset of its work. Five years from now, how will USAID know that its investment in the Improving Access to Justice Program has been justified?

In order to answer this question, we need to ask another. What constitutes success in promoting access to justice? The nature of success inevitably varies, depending on the objective and specific activity in question. And we should make clear at the outset that whatever success the program brings about will be accomplished not only by the organizations that receive USAID funds. As often as not, it is individuals and groups that in turn receive training or other help from Mission-supported grantees (and whom we will refer to below as the "partners" of grantees) that actually will achieve success.

We can view success as occurring on two levels (policy formulation and policy implementation) that break down into seven categories:

A. Policy Formulation

This applies to grantees helping disadvantaged and otherwise inadequately mobilized Filipinos influence legislation, executive agency regulations, judicial procedures, the design of major development programs or other policies. Generally, the most important of these decisions are made on a national level, although with decentralization, local government units are setting a growing array of policies.

What are potential examples of success regarding policy formulation? One is where a legal services NGO contributes to the content and adoption of a piece of legislation or an executive

agency regulation by providing technical assistance to the coalition of women or fishing communities or environmental groups that back the policy. Another is where that coalition loses its policy battle, but in doing so learns lessons about the law and about advocacy that it can apply in the future. Finally, press articles or public opinion polling may achieve success where they help the judiciary decide to launch procedural reforms that facilitate case flow or more equitable treatment of disadvantaged populations.

Success regarding policy formulation can be categorized in the following manner:

1. Impact on Policies and Related Decisions

Most obviously, policy impact will take place if a new law or regulation stems at least in part from the work of grantees. But this category of impact also would include the judiciary promulgating rules that facilitate more efficient, equitable adjudication. And it embraces instances where Mission-supported activities help affected Filipinos prevent negative changes in policies, such as legislation that would weaken beneficial aspects of a given law.

Under some circumstances, not all decisions of national importance are directly reflected in government policy. Some of the most important, in fact, concern who is appointed to a policy-making post in government. Other decisions with important policy implications may be made by entities such as multi-lateral agencies. Impact on policy formulation, then, will also hinge on helping otherwise powerless, poorly informed or poorly mobilized Filipinos affect such appointments or other decisions.

2. Impact on Participation

Short of actually influencing policies and related decisions, meaningful participation by USAID-supported groups or their coalition partners in policy formulation processes constitutes a degree of success. It is important to take this into consideration for at least two reasons. First, not all policy battles can be won. In the United States, Congressional opponents of a given proposal still participate in the legislative process even if the bill passes.

Just as pertinent is the fact that policy formulation can be a lengthy, multi-step process. Even if a law or regulation has not yet resulted from that process, grantees or their partners may be playing important roles in shaping those potential policies. Thus, if USAID-funded research and/or the principals who carry it out become involved in follow-up efforts aimed at putting findings into effect, that reflects accomplishment.

3. Impact on Capacities

Above and beyond success regarding the adoption of any given law or regulation, long-term impact regarding policy formulation will hinge on USAID-supported groups and their partners developing relevant capacities. For instance, press training seminars regarding pertinent issues and processes may help journalists do their jobs better. But as with most endeavors, many

individuals and organizations will mainly learn by doing. That is, only through involvement with policy advocacy will grantees and their partners become better at it, even if some of their current efforts prove unsuccessful.

These capacities can take many forms. They include knowledge of existing laws, of the ins and outs of legislative and executive decision-making processes, of skills such as how to make use of media, and of the key players within and outside of government.

B. Policy Implementation

Success regarding policy implementation involves grantees and their client or beneficiary organizations seeking the enforcement of policies relating to specific disputes or other legal needs. These would include assistance with court cases, quasi-judicial hearings carried out by executive agencies, other executive agency processes and alternative dispute resolution. They also would include building up the abilities of partners to address legal needs on their own or with reduced outside assistance.

Potential examples of success include situations in which: a citizens' monitoring group persuades a government agency to follow up on investigations that the agency was not pursuing aggressively; a legal services NGO guides a partner community's application for use of upland or coastal resources through the relevant bureaucracies; a legal services NGO works with other NGOs to educate and organize a community regarding violence against women.

Success regarding policy formulation can be categorized in the following manner:

1. Impact on Government Legal Decisions

Justice issues are most immediately addressed through the decisions of courts, executive agencies and local government bodies. Success will hinge on the extent to which the work of grantees, such as legal services NGOs or citizens' groups, results in favorable decisions.

2. Impact on Participation

The degree to which grantees and particularly their partners participate in the processes through which legal decisions are made also will reflect success. An example of this would be where paralegal farmers take on some traditional work of lawyers in pursuing agrarian reform through the DAR bureaucracy. As with policy formulation, set-backs and prolonged processes may mean that final favorable decisions will not always occur within the five-year life of the Improving Access to Justice Program. But to the extent that progress occurs that would not have taken place in the absence of the program (e.g., using paralegal training by NGO attorneys to move land reform applications through most if not all of the requisite bureaucratic stages), that constitutes success.

3. Impact on Capacities

Enhanced capacities go hand in hand with participation in policy implementation. A journalist may cover community-level legal issues better as a result of improved skills. People's organizations (POs, the grassroots groups of farmers, women, workers or other members of disadvantaged sectors) may become better at seeking access to justice because of enhanced knowledge of the law, paralegal skills (such as gathering evidence) or attitudinal changes that overcome a sense of poverty-imposed helplessness. They also may benefit from increases in organizational cohesion, political power and/or negotiating strength that could flow from these other factors. Often these capacities will be reflected in participation in legal processes or in obtaining favorable government decisions. But sometimes the capacities will be fostered before the opportunities to apply them come along.

4. Impact on Material Circumstances

This is the bottom line regarding many legal issues. As John Heard has emphasized, a key problem with access to justice is getting the law enforced. Success substantially hinges on translating legislative, court and bureaucratic victories into actual improvements in economic circumstances. Thus, the farmer who wins title to land needs to obtain actual control and to experience an increase in income.

Success regarding material circumstances also can involve halting or preventing negative developments, such as violence against women or environmental degradation. These often may be the greatest legal needs of a given individual or community.

C. The Integrated Nature of Success

We should note that developmental reality does not fall into the neat conceptual compartments we have just tried to portray. As we already indicated, capacities and participation are closely linked. Furthermore, grassroots experience with policy implementation can inform an NGO's work regarding policy formulation. And improvement in a group's material circumstances may contribute to greater political strength and other improvements in its capacities.

The other important fact regarding success is that achieving bottom line impact on material circumstances can be remarkably difficult and can take many years in the Philippines. This should temper any expectations regarding the goals of a five-year program and any assessment of whether an investment in the Improving Access to Justice Program has proven worthwhile. It is vitally important to keep the bottom line consideration of impact on material circumstances in view. But it takes much longer to accomplish that in the Philippines than in the United States, and the economic, political, attitudinal and cultural obstacles are far greater. The other types of success take on greater significance, then, in terms of representing progress toward that bottom line.

The overall success of the IAJP will flow from the accomplishments of the activities that comprise the program. **The Mission will know that the Improving Access to Justice Program has been successful if significant numbers of Filipinos actually or potentially benefit due at least in part to USAID-supported activities that: 1) affect the formulation of laws, regulations and other policies; 2) yield effective implementation of these policies through court decisions, executive agency actions and other types of enforcement; 3) increase meaningful participation by USAID-supported groups or their partner organizations in policy formulation and implementation; and 4) increase the capacities of USAID-supported groups or their partner organizations to affect policy formulation and implementation.**

In essence, the success of the program will be the sum of the accomplishments of the activities that constitute its parts. As we have emphasized, democratic development assistance in general and legal systems development in particular consist mainly of creating and responding to opportunities represented by those activities. The ways in which the opportunities unfold and achieve progress cannot be predicted in any rigorous manner.

The corollary to this is that success should not be framed in terms of overall progress of the legal system. It is unrealistic to assume that the relatively modest development activities carried out for relatively short periods of time can dramatically alter the flow of the nation's history, the flavor of its culture or the character of its institutions. They can, however, help accomplish more limited and nevertheless important objectives that contribute to the overall quality of justice by addressing specific populations and needs.

To put this point another way, the Mission would not claim that the roles it anticipates playing in 1993-1998 in fields other than law and democracy involve it making an overwhelming impact on any of the general needs it addresses. The same standards should apply to the legal field.

More specifically, its efforts to improve health and well-being may be successful if they help improve specific policies and benefit specific populations, even if there are negative trends in the country as a whole. If those efforts help educate the public about AIDs or expand credit for selected communities, will they be failures if HIV infection increases nationwide for the next five years or if poverty remains endemic? We are not predicting these downward trends for the country, but USAID's activities in these fields will not necessarily fail if they occur. Similar arguments could be made regarding the overall pictures concerning a more open market economy, productive investment or the environmental scene. The Mission aims to provide assistance that will affect aspects of these situations. Setbacks on a national level, beyond the control of the Mission, should not reflect poorly on its projects or USAID.

If in fact specific types of success in the legal field are difficult to predict and hinge on many factors beyond the Mission's control, what vehicles can it use to document and measure its accomplishments? We address this in the next section.

VII. EVALUATION

This section addresses how to evaluate the activities that constitute the Improving Access to Justice Program as well as the program as a whole.

A. General Considerations

1. It is extremely unfortunate that evaluation often, perhaps even typically, is the terminal event in development projects, and that it functions mainly to allow a donor to "close its books" on grants. Whenever possible, it should instead be seen as part of an ongoing, cooperative process through which grantor, grantee and partners aim to improve the project and to learn from it for other endeavors. Of course, all grants and projects must come to an end. But even then, an evaluation should primarily constitute a learning tool geared toward improving the future work of all parties involved.
2. On the other hand, some types of projects can only be fully assessed years after the activity and the funding for it have ceased. Yet this is rarely, if ever, done. Has press training improved the long-term quality of the writing of the journalists involved? Have internships affected the subsequent careers of law students? Have exchange programs that aim to upgrade the skills of a government agency's personnel through training or degree programs abroad improved their job performance or enabled them to implement new ideas? Have communities assisted by legal services NGOs actually reaped the economic or other benefits that should flow from legal victories? Such efforts may never be reviewed. The result is that similar, subsequent programs may not benefit from the experience of those earlier efforts.
3. Grantee reports often are the main source of information regarding the activities they undertake, whereas they should only be the starting point for analysis. Grantees often lack the time, expertise, inclination and objectivity to undertake very useful assessments. Furthermore, in democratic development activities, the impact of their efforts may be indirect and delayed, so that they are not fully aware of what has resulted.
4. As OVC is aware, quantification of results, such as the number of training sessions or participants, is inadequate because this says nothing about the quality of such training or its eventual impact. More qualitative data is needed.
5. These and other conventional devices employed for evaluation (e.g., occasional donor visits to project sites, assessments by outside consultants) also tend to fall short because they usually offer only "snapshots" of an activity. That is, they look at its status at a given moment or in a given month. In addition, information that could provide a basis for a retrospective analysis usually is sketchy. In fact, grantors and grantees alike expect too much of themselves if they believe that such snapshots or reviews of hazy project histories can provide anything but (often misleading) glimpses of activities' effectiveness. More substantial investments of time, effort and expertise are required.

6. Democratization efforts rarely build in mechanisms for evaluation from the outset, so that baseline data can be collected and used as a basis for subsequent comparison. For example, if a given civic education activity aims to improve the status of women, then it is helpful to initially collect data on at least a portion of the intended beneficiaries' income levels, self-perception, knowledge of relevant information and related matters. At the same time, we should recognize that sometimes baseline data cannot be collected, because grantees may work with far too many partner organizations and communities for such interactions to be fully documented.

B. Assessment-oriented Case Studies

We and the donors we have consulted suggest that the best method for documenting, assessing and building on the success of IAJP activities is the case study. The Mission could blaze trails for democratic and legal systems development work in the Philippines and abroad by employing and refining this device.

What do we mean by a "case study"? On an activity-specific level, it is a report that: 1) focuses on how a grantee tried or is trying to address a specific development issue (e.g., mobilizing public opinion in favor of judicial reform, contributing to a coalition seeking passage of a piece of legislation, training members of a farmers' organization to undertake paralegal tasks in pursuing agrarian reform); 2) confirms the grantee's contribution to whatever accomplishments have taken place by drawing on available documents such as government reports or newspaper articles and by interviewing individuals (including but not limited to grant beneficiaries) who are familiar with that contribution; 3) draws conclusions for future use, based on the success(es) or failure(s) of the grantee and its partner organizations.

On the broader level of program assessment (or, more usefully, evaluation of success regarding the IAJP's two objectives), case studies can be used to examine how a range of activities have contributed to some general trends or developments.

In effect, a case study can be a much more in-depth approach to what Ford and Asia Foundation personnel try to do in assessing democratic development grants. It would make use of the unexplored potential of social science research to assess and enhance the impact of grants. (In fact, it is a great irony that many donor organizations fund research on complex topics pertaining to democratization, but not on the impact of their own work.)

Lawyers who carry out nonformal legal education for farmers, for example, often lack the time and expertise to gather baseline data or subsequently to determine whether the farmers have retained the information imparted and used it in any way months or years later. Social scientists could provide that follow-up, so that legal services NGOs (and their donors) can understand which teaching techniques and other tactics work best.

What kind of case study would document impact on the level of the entire program or one of its objectives? An example regards judicial practices and rules of court. Should policy reforms in the judiciary occur and be implemented, it would be instructive to trace as much as possible

the sequence of USAID-supported efforts that might have contributed to such reforms. This kind of case study would not necessarily pin down causation, but it might enable the Mission to make a stronger argument that the link is more than coincidental. It also could yield lessons and strategies for the future.

It would be unfortunate if these lessons were confined to the Mission and its grantees. Through publications and conferences, such findings could be disseminated to a wider audience in the Philippines and possibly abroad. Furthermore, NGO leader Karina David suggests that appropriate case studies be translated into Pilipino and into formats--possibly as simple as comic books--that would provide POs with examples of successful activities and experiences.

The case studies would be undertaken mainly by Philippine social science research institutes such as the Cordillera Studies Center at the University of the Philippines Baguio, the Center for Social Policy at the Ateneo de Manila University and the Research Institute for Mindanao Culture at Xavier University in Cagayan de Oro. It also might be useful to bring in the Asian Institute of Management, to determine if its business school approach to conducting case studies could complement or refine the development-oriented work of these university-based bodies.

Perhaps the best way to fund such studies would take the form of complementary grants given to these research bodies in coordination with primary grants provided to those organizations that are carrying out the activities whose effectiveness would be examined. For example, the Center for Social Policy could receive a grant to undertake cases studies on a variety of situations in which one or more legal services NGOs have played an important role. The specific situations to be studied would be determined by the grantees in cooperation with the donor. The Ford Foundation has utilized grants to research institutes as mechanisms for assessing the progress of government programs relating to irrigation associations in the Philippines and Indonesia and to agrarian reform in the Philippines. This approach could be adapted by USAID.

In any event, it is important to emphasize that the purposes of the assessment-oriented case studies might make them differ from those usually carried out by research institutes or business schools. As with the IAJP as a whole, case studies will be refined over time as all parties involved learn the right questions to ask and the best ways of getting answers. For this reason, as well as for the program to build on prior experience, it would be appropriate for the Mission to start funding case studies of activities that grantees already have undertaken with or without prior USAID support.

To insure the cooperation of grantees and the communities or other partners with which they work, and for case studies to be most useful, it is important to return to the point that the research should mainly be forward-looking rather than a mechanism to decide whether a grantee's past activity merits future funding. Of course, that latter function may remain in view. But the studies should identify how to learn from failure as well as success, and viewing them as a joint learning exercise is the best way to do so. Of even more fundamental significance, for beneficiaries of development projects to fully cooperate and gain from efforts to assess impact, it is important to respect the beneficiaries' roles and insights as participants who can

help shape future activities rather than mistakenly relegating them to being objects of study regarding a completed experiment.

In fact, the case study approach would engender greater cooperation by grant beneficiaries than would quick visits to project sites by donors or consultants, because it would facilitate ongoing or repeated contact between the researchers and those they interview. Such personal contact is important for getting the most reliable information in the Philippines.

C. Other Mechanisms for Evaluation

1. Under the proposed program, USAID would support public opinion polling of the general population as well as attorney, judges and perhaps other actors. As Thomas Stukel pointed out, polling can be a vehicle for evaluation on a program level, by assessing whether people perceive improvements in the justice system. Thus, this activity (that USAID might in any event fund as a way of promoting accountability) could be employed to measure program impact.

There are three important caveats to this approach, however. First, what if public perception is incorrect or misleading? In fact, greater media attention to the problems of the legal system could intensify popular dissatisfaction in the short run, and this might be reflected in polls. Assessment based on this indicator, then, might unfairly suggest that Mission-supported activities were making the situation worse.

In addition, many of the societal changes sought by the program are of a long-term nature that the general public might not detect or that would take many years to filter down to popular perception. Other changes are so specific that they would benefit given communities, but would not make a dent on a national level.

The final caveat relates to causation. Even if the population or the legal profession accurately detects improvement and this is reflected in polls, it by no means guarantees that the changes have flowed from Mission-supported work. Case studies represent better vehicles for assessing causation, though even they will not necessarily provide absolute answers with regard to society-wide developments that likely spring from a complicated array of factors.

Having noted the above, we nevertheless see the potential for public opinion polling to inform assessment of the program. But the exact nature of the questions and approach the polling would take in this regard remains to be determined.

2. Survey research also could be employed for more limited target groups. The perspectives of those who pass the bar exam each year might be sampled see if legal education and internships are affecting their points of view, and if succeeding classes of new attorneys have greater dedication to public service. The same caveats as apply to #1 might also hold true in this instance, however.

3. The Mission's many and diverse non-IAJP grantees and contacts represent another potentially useful source of information regarding the program's impact. OVC grantees could indicate whether the effects of any policy reforms have trickled down to their communities.

Can this information rise above informal feedback, to constitute a more structured evaluation tool? Perhaps carefully structured surveys of relevant grantees and contacts could achieve this. As opposed to public opinion polling, such surveys could be more detailed and could benefit from the personal links that USAID personnel have with the individuals whose experiences and perspectives are being sampled.

4. The impressions of citizens' monitoring groups might be a source of information on trends in the legal system. The caveat here, however, is that those groups funded by USAID might not be wholly objective if, in effect, they are asked to assess the impact of their own work.

5. One problem with the case study approach is the flip side of an advantage. The advantage is that research institutes would work very cooperatively with the grantees whose work is assessed. The potential problem is that this close working relationship might make the institutes lean away from being critical in their findings. A way to limit this possible tendency and to build on the research would be to have outside evaluators review and seek to confirm the data contained in selected case studies. The evaluators could do so perhaps three and five years into the IAJP. The possibility of this would keep researchers "on their toes," and in any event would add to the credibility of the process. In addition, those evaluators also might be able to suggest ways in which the preparation of case studies could be strengthened in the future.

6. While we recommend that the case study approach be the backbone for assessing and enhancing progress in this field, we also realize that not all activities necessarily lend themselves to scrutiny through case studies. In addition, sometimes evaluation can rely at least partly on far less detailed evidence. For example, newspaper reports indicating that high level officials are taking action in response to IAJP-funded activities such as survey research suggest that the public is participating, albeit indirectly, in stimulating potential reforms.

7. Regarding press training, one way of detecting impact is to simply compare the quality of reporting of journalists before and after they attend such educational seminars. The proof (of their enhanced capacities) will be in the pudding (of the articles they produce). Even if any given article does not necessarily trigger government action or other positive developments regarding the legal system, at least this activity has resulted in improved coverage.

D. Sequencing as a Product of Evaluation

We have already expressed some reservations regarding the notion that USAID support for NGOs will create sufficient pressure for the Government of the Philippines to undertake wholesale reforms that USAID could assist. Again, we point out that the democratic development process is far from linear and that it hinges on many factors beyond the control of the Mission or its grantees.

An alternative way of looking at sequencing is as a learning process that flows from ongoing evaluation and discussions among grantees, research institutes and the Mission. In this light, the Mission could arrange meetings or conferences during the life of the program--for example, every eighteen months--to focus on lessons learned, so that all the parties involved would profit from each others' experiences. Similarly, each activity would be reviewed by the Mission and/or intermediary (grantee) organizations on an annual basis not just to assess success, but to understand the obstacles the implementing (subgrantee) group faces and to discuss how it could do better.

APPENDIX 1

A STRATEGIC COURSE OF ACTION FOR IMPROVING ACCESS TO JUSTICE

I. INTRODUCTION

"What should USAID do regarding access to justice?" This is the central question that the Office of Voluntary Cooperation (OVC) has asked me to address in recommending a five-year strategic course of action (SCA) for improving access to justice in the Philippines. This SCA flows from the main report prepared by the Strategy Assessment Team. The main report provides the background, rationale, general recommendations and evaluation criteria and mechanisms for the Improving Access to Justice Program (IAJP). The detailed identification of potential grantees and activities are discussed here.

The SCA also builds on previous reports and recommendations presented to USAID over the past year. As such, it reiterates the analyses and background information contained in those reports only to the minimal extent necessary. It mainly attempts, in as much detail as possible, to suggest to USAID what it should do.

The SCA recognizes that program development takes place over an extended period of time, that it is often a product of repeated discussions with potential or actual grantees (or, when carried out by intermediary organizations, with subgrantees⁹), and that it can be a process of trial and error to determine which grantees are more or less reliable and successful. Due to these factors, this paper can only be a starting point for considering what to fund. Furthermore, the strength of its recommendations varies among activities: some suggestions regard organizations that have proven track records, whereas other suggestions flow from ideas that have only been discussed in the most preliminary ways.

This paper is divided into two main sections. The first, "General Objectives and Specific Activities," describes the substance of what USAID should consider funding (specific activities) and why it should do so (general objectives). The second section, "Implementing the Strategy," discusses implementation vehicles and funding levels.

II. GENERAL OBJECTIVES AND SPECIFIC ACTIVITIES

As noted in the main report, the Mission is not starting from scratch regarding an Improving Access to Justice Program. It already is supporting a few interesting and productive initiatives. The SCA--as well as the specific activities that flesh out the strategy and comprise the Improving Access to Justice Program--builds on those initiatives.

A preliminary note regarding the program's two general objectives: just as the reality of legal systems development is neither linear nor neatly compartmentalized, there is some overlap between the objectives for reasons discussed below.

⁹ As in the main report, for the sake of simplicity this appendix refers to subgrantees as "grantees."

A. Promote Innovative Approaches to Legal Services

Both this Strategy Assessment Team's main report and previous analyses submitted to USAID emphasize that the privatized nature of Philippine society and justice means that laws are enforced by the government only to the extent that the parties affected press for it to do so. Clearly, however, the Mission cannot take on the massive task of supporting legal aid for every Filipino who needs assistance.

What the Mission can do, and is already doing to some extent, is support efforts that have multiplier effects that transcend the impact of traditional legal aid. Such efforts tend to contribute to broader development activities, and/or benefit communities and groups rather than individuals.

1. Developmental Legal Services Groups

Effective access to justice hinges in part on the availability of attorneys who are willing and able to train, represent and work with disadvantaged Filipinos regarding policy implementation (i.e., obtaining favorable decisions from executive agencies, the courts and other government bodies and obtaining enforcement of those decisions) and who can provide technical assistance to them regarding policy formulation (i.e., helping client groups understand and contribute to proposed legislation, regulations and other policies). In effect, the country needs a public interest law movement.

Briefly discussed in the main report, developmental legal services groups (DLSGs, also known as alternative law groups or legal resource organizations) constitute the core of such a movement. DLSGs are NGOs that address a spectrum of legal needs, generally on behalf of low income groups. Unlike traditional legal aid, they operate in ways that make those client populations more legally self-reliant. DLSGs do this through community education and paralegal training, and by encouraging clients to take the lead in setting strategy in efforts to affect policy implementation and formulation. They also provide legal representation for specific communities where necessary and assist networks of client groups concerning national level policy reform. Because DLSGs contribute to major development programs, legislation and executive agency regulations, a few also undertake in-depth policy research.

Especially active regarding social, economic and environmental issues, DLSGs are especially important for at least two reasons. First, the stronger DLSGs (some supported by OVC through the Asia Foundation) have accumulated an impressive track record. They have played leading roles regarding the Urban Development and Housing Act (UDHA) and pending legislation regarding violence against women, and contributed in a more modest way to the Local Government Code (LGC). To an even greater extent, DLSGs also have had and are having significant impact on executive agency regulations regarding the UDHA and the LGC, as well as policies promulgated by the Department of Environment and Natural Resources, the Department of Agrarian Reform and the Bureau of Fisheries and Aquatic Resources. They contributed to identifying flaws and recommending improvements in a major Asian Development

Bank-funded contract reforestation program, and have been actively involved in the Policy Studies Component of the USAID-supported Natural Resources Management Program. In addition, these NGOs are actively and successfully involved in training, advising and representing communities and people's organizations (POs) seeking access to justice regarding a diversity of issues, such as violence against women, agrarian reform, upland tenurial arrangements and protection of aquatic resources.

Specific Activities

- a. At least four of the Philippines' leading DLSGs quite appropriately will receive roughly half of the support provided under USAID's September 1993 grant to the Asia Foundation for a Democratic Development Project (Grant No. AID 492-0470-G-SS-3115-00). These NGOs (and the concerns they address) are: Tanggol Kalikasan (environment), Panlipi (environment and indigenous upland minorities), Women's Legal Bureau (status of women) and Saligan (various issues, including labor, the urban poor, farmers and decentralization). In recent years they have compiled admirable track records. If they continue to perform along those lines, they will merit further support beyond the life of that grant.
- b. TAF and USAID should consider assistance for other DLSGs. Groups that might merit support include the Environmental Legal Assistance Center (ELAC) of the Protestant Lawyers League of the Philippines. ELAC has been involved with the environmental impact of Japanese aid and Japanese corporations. Perhaps more than other DLSGs, it has devoted considerable attention to pollution issues.
- c. As a part of Asia Foundation subgrants to the DLSGs or through a subgrant to the network composed of these groups (i.e., the Alternative Law Group network), the Mission could fund short-term legal training for DLSG attorneys. Saligan lawyers, for example, suggest that senior private practitioners could provide useful training regarding injunctions and trial techniques.
- d. Similarly, since most DLSGs are involved with nonformal legal education for low income groups, they could benefit from in-depth training regarding popular education techniques. The best thoughts I have heard on how to provide that training were presented by NGO leader Karina David when I interviewed her. These ideas, which are partly based on the experience of the NGO HASIK in working with the Women's Legal Bureau, involve having a community development NGO such as HASIK observe and critique nonformal legal education conducted by a DLSG. Turning such thoughts into a program for several DLSGs, perhaps through an Asia Foundation subgrant to the Alternative Law Group network, might be a worthwhile investment.
- e. Executive Director Sheila Coronel of the Philippine Center for Investigative Journalism has expressed an openness to train development-oriented lawyers regarding use of media in addressing legal and policy issues. (The Center for Media Freedom and Responsibility is another possible implementing organization.) Such a session or series of sector-specific sessions might serve a number of purposes. First, given that many legal battles are fought in the media, they would provide DLSG lawyers and other attorneys with a better sense of how to use this

tool. If the training seminars also involved lawyers educating journalists regarding legal issues, they also might improve reporters' knowledge of the beats they cover. Finally, the sessions could facilitate development of personal ties that would help the attorneys make use of the press.

f. Given the role that DLSGs are playing regarding policy issues and the recognized need to integrate legal reform with social science insights, it might be beneficial for subgrants to these NGOs to allocate increased funds for policy research.

g. Any activities that build up the Alternative Law Group network might help contribute to strengthening the Philippine equivalent of a public interest law movement. For example, the network's secretariat could take on an attorney who would track the status of various pieces of pending legislation for the member NGOs.

2. Legal Components of Broader Development Efforts

Through its funding of DLSGs, the Mission already is supporting efforts to integrate legal services into broader development efforts. But DLSGs do not constitute the only vehicles for USAID to contribute to such efforts. Sometimes other types of NGOs lead the way in pulling together law programs. Under these circumstances, they merit funding for the legal components of their operations.

Specific Activities

a. As OVC is aware, the Davao City-based Kapwa Upliftment Foundation, already a USAID grantee, is interested in obtaining legal services to address local power brokers' illegal exploitation of upland areas.

b. Executive Director Tessie Fernandez of the Cebu City women's NGO Lihok Pilipina is interested in obtaining support to expand an apparently successful community organizing project aimed at preventing violence against women. The effort is significant because the NGO has close and beneficial ties to the Cebu City government (which helps ensure police cooperation) and because it could serve as a model for other NGOs and government bodies aiming to address a problem that research indicates afflicts the majority of urban poor women.

c. In a related vein, the Manila-based NGO HASIK has done interesting work with the USAID/TAF-supported Women's Legal Bureau regarding violence against urban poor women, and might merit funding to expand such activity.

3. Targeted Funds for Legal Services

As opposed to assisting specific organizations, USAID could support or help establish funds that lawyers and legal services NGOs could utilize to address high priority legal needs. As with other aspects of the Mission's funding of legal services, the beneficiaries would be groups and communities rather than individuals and the funds would be used in conjunction with broader

development efforts. This approach might have the additional advantage of increasing provincial attorneys' involvement in providing legal services, since most DLSGs are Manila-based.

Specific Activities

a. The USAID-endowed Foundation for the Philippine Environment (FPE) is launching an Environmental Legal Defense Fund (known as Endefense) regarding "green" (biodiversity) issues. Depending on the progress of this effort, a companion "brown" (pollution) fund could be established. The fund would cover the litigation costs of groups that become involved in pollution disputes. It also would support policy research and educational efforts. Lawyers and NGOs would apply to the fund to cover the costs of specific cases or projects. A coordinating council made up of attorneys, NGO and PO representatives and FPE and DENR personnel would decide on these requests.

Given the understandable priority that the Government of the Philippines attaches to attacking the country's energy shortage, such a fund might be structured so that it only addresses pollution caused by such sectors as manufacturing and mining, and not power generation. This is not to pass judgement on a complex issue or to deny that energy facilities have a poor environmental track record in the Philippines, but it would be politically risky for a Mission-supported fund to become embroiled in the debate about power generation and development strategies. If this activity were supported, it might benefit from coordination with the USAID-assisted ASEAN Environmental Improvement Project, a regional endeavor that promotes cleaner industry and is directed out of Manila.

b. Launched in June 1993, the Philippine Agrarian Reform Foundation for National Development (PARFUND) is a private funding mechanism designed to draw support from various sources to help NGOs and POs pursue agrarian reform. Its scope is by no means limited to the Comprehensive Agrarian Reform Law and related legislation, because it is also concerned with resource control and development issues affecting upland and coastal communities. Both Ford Foundation Program Officer Terrence George and Gerry Bulatao, Executive Director of the agrarian reform NGO KAISAHAN have identified the PARFUND as a logical vehicle for legal support designed to accelerate land transfer operations.

Though no longer a "hot" issue in the Philippines, agrarian reform remains vitally important because of the evidence that more equitable distribution of land and income has contributed to the success of societies such as Taiwan, Korea and Japan. One main bottleneck in the process in the Philippines has been the shortage of legal assistance for potential beneficiaries. Gerry Bulatao also raised the possibility that USAID support for PARFUND legal services could be used to leverage a matching contribution from the Department of Agrarian Reform (DAR). DAR recognizes the need to "privatize" such support because of the difficulty it has experienced in recruiting attorneys.

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c. In view of the Mission's involvement in implementation of the Local Government Code (LGC) through its Local Development Assistance Program, it might be worthwhile to establish a fund through which the Partnership of Philippine Support Service Agencies (PhilSSA) could provide training and other services regarding issues pertaining to Local Government Code implementation. PhilSSA is an NGO network that includes developmental legal services NGOs. This idea is further discussed in Appendix 3, which addresses how USAID could integrate IAJP activities with some of its other programs.

B. Encourage Greater Accountability in the Legal System

Both the CDIE report and other documents identify external, nongovernmental forces as having the potential to play important roles in triggering government action regarding the legal system in general and the courts in particular. While some in the government are very concerned about the state of the justice system, individuals interviewed by the team agree with these reports that a continuing flow of information and outside oversight is necessary if key officials are going to start taking appropriate steps.

While there is no guarantee that support for the work of external forces, such as NGOs and the press, will necessarily lead to energetic reform in the courts, it does increase the possibility of movement in the right direction. Moreover, such outside scrutiny at least seems to put a damper on judicial corruption and delay. Regardless of whether USAID-supported activities trigger systemic reform, even the potential for more modest impact would justify an investment of aid.

It should be clear that in supporting the activities discussed below, USAID is not itself seeking to generate pressure for accountability, but rather to create and respond to opportunities for concerned citizens and groups to undertake activities that might spur reform.

The activities that would contribute to this goal are discussed separately, but in reality they could build on each other. Media would make use of the findings of survey research, policy research and monitoring efforts, for example. Some policy research could be informed by polling results.

1. Media Coverage

The potential role of the media in reforming the justice system has already been demonstrated by the work of PCIJ and other journalists in raising public awareness of judicial corruption. While the Mission is well advised to steer clear of actually funding PCIJ investigative reports because of the controversy they generate, it already is planning to support other worthwhile activities that could contribute to building public awareness of the legal system's problems.

Specific Activities

a. Under the Democratic Development Project being undertaken by the Asia Foundation, USAID will be supporting important initiatives conducted by PCIJ and the Center Media Freedom and Responsibility (CMFR). These include training, workshops and dissemination of information. Some of these activities pertain directly or indirectly to the operations of the legal system.

b. CMFR anticipates the possibility of additional journalistic workshops dealing with such subjects as judicial accountability and public officials' assets. These and other workshops could identify legal system reforms that can actually be accomplished, and could push for them to be undertaken. To the extent that additional USAID funding (beyond that already anticipated) is necessary for these activities, they would constitute a sound investment.

2. Monitoring Groups

Constructively critical NGOs can play a crucial role in monitoring government performance, providing useful suggestions regarding potential improvements and pressing for government follow-up on reforms or investigations that have been initiated.

Specific Activities

a. With Asia Foundation support, the influential Makati Business Club (MBC) has been undertaking Project CourtWatch, an effort to monitor Metro Manila courts and ascertain obstacles to their functioning equitably and efficiently. With the initial stage of the project coming to an end, it should be possible to ascertain the degree to which CourtWatch is focusing narrowly on technical fixes for the judiciary's problems or whether it is taking a more comprehensive approach to pressing for improved judicial performance. Mission support should hinge on its taking a more comprehensive approach.

b. Mission Director Thomas Stukel and others have raised the appealing idea of nongovernmental "justice council" that would provide an external mechanism for addressing problems of accountability in the legal system. The council conceivably could serve a number of functions. It could selectively combat the tendency in the Philippines for government bodies' investigations and cases to lose momentum once the glare of publicity diminishes. The council could do this by following up on such activities in the justice field, pressing the relevant government offices to complete their investigations and to pursue cases diligently. The council also could constitute a powerful vehicle for focusing government attention on issues that come to light as a result of other IAJP-supported activities. For example, press scrutiny, public opinion polling, research on legal reform or DLSG work all could reveal problems (and possible solutions) that the council could pursue with government officials. Furthermore, follow-up work by the council could ensure that these problems are not forgotten by the government over time.

The Ayala Foundation, already an OVC grantee for activities in other fields, could become a very appropriate recipient of funds for council support staff and other expenses, particularly

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since the Foundation's Executive Director is already very involved with citizen anti-crime campaigns and has a number of ideas for other justice-related work. The one caveat here is a personal one: there is no doubting the integrity of the Ayala Foundation's Executive Director or that of her husband, a leading jurist, but the fact that he is a jurist could subject any Ayala-initiated effort regarding judicial accountability to indirect pressure. Should further consideration of the idea indicate that this is the case, perhaps support for such an initiative could flow through the Makati Business Club or a more development-oriented NGO.

The one other point regarding such a council is that the Ayala Foundation (or any other grantee) must walk a very fine line in recruiting the panel's members. On the one hand, it would be appropriate and perhaps even necessary for at least some members to be prominent citizens, for they might carry considerable weight in pressing for follow-up action by government bodies. But in some cases their very positions and backgrounds could involve personal ties that would let pressure flow in the other direction--that is, toward the council. Perhaps an appropriate mix would involve: academic, business and NGO leaders; DLSG attorneys; respected media personnel; and, if selected with greatest care, a few private practitioners and/or retired jurists.

c. In addition to or instead of the aforementioned council, the Ayala Foundation has an interest in other activities pertaining to increasing accountability. This includes training citizens' groups to monitor justice-related issues on a local level.

3. Survey Research

There is a tremendous potential for survey research to convey popular perceptions and other information to key players in government and media regarding how well the legal system is operating. Thomas Stukel has identified the additional value of such polling for measuring whether the legal system's performance is improving or deteriorating over time. The Philippines is fortunate in that relatively sophisticated organizations have evolved that are capable of undertaking such research. Utilizing non-USAID funds, the Asia Foundation is already providing support for surveys through which the Social Weather Stations (SWS) polling organization is sampling the opinions and experiences of judges, attorneys and the general public.

Specific Activities

a. The Asia Foundation's July 1993 concept paper proposed to USAID that it support public opinion polling by Social Weather Stations about government bodies and policy options. This seems to be an excellent vehicle for complementing and spurring media attention regarding the legal system. The USAID-supported activity could continue the kind of polling initiated by the Foundation. If more finely tuned, it also could identify the public's greatest legal needs and experiences with the system. The one possible caveat to this regards political sensitivity. USAID might prefer the Foundation to fund from TAF's other resources any surveys that could yield particularly controversial findings.

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4. Research on Legal Reform

If properly disseminated, research on the operations of the legal system and the prices society pays for its shortcomings could stimulate and guide reform efforts. As a number of persons emphasized to the team, not all of the system's key actors necessarily recognize that severe problems exist. And even to the extent that such recognition exists, it may not be in these actors' interests to pursue reform. The additional function of conducting and disseminating research, then, would be to mobilize broader public opinion. But to return to the point about dissemination, the Mission should support such research only if the grantee has a clear idea about how to utilize the findings in a way that could have actual impact on the legal system.

Specific Activities

- a. Under Project CourtWatch (and with TAF support), the Makati Business Club is undertaking studies regarding the cost to the national economy of court delay and case load trends regarding the Court of Appeals. There is the potential to build on or add to these MBC efforts. In the process, CourtWatch could become an instrument for independent input into court improvement.
- b. Supported by the Mission-funded Democratic Development Project that TAF is administering, the Center for Jurisprudence and Public Policy will undertake research on such topics as endemic over-utilization of motions for reconsideration in the courts. Should such research yield some specific recommendations and efforts to see them implemented, further support would be warranted.
- c. Appropriate research institutes such as the Cordillera Studies Center at the University of the Philippines Baguio conceivably could play a role in studying how the government could grant official recognition to indigenous dispute resolution processes pertaining to issues such as conflicts over upland resources.

5. Legal Education

Many attorneys and other persons the team interviewed emphasized that long-term improvement in the accountability of the legal system will hinge on affecting the attitudes and values of the next generation of lawyers (i.e., law students). I accordingly recommend support for activities that would help reorient legal education to the extent possible. Doing so is important because of the potential impact on the legal system, but also because Filipino lawyers play important roles in so many fields that do not involve legal practice.

I should emphasize that the idea here is not to completely revamp Philippine legal education. Rather, it is to provide opportunities for law students and law professors who are inclined toward public service on a full-time or pro bono basis to develop appropriate skills and knowledge.

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Specific Activities

a. As Office of Natural Resources, Agriculture and Decentralization Chief John Grayzel pointed out to the Strategy Assessment Team, there is a need for lawyers to work with social scientists regarding environmental and other issues. One way of addressing this need over the long term is to support the revival of the currently suspended masters of law (LI.M.) program at the University of the Philippines College of Law. The school's dean has expressed to Prof. La Vina an interest in building a program that would focus on law professors, lawyers doing development work and government attorneys, providing them with stipends and scholarships where necessary. A major component of the program would be an emphasis on the inter-disciplinary nature of the law, along the lines of the education that President Clinton received at Yale Law School. Thus, the graduate students would be exposed to the use of both natural and social sciences (e.g., economics, anthropology, psychology, environmental sciences). They would in turn make use of that training in their teaching (thus broadening the perspectives of law students) and their public policy work in and outside of government.

b. A range of individuals suggested that the best way to improve legal education is to provide opportunities for law students to undertake clinical training that puts them in touch with the legal problems of the majority of the population. University-based clinical legal aid programs can be useful. But perhaps a more strategic approach would be to provide internships for students to work with DLSGs and other legal services organizations. Through a grant to the Human Rights Center of the Ateneo de Manila College of Law's Human Rights Center, the Ford Foundation is supporting such training for both Ateneo and provincial law students. Ford Program Officer Terrence George suggests that the Mission consider building on this effort or picking up funding for it once Ford support comes to an end.

C. Areas of Overlap

The two objectives described above intertwine, in that certain activities that constitute innovative legal services also encourage greater accountability in the legal system. Clinical legal training is described under the heading of encouraging accountability, but if properly conducted also can constitute an innovative form of legal services.

Of much greater significance, the DLSGs should be seen not only as providing legal services, but as also promoting accountability. In constituting the core of a public interest law movement, the DLSGs inject more ethical and broader perspectives into a legal system racked by corruption, patronage and excessive personalism. They are doing so by taking in law students as interns for their organizations and by teaching law classes. Over the longer run, they may assume a more prominent place in the legal profession. In and of themselves they will not dissolve the ingrained patterns that plague the profession. But DLS attorneys do provide important examples of alternative approaches to legal practice.

Support for DLSGs serves an additional long-term function of allowing some of the country's best and brightest law graduates to build up the experience and expertise necessary to work

productively in government when the opportunity arises. A few have already done so, at the Department of Agrarian Reform and the Department of Environment and Natural Resources. Given the encouraging trend toward government-NGO cooperation regarding policy matters, there is every reason to believe that DLS attorneys will continue to join government service. A few will take what amounts to their USAID-supported training (that is, USAID support for their NGOs and therefore for the experience they accumulate) with them as they do so.

Finally, DLSGs promote accountability by training and advising affected populations regarding how to make the government enforce the laws and how to translate their policy preferences into proposed legislation and regulations. In making client organizations more legally skilled and knowledgeable, they enable those groups to press for accountable government behavior on their own, with decreasing guidance from lawyers.

D. Priority Activities

Which of the above activities deserve the greatest USAID support? Developmental legal services groups merit the highest priority. There are three reasons for this. First, they have a good track record to justify confidence in their future performance. In addition, they contribute to both objectives of the IAJP by improving accountability in the legal system while representing an innovative and effective approach to legal services. Finally, they contribute to both policy formulation and policy implementation, thus contributing to access to justice on a national level (policy formulation) while ensuring that specific communities and client groups benefit (policy implementation).

What should be the second priority? All of the other ideas discussed above have merit, and none have yet accumulated a record of documented performance to justify an assumption of definite impact. Nevertheless, support for better media coverage, monitoring groups and survey research may be more attractive because they offer the possibility (though by no means the certainty) of galvanizing action to tackle at least a few of the courts' and other legal institutions' problems on a systemic level.

III. IMPLEMENTING THE STRATEGY

This section discusses how USAID should go about implementing the IAJP and considerations pertaining to funding.

A. Intermediary Organizations

A number of factors weigh in favor of OVC working through intermediary organizations to promote access to justice. A relatively large grant is much easier for USAID to arrange and manage than numerous modest ones. Subgrantees prefer working through intermediaries because it lightens their reporting and record-keeping loads, provides these generally small NGOs with far greater flexibility and removes the complicated PVO registration requirements necessary for

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receiving USAID funds directly.¹⁰ In addition, Mission personnel may lack the time to develop useful personal ties with a broad array of IAJP grantees. Finally, working through intermediaries allows the Mission to chart the general course for this program while leaving the intermediaries responsible for dealing with the sometimes difficult judgement calls that can constitute the details of the program.

Which intermediaries should USAID work with?

1. The Asia Foundation

The major intermediary organization should remain the Asia Foundation (TAF). In view of my previous staff position with the Foundation, which ended in 1990, I have made an effort to defer to my two fellow team members regarding this recommendation. Their conclusion is that TAF should be the main recipient of funds regarding access to justice.

The Foundation offers a number of advantages. First and foremost, it has a proven track record of accomplishment in this field, particularly in recent years. Along with the Ford Foundation, it is the leading donor regarding legal systems development in the Philippines and elsewhere in Asia. By virtue of its experience, the Foundation has identified some of the best subgrantees to work with. TAF has the confidence of subgrantees as well as other Filipino organizations. Regarding the personal element, the Philippines office has a good blend of personnel in place. Furthermore, in her first months on the job, Assistant Representative Karen Gollin (who has specific responsibilities regarding the legal field) has demonstrated the intellectual toughness, genuine concern and good rapport with subgrantees to justify confidence in her capacity to build on TAF's current law program.

As a donor that has its own, non-USAID funds, TAF is able to complement USAID support for subgrantees with those funds. This also proves useful under circumstances where it is necessary to fill in gaps in USAID support to subgrantees, such as expenditures that the Mission cannot cover but that TAF can.

Several of my discussions with Mission and Foundation staff focused on the question of how USAID support to the Foundation should be structured. On the one hand, the Mission increasingly values flexibility for grantees and subgrantees. On the other, the Mission may wish to participate more than it has in the past in suggesting possible activities that the Foundation might pursue and consulting with the Foundation regarding the progress of those activities. What kind of funding agreement could address these dual priorities?

First, let me emphasize that the current Democratic Development Project grant from USAID to TAF is admirably flexible. In fact, it constitutes a model for how other missions should operate

¹⁰ Even the sophisticated Ayala Foundation, which thinks highly of USAID and its personnel, notes the very cumbersome nature of complying with USAID regulations. The similarly sophisticated Makati Business Club also is favorably inclined toward USAID, but has had difficulty with the registration process. (It is not yet registered.)

in the realm of democratic development. The main value is not that it relieves the Foundation (and to some extent the Mission) of some burdensome administrative requirements, but rather that it frees subgrantees to concentrate more on development work and less on counterproductive requirements that have nothing to do with promoting programmatic effectiveness or financial rectitude. If anything, USAID should strive to be even more flexible regarding financial and substantive reporting regulations. And nothing the Mission does in the future should constitute a step backward from the initiative it took with this grant.

In view of this, what Thomas Stukel has called a potential "partnership agreement" between TAF and the Mission regarding improving access to justice might best take the form of an amendment to the Democratic Development Project grant, rather than a new grant that would consume considerable time and effort on both sides. The amended agreement could provide for a substantial contingency fund, along with regular consultations between the two organizations regarding utilization of that fund, the progress of ongoing activities, and the findings of the case studies discussed in the main report.

The Mission can play a valuable role in such a partnership. First, it can test the assumptions of TAF and the subgrantees, providing an additional perspective on current and prospective activities. Mission personnel's knowledge about such fields as natural resources management and decentralization could dovetail with the IAJP, to the benefit of the thinking of TAF and the subgrantees. In addition, the Mission may become aware of certain ideas and programming possibilities that have not come to the attention of TAF.

Ultimately, however, under any agreement USAID must defer to TAF's judgment on how and whether to fund ideas that the Mission favors. The Mission lacks the expertise, experience and contacts in the legal field to know whether a programming possibility that is appealing on its face is not advisable because it is too controversial, because the prospective subgrantee is unreliable or because of a host of other considerations. Through its grant to the Foundation, it is paying for that expertise.

In addition, it would be counterproductive for the Mission, TAF and the subgrantees alike if TAF's operations became subject to Mission direction. Though the departure of United States military forces has greatly improved the programming environment for USAID and the Foundation, the perception of direct U.S. Government involvement in democratic development activities can still be harmful in some NGO circles and in certain segments of the Philippine body politic. Given the potentially sensitive nature of some activities that might be funded under the IAJP, it also might be in the Mission's interest to provide general approval for certain ideas while letting TAF take responsibility (and perhaps the flak) should controversy erupt.

There is a significant respect, however, in which OVC should consider being more stringent with the Foundation. TAF has a good grasp of its subgrantees' operations, but it would be much better if its personnel spent significantly more time in the field--that is, outside the office and especially outside Metro Manila. The Mission has a right to require that.

One final question remains regarding TAF's role. Should it be the sole recipient, and not just the major recipient, of USAID funds for the IAJP? The answer is no. The other potential intermediary organizations discussed below have the capacity to deal with a major donor such as USAID, and three of them have already done so.

Nevertheless, with the exception of the Asian-American Free Labor Institute, the Mission has little experience dealing with these organizations regarding access to justice issues. It therefore might want to course fund to them through the Asia Foundation for an initial one to two years, so that the activities they undertake can be carefully discussed and planned. In two instances, this also would be necessary because the organizations in question (PARFUND and PhilSSA) are not yet registered with the Mission.

2. The Ayala Foundation

As noted above, the Ayala Foundation has some specific ideas regarding monitoring and improving the operations of the legal system. Its leadership has a demonstrated commitment to this challenge. In addition, as a Philippine organization, Ayala might be the logical recipient of support for activities that might be sensitive for a foreign entity to aid or monitor.

However, the potential activities that Ayala could undertake and fund would seem to require a good deal of prior planning and discussion concerning potentially sensitive work (such as organizing a nongovernmental "justice council"). In the absence of in-depth experience regarding law programming, it is difficult to determine how the Mission and Ayala could approach this process. For fleshing out the ideas for some activities, Ayala and the Mission might want to consult the Asia Foundation and USAID legal services subgrantees with which Ayala has a working relationship, such as Saligan and Panlipi. And as noted above, funding might initially flow through TAF until the Ayala activities were up and running.

3. Targeted Funds for Legal Services: PARFUND; Foundation for the Philippine Environment (Endefense); PhilSSA (Local Government Code implementation)

These vehicles are discussed above.

4. Asian-American Free Labor Institute

In my discussions with the Country Program Director of the Asian-American Free Labor Institute (AAFLI), which has received Mission funds for radio programs and legal services pertaining to workers' right, we agreed that the general orientation of his organization's work was consistent with the IAJP. Nevertheless, we also agreed that none of the specific activities AAFLI is undertaking or planning necessarily fit within the IAJP. Should Mission discussions with AAFLI result in ideas for specifically law-oriented projects, they would merit serious consideration.

B. Direct Grants

Because program development is a staff-intensive process that involves getting to know the grantees as well as the subject matter, OVC should make few if any law-oriented direct grants (that is, grants to organizations that actually implement activities, as opposed to grants to intermediary organizations that select and monitor the work of implementing subgrantees). This is not to say that its limited experience with direct grants to groups such as the Cebu-based Free Legal Assistance and Volunteers Association (Free LAVA) has been unsuccessful--far from it. But OVC personnel's numerous other responsibilities preclude their getting deeply involved with such work, and deep involvement is exactly what is needed for a law program to flourish.

Nevertheless, what OVC can do regarding its many direct grantees working in such fields as community development is let them know that it is open to providing funding for legal services components of their work. Many of OVC's NGO partners are involved in activities that have potential legal dimensions. Davao City's Kapwa Upliftment Foundation has concerns regarding environmental issues, for example, and the Jolo-based Amanat Foundation has informed me of its interest in expanding its work with Muslim women to include nonformal legal education and perhaps other legal services. The best way to address such needs is to inform such groups of OVC's interest in legal issues and to provide funds for legal services in its future grants to them. The grantees would decide for themselves whether to contract with private practitioners or legal services NGOs for assistance. This point is discussed further in Appendix 3.

C. Funding Levels and Related Considerations

1. The Asia Foundation

On September 30, 1993 the Mission committed \$500,000 (via Grant No. AID 492-0470-G-SS-3115-00) to TAF for the aforementioned, eighteen-month Democratic Development Project. This may constitute the first tranche of a larger project of the same name, for which the Foundation requested \$1.3 million in its July 1993 concept paper. I understand that a second tranche that might provide the additional \$800,000 is under consideration, but that no firm commitments have been made. The time frame for a second tranche might hinge on when it is awarded.

For the reasons cited above, the Mission should provide that additional \$800,000 to TAF, in the form of an amendment to the current Democratic Development Project. Many of the specific activities identified above already are included in the TAF proposal. The Foundation may want to consider funding other activities listed in this paper. I should strongly emphasize, however, that USAID should not mandate that the Foundation consider those activities at this time. Given the amount of time required for program development, it could set the Democratic Development Project back significantly if TAF were forced to reconsider decisions it already has made. To ask the Foundation to reformulate its plans for the \$1.3 million would amount to too many cooks spoiling the broth.

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Is this level of funding enough to make a difference? The Foundation's July 1993 concept paper makes a persuasive case against seeking a dividing line between levels of funding that can and cannot make a difference. That paper's section on "Press Scrutiny of the Judiciary: A Case Study of Impact" points out that a very modest donor investment led to significant positive repercussions. In fact, USAID already has made a difference through its support for legal services NGOs. But as emphasized in the main report by the Strategy Assessment Team, it should not expect even a tremendous investment of funds to have a wholesale, systemic impact.

Nevertheless, the Mission can help create and respond to opportunities that can contribute to broader trends. The main bottleneck in doing so is the fact that an individual donor staff member can only intelligently do a certain amount of program development and management. If in fact USAID provides TAF with the additional \$800,000 I suggest, it also should fund additional TAF staff so that the funds can be most effectively spent and administered.

Should the Mission consider providing TAF with a higher level of funding, above and beyond \$1.3 million? Looking down the road perhaps two years, the answer is yes. Inflation, the growth of subgrantees and new opportunities will make it feasible and desirable for the Mission to increase support for TAF access to justice programming. And given appropriate staffing, TAF's annualized allotment could justifiably be increased by 50 to 100 per cent on the assumption that the funds would be put to effective use. Based on a very rough estimate that the Foundation would spend the \$1.3 million at the rate of \$500,000 per year, this means that funding could increase to between \$750,000 and one million dollars per year.

2. Other Funding

It is even more difficult to identify appropriate levels of support for non-TAF initiatives, because there is not even an approximate figure on which to base estimates. There is the possible combination of intermediary support for the Ayala Foundation, Endefense, PARFUND, PhilSSA, AAFLI and other potential initiatives. Together, these could conceivably amount to \$250,000 annually at first, growing to \$750,000 if Mission and grantee staff demonstrate the capacity to identify and oversee additional and/or larger activities.

3. Recommended Total

The upshot of these very rough calculations is that the Mission should consider granting an annual total of \$750,000 (including a total of \$1.3 million for TAF, which might spend at the rate of \$500,000 per year) for the first two years of the IAJP. Afterwards, funding could increase to up to \$1.75 million per year, depending, of course, on how quickly the Foundation and other intermediaries can intelligently program the funds.

4. Increasing the Prospects for Sustainability

USAID has a legitimate concern about whether activities it funds will prove sustainable. A Mission-supported activity such as private commercial arbitration will probably become self-

supporting during the life of the IAJP. The corporations and other businesses availing of the service presumably will pay enough to finance it.

In a different vein, some activities may not be strictly self-sustaining, but there is no need for them to be. Such initiatives as research and press training either will leave a mark or they will not once they have been completed.

Still, a thorny issue confronts many IAJP activities: they are unlikely to generate sufficient funds from their own activities or from Filipinos. Some potential subgrantees are trying to supplement donor support. But the fact is that they are not profit-making operations, they do not serve well-off clientele and there are not the same resources and tradition of philanthropy in the Philippines as there is in the West.

If we expect organizations such as the developmental legal services groups or the Philippine Center for Investigative Journalism to become self-sustaining, we may be holding them to a higher standard than equivalent American organizations. As noted in the main report, public interest groups in the United States often rely on government support, foundations or contributions from an affluent pool of citizens. Thus, they are not truly self-sustaining.

Still, there are steps the Mission could take to increase the prospects for Philippine grantees' sustainability. Case studies that document their accomplishments could help persuade other donors to provide support that complements or follows USAID funds. As noted above, PARFUND represents an interesting opportunity to get the Government of the Philippines to start supporting NGOs' legal advocacy efforts.

Finally, the Mission could consider contributing to endowment funds for selected grantees that have compiled substantial records of accomplishment over several years. A prerequisite would be that they have or establish independent boards overseeing such funds. USAID/Philippines could not afford to establish an endowment so large that an organization would become completely self-sustaining, nor would that be desirable at this point. But it could provide perhaps ten per cent annually, above and beyond the grantee's operating budget, into an endowment fund.

APPENDIX 2

JUDICIAL ADMINISTRATION: CONSIDERATIONS CONCERNING A ROAD NOT TAKEN

The Strategy Assessment Team has provided considerable justification for the path it recommends for an Improving Administration of Justice Program. Both implicitly and explicitly (through, for example, reference to the Center for Development Information's earlier report on the Philippines), it has also touched on why alternative courses of action have not been suggested. This appendix explains more fully why USAID/Philippines should not pursue a conventional legal systems development strategy that focuses on judicial administration in order to attack court delay and other problems. (Such a strategy typically involves technical assistance, such as training judges and court personnel and providing ongoing advice by foreign consultants on case management systems. It also may include buying hardware such as computers for the courts.) I also touch on the criteria that would need to be fulfilled for USAID to embark on this course at some point in the future, and the ways it might go about doing so.

First, I will briefly review what a conventional judicial administration strategy tends to include.

I. OUTLINE OF A CONVENTIONAL JUDICIAL ADMINISTRATION STRATEGY

A USAID/Philippines-supported program to improve judicial administration might start with sending appropriate jurists to the United States to learn about the operations of judicial administration academies there. The idea would be to build up a critical mass of key personnel interested in adopting or adapting American techniques for attacking court delay and otherwise making the judicial system operate more efficiently.

At the same time, donor personnel would try to cultivate close ties with leading jurists who constitute that critical mass. This would contribute to beneficial working relationships and would encourage the jurists to pursue the goals and practices they learn about in the United States.

These steps would be complemented by regularly bringing to the Philippines American jurists and other experts in judicial administration. Such consultants would testify to the effectiveness of the approach in the United States. They would provide ideas and advice to their Filipino counterparts.

A judicial administration strategy also would try to build up local institutions that would implement specific aspects of the program. In connection with this, it would support pilot projects and research by those institutions. It also would encourage the Supreme Court to instruct the lower courts to adopt certain techniques designed to ease court delay. One such initiative would be a continuous trial system at least loosely based on that of the United States, as opposed to the prevailing Philippine practice of "piecemeal" adjudication that stretches cases over numerous and sometimes innumerable stages lasting many months or years.

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If possible, the program would even make the Philippines the hub for judicial administration activities throughout the region. Asia-wide conferences would be held in Manila, or would at least be organized by a Manila-based secretariat. This would add to the momentum of the Philippines program.

II. THE ASIA FOUNDATION EXPERIENCE IN THE PHILIPPINES

The problem with the above approach is that the Asia Foundation (TAF) tried it from the late 1970s through most of the 1980s. It failed in a rather convincing manner. Even in theory, it was problematic, given the reality that the roots of the judicial system's problems penetrate much further into Philippine society than could be addressed by judicial administration's technical fixes. But actual experience proved even more persuasive than theory. Or to put the point another way, an inductive learning process yielded far more insight for the Foundation than a deductive approach that started with certain assumptions about the need for judicial administration and concluded that a linear sequence of activities would yield substantial progress. As assistant representative with the Foundation's Philippines office from 1987 through 1990, I review that experience from the first-hand perspective of one who joined the office at a point when important lessons were becoming clear.

Before proceeding further in this discussion, I should emphasize that in the 1990s the Asia Foundation's Philippines law program has adopted a much more realistic and creative approach than it displayed in the 1980s. This approach has already yielded some significant successes, as mentioned in the Strategy Assessment Team's main report. The criticism contained in my comments on TAF judicial administration efforts, then, are confined to a particular aspect of its work in the past. They by no means reflect on its current capacities and accomplishments. I highlight TAF's judicial administration experience so that USAID will be better able to avoid similar mistakes.

In what ways did TAF's judicial administration efforts fail? Filipino judges and attorneys today maintain that efforts to institutionalize a continuous trial system has not improved the speed and quality of justice. Some attorneys are not even aware that the continuous trial system was ever introduced. While one former grantee, the Institute for Judicial Administration, labors admirably under honest, competent leadership, court backlogs remain at least as bad as ever and the effectiveness of its efforts remain open to question. In addition, other bodies responsible for promoting a more efficient and credible judiciary have performed more poorly.

In addition, in the middle and late 1980s the Philippines was seen within the Foundation as the center of regional judicial administration activity. It accordingly was the hub for organization of conferences concerning the subject. There is no evidence that those conferences had any significant impact in the Philippines or elsewhere in Asia.

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Reviewing these experiences, it is clear that the TAF/Philippines judicial administration program was characterized by seriously flawed assumptions, intellectual ownership by the Foundation rather than its grantees, well-intentioned consultant advice that ranged from naive to counterproductive, and indifferent responses by the supposed project principals. Of course, judges were delighted to accept travel grants and willing to say positive things about TAF assistance. But in a reversal of development roles, the donor (TAF) was always the most interested, committed party. The bodies that received the funds tended to be more complacent.

One fundamentally flawed assumption of the Foundation's judicial administration efforts was that "justice delayed is justice denied"--i.e., that repeated postponements cause inequity. But this reversed the reality of the way in which the Philippine judicial system operates: delay is substantially an effect of corruption, favoritism and indifference, rather than a cause. Condoning delay is a prime way of turning a profit, doing a favor or simply remaining on good terms with the local bar and with fellow judges who operate in a similar manner.

A related assumption was that there was a deep commitment on the part of most judges to the fast and fair administration of justice. In principle, judges approve of efforts to improve the system. But individuals partly or mainly motivated by personal ties and financial gain, who are selected on the basis of patronage rather than merit, generally lack the commitment to implement reforms. In fact, such reforms can work against their interests by cutting down on opportunities to bend or exploit rules that permit delay and favoritism. Thus, efforts to institute a continuous trial system died the death of a thousand favors and connections. The fact that recent press revelations suggest that certain Filipino jurists involved with judicial administration also engaged in unethical practices tends to buttress the point.

TAF's Manila office also vastly overestimated the potential for short-term training to overturn deeply held attitudes, values and especially interests. Judicial training seminars that I and others observed were essentially, in the words of one Filipino law professor, "rest and relaxation sessions." (The judges' attitudes contrasted sharply with the seriousness demonstrated by low income groups at training sessions run by legal services NGOs.)

Another mistaken premise concerning training involved not its value, but its necessity. I have met and heard of several judges who manage their case loads adeptly without training, so that delay in their courtrooms is not a major problem. They are convinced that the key to processing cases is not training, but discipline. Conversely, some judges who in the 1980s spoke highly of their training failed to put it into practice. The day after meeting one jurist who praised the continuous trial seminar he had attended, I observed him postponing four cases brought before him. In one, an attorney obtained a postponement after claiming that he was suffering from hypertension stemming from too much eating two weeks earlier and because a witness was absent due to a head cold.

Exacerbating the impact of these problematic assumption was the fact that TAF's program suffered from a lack of historical memory or investigation. It also was hindered by the related assumptions that small steps forward in judicial administration could not be reversed and that

they therefore merited great investments of energy. TAF never took cognizance of the fact that unsuccessful efforts to implement judicial administration reforms in the Philippines dated back to at least 1969, when: some courts were mandated to hold continuous trials; judges were required to certify monthly that they had resolved all motions, petitions, cases and other proceedings pending before them for three months, at the risk of having their salaries withheld; and the University of the Philippines Law Center was conducting in-service training seminars for clerks of court in order to acquaint them with court management techniques. It never inquired into why those reforms failed.

It might also be worth noting that at the same time the Foundation was pressing ahead in this area, the recently installed Aquino Administration was increasing judges' salaries substantially. Yet if there has been any change in the level of judicial corruption since that time, it has been an increase. With the participation of many Foundation grantees, the Aquino Administration also commissioned a Task Force on the Improvement of the Administration of Justice that in late 1988 issued a comprehensive report ("Justice within the People's Reach") describing numerous steps that should be taken. For the most part, those recommendations have since gathered dust.

In retrospect, the best developments for the Foundation's Philippines law program were when temporary political sensitivity about receiving American assistance put TAF's judicial administration work on hold and when the Foundation's home office became more open to changes in programmatic direction. But TAF paid a price along the way. It was not so much in terms of funding. After all, risks and even mistakes should be part of the development learning process. Rather, a tremendous amount of effort was wasted in a field that consumed a great deal of staff time and administrative attention, partly by virtue of the high level officials involved and partly because those officials lacked the drive and commitment to undertake projects without Foundation prodding and encouragement.

That effort would have been better invested elsewhere. New opportunities in legal services and other fields were missed by TAF because they could not be explored. And chances to develop expertise and research tools regarding how to best meet Filipinos' legal needs were sacrificed as the Manila office strove to persuade jurists to accept grants, meet with consultants and attend conferences.

It could be argued that TAF's Manila office was not persistent enough, that it should have pushed harder to "open doors" or to keep them open. Even in principle, I question the whole premise underlying this approach or the use of consultants in this way. "Open doors" to what end? Simply persuading grantees to accept funds and half-heartedly pursue projects does not constitute any kind of accomplishment.

On a more practical level regarding this matter, one problem with the TAF/Philippines judicial administration effort was not that it was insufficiently persistent, but rather that it pushed too hard. Grantees never had to take on intellectual ownership of their projects. The funds would flow anyway.

III. OTHER SOCIETIES' EXPERIENCES WITH JUDICIAL ADMINISTRATION

Judicial administration has a problematic track record in some other societies as well. The Asia Foundation has moved away from it as a priority in some countries because of that experience. In Washington earlier this year, the American attorney who formerly arranged judicial administration activities for Amideast, the U.S.-funded agency that is very roughly the Middle East equivalent of the Asia Foundation (though Amideast concentrates more on exchange activities), informed me that his experience in this field was almost uniformly negative and unproductive.

Asian lawyers with whom I have discussed the matter have also voiced doubts. The Director of the Sri Lanka's Law and Society Trust suggested that the problems plaguing South Asian judiciaries ran too deep and were too structural to be addressed by judicial administration. He preferred to concentrate on fostering relatively modest (but, in an absolute sense, still ambitious) "enclaves of excellence" such as improving commercial arbitration or community mediation. When during a consulting assignment earlier this year I asked a leading Bangladeshi attorney about the prospects for improving judicial performance in his country through training, he responded that "the problem is not training. it is integrity."

USAID itself has had difficulty in working with government legal institutions in some Latin American societies. The law and development movement in the 1960s and the early 1970s, and to a greater extent USAID's administration of justice program for Latin America in the 1980s, both ran into considerable difficulties. This is not to say that there were not success stories in certain countries. For example, the CDIE report cites Columbia as a case where crisis conditions impelled reforms that had at least some modest positive impact.

An assessment by former State Department attorney Thomas Carothers, however, found that the administration of justice program fell far short of expectations for an effort that obligated over \$50 million from 1983 through 1988. His analysis details several reasons for this, among them an excessive faith in the power of modern, rational education; the related assumption that short training courses can reverse attitudes and practices that stretch back generations; and the tendency to overlook (and thereby repeat) past failures. Another fundamental factor in the problems experienced by the program was that the initiative came mainly from outside the societies affected. But the heart of Carothers' analysis flows as follows:

[A] political development assistance strategy oriented toward law enforcement institutions and toward governmental institutions generally . . . tends to ignore the profoundly antidemocratic underlying political and economic structures of the societies and to focus on modifying institutional forms that are often of peripheral importance in real terms. It also tends to encourage the general tendency of the United States to concentrate its political attention on the elite ruling groups and not to involve itself with the many other sectors of society that have long been disenfranchised and must be incorporated into a participatory political process for democracy to take root (1991, 224-225).

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Finally, USAID might also consider the track record of over two decades of substantial government investment in judicial administration in the United States. The delay-plagued and turnstile justice practiced in our inner cities, America's most Third World-like setting, does not constitute a shining model of judicial administration in action. Of course, it could be argued that insufficient resources are to blame in those U.S. settings. But far more severe shortages of resources plague most developing countries, where they are exacerbated by cultural, economic and political factors. And the prospects for correcting those shortages or overcoming those factors through technical training are remote.

IV. CONSIDERATIONS REGARDING FUTURE JUDICIAL ADMINISTRATION PROGRAMMING

As discussed above, the prospects for judicial administration programming making a deep dent in the problems of the Philippine legal system in the near or medium terms are limited. Nevertheless, this is not to preclude cautious experimentation in this field if the opportunities arise in the future. The Strategy Assessment Team has concentrated its efforts on examining how external forces might contribute to improved access to justice, and has emphasized that predicting or even aiming for a sequence of projects is not realistic. Nevertheless, at this point it might be useful to consider the possibility of USAID judicial administration programming if a confluence of events (to which USAID grantees might make a contribution) make such programming advisable down the line.

How will USAID know if the time might be right to dip its toe in these waters? And how should it proceed if that time does arrive?

The best way of assessing whether such an investment is advisable is to adopt the very basic funding criteria provided in the main body of the team's report: ascertain whether the Mission will be working with bright people who have good ideas, who are in a potential position to have some positive impact on the issue USAID hopes to address, and who demonstrate the dedication to doing so. If a threshold question that the Mission considers is whether it can persuade prospective grantees to accept funds for and advice about projects, then the time is not yet ripe.

More specifically, the Mission should not jump at any chance to work in this field. Rather, if leading jurists or other government officials come to the Mission with ideas of their own and with proposals that reflect intellectual ownership and dedication, they might constitute worthwhile partners. Though this approach might seem somewhat stringent, it keeps the responsibility for project success with those who should be implementing it, which in itself is necessary for any initiative to have any chance of succeeding.

This approach also is necessary in order to avoid the Asia Foundation error of working with half-hearted partners simply because they are willing to accept funds and advice. The worst thing that could happen to the Mission regarding legal systems development would be for it to drain resources and energy away from more promising endeavors and into judicial administration merely because a prominent jurist demonstrates some casual interest.

If the basic funding criteria are met, USAID should of course be open to the ideas floated by its prospective partners in government. But it should also consider departing from conventional judicial programming in at least four respects:

1. Initial funding should be limited, so that all involved can learn from experience and not waste a major investment.
2. As a part of this learning experience, case studies should be employed.
3. Rather than operating on a national scale, two or three pilot areas should be selected so that any successes, problems and obstacles can be studied in depth.
4. The Mission should refrain from bringing in foreign consultants. Along with its Filipino partners, it should seek out local individuals and entities who can deal much more realistically with the technical problems facing the judiciary. Thus, it should bring in current or retired jurists who have good track records in managing their case flows, to discuss how to do so. It also should work with organizations such as the Asian Institute of Management to devise management systems appropriate for the Philippine setting, rather than grafting on those that are used abroad.
5. Judicial training programs conceivably could incorporate a focus on such subjects as environmental law or the status of women, and bring in as teachers knowledgeable NGO attorneys and other NGO leaders deeply involved with these issues. Though worth trying, feedback from various sources regarding this idea suggests that it might encounter the same problem as other types of judicial training: the audience might not take it seriously.
6. One possible way of increasing the chances that judges take training seriously would be to provide incentives for them to do so. For example, an easily graded multiple choice examination near the close of a seminar might be held, with each judge's score forwarded to the Supreme Court and posted for colleagues at the training session to see.

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APPENDIX 3

INTERFACE WITH OTHER USAID PROGRAMS

Though not part of its formal mandate, the Strategy Assessment Team was requested by a few members of the Mission to consider how the Improving Access to Justice Program (IAJP) could interface with other USAID/Philippines priorities. Given our other responsibilities, our explorations and conclusions in this regard are especially preliminary. Nevertheless, there are three respects in which we see rich potential for USAID-supported legal activities to strengthen its other ongoing work: responding to the legal needs of OVC-assisted NGOs; management and protection of natural resources; and implementation of the Local Government Code. First, however, we should note how this process is already occurring, albeit in an unplanned, sporadic manner.

I. CURRENT COOPERATION

As with its more general access to justice efforts, the Mission is not starting from ground zero in terms of integrating its work regarding access to justice with its efforts in other fields. Attorneys from Panlipi, a developmental legal services group (DLSG) that the Mission is supporting through its Democratic Development Project grant to the Asia Foundation, are playing an important role in the ONRAD-supported Natural Resources Management Program. They have, for example, contributed substantially to the formulation of Department of Environment and Natural Resources Administrative Order 2 (1993 Series), which helps protect upland areas by establishing indigenous people's claims to ancestral domains. Another DLSG, Saligan, is cooperating more indirectly with Mission efforts through its work concerning implementation of the Local Government Code (LGC). Both Panlipi (regarding indigenous peoples in Mindoro) and Saligan (regarding LGC implementation in Makati) are working with another Office of Voluntary Cooperation grantee, the Ayala Foundation. Finally, there is the prospect of the Philippine Center for Investigative Journalism, another Democratic Development Project subgrantee (for training activities) to assist the Barefoot Media Initiative launched by the OVC-supported Aboitiz Foundation in Cebu.

Beyond demonstrating that integration of Mission-supported activities relating to the justice field already is occurring, there is another reason for identifying what probably is just a partial list of instances in which cooperation flows across USAID's programmatic boundaries without any coordination by the Mission. That reason pertains to a general point of the main report: progress in the justice field will often hinge on providing support for Filipino initiatives that, except for funding, are and should be beyond the control or direction of the Mission.

II. OFFICE OF VOLUNTARY COOPERATION

OVC currently funds numerous local NGOs doing work pertaining to the status of women, community development, livelihood skills and other fields. It is seeking to integrate such work with activities by these NGOs pertaining to democracy and public participation. What role could access to justice play? How should OVC structure support for that role?

Access to justice can strengthen local democracy where OVC-supported NGOs need legal training or other legal services in order to better understand, participate in and, where necessary, challenge government decisions (and sometimes private party actions) affecting their rights and livelihoods. The best way for OVC to structure support for such legal services is simply by including line items for them in future grants (or amending current grants if possible). This offers the NGOs the flexibility of deciding which private practitioners, legal services NGOs and/or university-based legal aid clinics they will work with free of the potentially time-consuming process of having to consult with OVC or receive its approval.

An alternative approach would be for OVC to set up a legal services fund for NGOs it supports to draw on as needed. This has the advantage of freeing an NGO from the need to forecast legal services needs at the outset of its OVC grant. But unless the fund could be used very easily and flexibly, this option could well prove a cumbersome device that imposes bureaucratic burdens on OVC and its grantees alike.

Whatever option OVC chooses, it can facilitate the process of grantee NGOs accessing legal services. First, it can let its grantees know that funding such services is an option it now entertains. It also could invite Developmental Legal Services Groups (DLSGs) to its regular grantee conferences/consultations. Finally, written information regarding the nature and addresses of these organizations could be provided to its grantees. Initial contact between one DLSG (the Legal Rights and Natural Resources Center) and an OVC grantee (the Kapwa Upliftment Foundation) has led to the possibility of such collaboration.

III. NATURAL RESOURCES

Because the Mission and the Department of Environment and Natural Resources (DENR) will revise the Natural Resources Management Program (NRMP) in the coming year, it is an appropriate time to consider how law-related services could improve both the implementation of the program and access to justice for affected communities. Integrating legal services into NRMP could take on additional importance, in view of the fact that funds provided by the Asian Development Bank (ADB) will enable many additional parts of the country to implement the kind of community forestry projects piloted under NRMP. NRMP could accordingly pilot legal services that ADB funds could eventually support on an expanded basis.

Discussions with staff of NRMP's Policy Studies and Policy Implementation Components and with other individuals indicate that access to justice activities could strengthen a revised NRMP in the following respects:

A. DENR Contracting for NGO Legal Services

DENR is hamstrung by shortages of resources and quality attorneys, as well as by myriad bureaucratic requirements that make it difficult for it to deliver legal services. A flexible mechanism for addressing these problems might be a fund--perhaps along the lines of

PARFUND, which is discussed in Appendix 1--that allows DENR to contract with NGO attorneys to provide legal services. To a very limited extent, this already is occurring outside of NRMP, through an arrangement under which the legal services NGO SALAG is carrying out legal training seminars for upland communities. Another respect in which NGO attorneys could assist the department is if they are deputized and funded to prosecute illegal loggers.

B. Delineation of Ancestral Claims

While the formulation of DENR's Department Administrative Order 2 for 1993 (DAO 2) by the Policy Studies Component provides for certification of ancestral domain claims and ancestral land claims by indigenous communities, no funds have yet been provided for the crucial delineation of these claims. The delineation process involves survey activity that clearly would not be carried out by lawyers. But the experience of the OVC/TAF subgrantee Panlipi, a legal services NGO with which two Policy Studies Component staff are affiliated, indicates that lawyers can play an important role in terms of training appropriate community members regarding the requirements of the law and how to document claims.

C. Implementation of Other Tenurial Arrangements

The successful implementation of community forest management under NRMP also would benefit from pertinent legal training and other services. While the relevant processes include community organizing, there currently is no attention to educating beneficiary communities regarding the law and their rights under it. Such legal support would enable these communities and their partner NGOs to participate more actively and decisively in forest management and conservation. In the absence of legal services, there is the prospect that only corporations and other commercial interests will be able to take advantage of the upland resource liberalization brought about by NRMP, and that forest residents will not be able to do so.

D. Resolution of Competing Claims

Despite the progress achieved under NRMP, there are several respects in which competing claims to upland resources will persist. These can be addressed in part by educating affected communities regarding provisions of the law and/or by constructing dispute resolution mechanisms. For example, it would be useful to educate groups that stand to benefit from DAO 2 that while the Mining Code takes precedence over that executive agency regulation, local mining regulatory boards created under the Local Government Code and chaired by DENR's Provincial Environment and Natural Resources Officers can block renewal of mining leases (such as those that conflict with ancestral claims). Intra- and inter-tribal agreements and disputes also could benefit from clarification of respects in which national law defers to indigenous law or provides mechanisms for conflict resolution.

E. Protection of Aquatic Resources and Rights

In view of the fact that the thrust of NRMP may shift to protection of coastal resources as the ADB and perhaps other donors increasingly fund upland resource management activities, legal services could benefit affected groups. Many fishing communities, for example, are unaware of municipal councils' enhanced powers under the Local Government Code regarding local fishing policies (e.g., the awarding of bangus fry concessions and whether to permit commercial fishing by outside interests), and the options open to these communities concerning resulting rights and privileges. They also lack the very basic legal skills, such as drafting documents and petitions, that can help them secure such rights and privileges. The issue takes on salience in terms of protecting aquatic resources, in that expanded knowledge and skills can lead to effective efforts to combat illegal fishing practices and/or depletion of those resources.

IV. LOCAL GOVERNMENT CODE

Under some circumstances, the various elements of USAID work discussed in this appendix--improving access to justice, increasing OVC-supported NGOs' participation in democratic processes and strengthening environmental protection--all come together in concerns addressed by the Mission's Local Development Assistance Program (LDAP). Meaningful decentralization often dovetails with community control of local resources, NGO and PO participation in relevant government decisions and training regarding pertinent laws and legal skills. A good example of how these elements can be blended is found in one chapter of "A People's Journey to Self-Determination," the 1993 Philippine Business for Social Progress (PBSP)-LDAP publication that chronicles the early experience of LDAP implementation in numerous communities. That chapter, "God's Little Paradise Regained," describes the work of the NGO PROCESS and other NGOs and POs concerned with fishing communities in Bohol.

LDAP quite appropriately emphasizes cooperation between NGOs and Local Government Units (LGUs) in implementing the Local Government Code. Nevertheless, there are instances in which the nature of traditional Philippine politics and governance indicates that LGUs will not respond to community needs unless they are pressured or persuaded to do so by NGOs and POs. Under such circumstances, legal services can strengthen the knowledge, skills, organization and bargaining position of otherwise marginalized groups.

Given this reality, it might be worthwhile to establish a fund through which the Partnership of Philippine Support Service Agencies (PhilSSA), an NGO network that includes legal services NGOs, could provide training and other services regarding issues pertaining to Local Government Code implementation. This could be undertaken in coordination with or independent of PBSP's work concerning LDAP, since many PhilSSA members already cooperate with PBSP. The legal services provided through this fund need not be confrontational. By strengthening local NGO and PO capabilities they will make it more likely that LGUs will pay attention to those organizations' requests and priorities.

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Another possible respect in which access to justice activities could strengthen Local Government Code implementation is through support for projects initiated by the Asian-American Free Labor Institute (AAFLI). Already a recipient of USAID support for radio programs, counseling and legal aid aimed at securing workers' rights in several parts of the country, AAFLI could build on these and related ideas to promote enforcement of labor laws through cooperation among unions, LGUs and executive agencies. It should be noted that the Institute is not narrowly focused on unions: it also has an interest in protecting the rights of women and other sectors that may not be well organized.

V. **A POTENTIAL MODEL FOR INTEGRATING ACCESS TO JUSTICE INTO OTHER MISSION-SUPPORTED ACTIVITIES**

How might legal services operate in the above situations regarding OVC grantees, natural resources management and decentralization? It would of course vary, depending on the circumstances and goals. But one hypothetical example could involve cooperation between a Manila-based DLSG and an OVC-supported NGO located elsewhere in the country. The DLSG would initially provide legal services, but would also train a local attorney from the NGO's province regarding relevant aspects of the law and how to best work with the OVC grantee's beneficiary populations. In time, such collaboration would both provide the NGO with a local lawyer with whom it could work (as opposed to relying on help from distant Manila) and inculcate a more developmental perspective and relevant skills on the part of that attorney.

APPENDIX 4
GENDER CONSIDERATIONS

In what ways can the Improving Access to Justice Program specifically address the legal needs of women and provide women with significant roles in the program's implementation? Though considering these issues was not a part of the Strategy Assessment Team's mandate, USAID/Philippines PVO Consultant Darlene Pridmore correctly pointed out during our discussions with the Mission that the status of women is an important consideration that cuts across USAID activities. How, then, should gender considerations relate to the proposed IAJP?

We see three types of connections. Most directly, the IAJP can include legal services targeted at addressing the inferior legal status of Filipinas. It would continue support for two developmental legal services NGOs, the Women's Legal Bureau (WLB) and Saligan, that USAID is already supporting (through the Asia Foundation) to undertake work in this field. WLB is the leading Philippine legal services NGO concerned with such problems as endemic violence against Filipinas, and is spearheading a coalition that is striving to strengthen anti-rape legislation. While Saligan works with various sectors, it is playing a potentially important role by advising the network of women legislators in the Philippine Congress. Furthermore, as discussed in Appendix 1, the IAJP could support other NGOs to integrate access to justice concerns into their more comprehensive efforts regarding the status of women. Appendix 1 identifies Lihok Pilipina and HASIK as two such organizations.

Another connection pertains to women playing leading roles in IAJP-funded activities. Such leadership is significant because women in positions of authority tend to be more cognizant of gender considerations than men and are therefore more likely to integrate such considerations into their work. In addition, they provide role models for IAJP-supported staff, trainees and beneficiaries.

With respect to this second kind of connection, a number of subgrantees that we suggest supporting are led by women. Most obviously, these include the NGOs WLB, Lihok Pilipina and Hasik. Furthermore, the partner POs and NGOs with which these and other subgrantees work often are headed by women. Potential IAJP subgrantees also include the Philippine Center for Investigative Journalism and the Center for Media Freedom and Responsibility. Both are headed by women and have females in other important positions. Finally, potential intermediary organizations such as the Asia and Ayala Foundations also have female leaders.

The third connection concerns integrating gender considerations throughout the IAJP, blending them into activities that would not otherwise address the status of women. The basic mechanism for doing so is for USAID to emphasize to grantees and subgrantees that they should involve women and women's concerns in IAJP-supported activities whenever possible. This could involve increasing female involvement in various kinds of training sessions, for example. It also might include focusing a portion of potentially IAJP-funded survey and legal research on the legal problems of women.

APPENDIX 5

OTHER DONORS ACTIVE IN THE LEGAL FIELD

At the outset of our work, OVC Deputy Chief David Nelson suggested to the team that it would be useful for the Mission to have an idea of the roles that other donors are playing regarding access to justice. Indeed, it would be useful for the Mission or its intermediary (grantee) organizations to consult with other donors to learn from their experiences and to prevent duplication of effort.

Our informal survey only covered a part of the terrain of donor activity in this field. In addition, some relevant work is supported by foreign funders that do not maintain offices in the Philippines and that therefore could not be contacted. Nevertheless, we met with the following organizations, including a few with which the Mission is already familiar, and ascertained that they are among the active donors regarding access to justice:

- **The Ford Foundation's** Human Rights and Governance Program includes support for development legal services groups (DLSGs), particularly regarding the status of women, indigenous communities and upland resources. In addition, Ford is working with NGOs specifically concerned with violence against women. (It also is worth noting that Ford is quite involved in the USAID priority field of decentralization, though for the most part not in ways that directly relate to access to justice.)
- **The Asia Foundation's** work, supported by both the Mission and the Foundation's other resources, is discussed in some detail in Appendix 1. To summarize, the Foundation funds DLSGs, press training, public opinion polling, legal research, monitoring efforts and other activities that pertain to access to justice.
- **The German Naumann Foundation** funds the NGO PROCESS, which integrates legal services with more general community development work for fishing communities, farmers and other sectors in Bohol, Panay and northern Luzon.
- The Dutch agency **NOVIB** is in a period of transition, but has been active in the past regarding support for organizations concerned with civil and political rights, as well as other types of legal services.
- **The Asian-American Free Labor Institute** is heavily involved with the rights of workers. It also is concerned with related issues pertaining to decentralization and the working conditions of women and children.
- **The Delegation of the Commission of the European Communities** is supporting NGOs concerned with civil and political rights, but is actively considering branching out to address other access to justice concerns with its funding.

- The **Canadian International Development Agency** does not directly focus on access to justice issues through its programs, but provides related support regarding the status of women and NGO advocacy.
- Though we were not able to contact other organizations, the following also fund activities relating to access to justice in the Philippines: the United Kingdom-based **Christian Aid**; the Dutch agencies **CEBEMO** and **ICCO**; the Belgian organization **NCOS**; the Danish, Dutch and Australian Embassies; and the Swiss agency **Helvitas**.

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APPENDIX 7
PERSONS INTERVIEWED

USAID Interviews

Note: In addition to the USAID interviews listed here, the team benefitted from five group discussions chaired by Director Thomas Stukel. These involved numerous Mission members, including Deputy Director Richard Johnson. An additional group meeting was chaired by Office of Voluntary Cooperation Chief John Heard.

Lisa Chiles, Regional Legal Advisor

Harold Dickherber, Chief, Decentralization and Local Development Division, Office of Natural Resources, Agriculture and Decentralization (ONRAD)

Jose Garzon, Food for Peace and PMP Officer, Disaster PMP/Food for Peace Division, OVC

John Grayzel, Chief, ONRAD

John Heard, Chief, OVC

David Nelson, Deputy Chief, OVC

Darlene Pridmore, PVO Consultant, OVC

Other Metro Manila Interviews

Antonio Abad, former Dean, Far Eastern University Institute of Law

Pacifico Agabin, Dean, College of Law, University of the Philippines

Al Agra, Executive Director, Sentro ng Alternatibong Lingap Panlegal (Saligan)

Ferdinand Aldaba, Director, Center for Social Policy, Ateneo de Manila University

Salvador Armamento, Executive Director, Structural Alternative Legal Assistance to Grassroots (SALAG)

Elena Arnedillo, Economist, Delegation of the Commission of the European Communities
Plutarco Bawagan, Jr., Metro Manila Chairperson, Protestant Lawyers League of the Philippines

Baron Buck, Managing Director, American Security Systems International, Inc.

Victor Gerardo Bulatao, Executive Director, Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (Solidarity Toward Countryside Development and Agrarian Reform)

Milo Casals, Canadian International Development Agency

Karina Constantino-David, Executive Director, Harnessing Self-Reliant Initiatives and Knowledge, Inc. (HASIK); Chair, Partnership of Philippine Support Service Agencies (PhilSSA); Chair, Caucus of Development NGO Networks

Sheila Coronel, Executive Director, Philippine Center for Investigative Journalism (PCIJ)

Vicente de Guzman, Director, National Capital Region, Tanggapang Panligal ng Katutubong Pilipino (Panlipi, Legal Assistance Center for Indigenous Filipinos); Administration Specialist, Policy Studies Component, Natural Resources Management Program (NRMP), Department of Environment and Natural Resources (DENR)

Melinda Quintos de Jesus, Executive Director, Center for Media Freedom and Responsibility; Executive Editor, Philippine Journalism Review

Eduardo de los Angeles, President, Philippine Stock Exchange; former Dean, Ateneo de Manila College of Law
 Jose Manuel Diokno, Chairperson, FLAG
 Soccoro Diokno, Secretary-General, FLAG
 Jaime Faustino, Program Officer, Asia Foundation
 Lombie Gadioma, Head, Secretariat, Alternative Law Groups
 Bobby Gana, Saligan
 Victoria Garchitorena, Executive Director, Ayala Foundation, Inc.
 Donna Gasgonia, Panlipi; Legal Policy Specialist, Policy Studies Component, NRMP, DENR
 Terrence George, Program Officer for Human Rights and Governance, Ford Foundation
 Karen Gollin, Assistant Representative, Asia Foundation
 E.S. Guiang, Team Leader, Conservation and Development of Residual Forest Work Element, Policy Implementation Component, NRMP, DENR
 Johannes Ignacio, Executive Director, Paralegal Training and Services Center
 Erik Jensen, Assistant Representative, Asia Foundation
 Maximo Kalaw, Jr., President, Haribon Foundation; President, Green Forum
 Harry Kamberis, Country Program Director, Asian-American Free Labor Institute (AAFLI)
 Eva-Maria Kohler, Resident Representative, Friedrich Naumann Foundation
 Marvic Leonen, Executive Director, Legal Rights and Natural Resources Center/Kasama sa Kalikasan; Professor, University of the Philippines (U.P.) College of Law
 Raphael Perpetuo Lotilla, Director, Institute of International Legal Studies, U.P. Law Center
 Guillermo Luz, Executive Director, Makati Business Club
 Mahar Mangahas, President, Social Weathers Stations
 Malou Mangahas, PCIJ
 Jose Mendoza, Saligan
 Sylvia Miclat, Program Officer, NOVIB
 Raul Pangalangan, Center for Law and Jurisprudence, U.P. Law Center
 Francis Pangilinan, former Quezon City municipal councilor
 Ernani Paño, Court Administrator, Supreme Court of the Philippines
 Mary Racelis, Assistant Representative for Southeast Asia, Ford Foundation
 Socorro Reyes, President, Congressional Training and Research Service
 Steve Rood, Program Coordinator for Governance and Environment, Cordillera Studies Center, U.P. Baguio
 Gertie Sandoval, Women's Desk, Saligan
 Howie Severino, PCIJ
 Luis Sison, Presidential Adviser on Legal and Judicial Affairs
 Hector Soliman, Assistant Secretary for Legal Affairs, Department of Agrarian Reform
 Richard Stevenson, Director, ASEAN Environmental Improvement Project
 Alfredo Tadiar, Executive Director, Office of Legal Aid, U.P. College of Law
 Raquel Tiglao, Executive Director, Women's Crisis Center
 Rigoberto Tiglao, Manila Bureau Chief, Far Eastern Economic Review

Stella Tirol-Cadiz, PCIJ

Christine Tomas-Espinosa, Executive Director, Panlipi; Director for Legal Aid, Integrated Bar of the Philippines

Evalyn Ursua, Deputy Executive Director, Women's Legal Bureau, Inc.; Professor, U.P. College of Law

Michael Wallace, Chief, Policy Studies Component, Natural Resources Management Program

Haydee Yorac, former Chairperson, National Unification Commission; former Commissioner, Commission on Elections

Interviews Outside Metro Manila

Joselito Alisuag, Chairperson, Haribon Foundation Palawan Chapter; Chairperson, Palawan NGO Network; Director/Attorney, Tanggol Kalikasan/Palawan - Puerto Princessa

Audie Arnado, Executive Director, Center for Paralegal Education and Training - Cebu City

Antonio Auditor, Project Director, Free Legal Assistance and Volunteers Association (Free LAVA) - Cebu City

Adoracion Avisado, Executive Director, Paglilingkod Batas Pangkapatiran Foundation (PBPF) - Davao City

Ana Palayan, Monitoring Officer, PBPF - Davao City

Archie Baribar, Free Legal Assistance Group (FLAG) - Bacolod

Leonardo Chiu, Executive Director, Ramon Aboitiz Foundation, Inc. - Cebu City

Rebecca Cruz, Legal Researcher, PBPF - Davao City

Francisco Cruz, FLAG - Bacolod

Eva Dela Merced, Executive Director, Broad Initiatives for Negros Development (BIND) - Bacolod

Alma de la Paz, Executive Director, Kapwa Upliftment Foundation - Davao City

Tessie Fernandez, Executive Director, Lihok Pilipina - Cebu City

Celia Flor, Development Through Active Women Networking - Bacolod

Manuel Legaspi, President, Cebu City Chapter, Integrated Bar of the Philippines - Cebu City

Andrea Lizares-Si, President, Soroptimists International - Bacolod

Mario Martir, Project Officer, BIND - Bacolod

Susan Martir, BIND - Bacolod

Grizelda Mayo-Anda, Coordinator, Environmental Legal Assistance Center, Protestant Lawyers League; Attorney, Panlipi/Palawan - Puerto Princessa

Recil Mojares, Executive Director, Cebuano Studies Center, University of San Carlos; Coordinator, Barefoot Media Initiative - Cebu City

Gus Nazareno, Assistant to Dean for Legal Aid, Ateneo de Davao College of Law; Executive Director, Mindanao Labor Institute - Davao City

Cresente Paez, Chairperson, Kaabag sa Sugbo - Cebu City

Emelina Quintillan, Executive Director, Pilipina Legal Resources Center (PLRC) - Davao City

Bobby Salera, Visayas Coordinator, Philippine Partnerships for the Development of Human Resources in the Rural Areas (PhilDHRRA) - Cebu City

Benedicto Sanchez, Environmental Desk, BIND - Bacolod

Bing Solamo-Antonio, PLRC - Davao City

Esperanza Valenzona, Chairperson, Free LAVA - Cebu City

Cesar Villanueva, Executive Director, BALAYAN, La Salle University - Bacolod

APPENDIX 8

GLOSSARY

Glossary

- AAFLI: Asian-American Free Labor Institute
- ADB: Asian Development Bank
- BIND: Broad Initiatives for Negros Development, an NGO
- CDIE: USAID Center for Development Information and Evaluation
- CDIE report: June 7, 1993 Second Draft of a CDIE report, "A Strategic Assessment of Legal Systems Development in the Philippines"
- DAR: Department of Agrarian Reform
- DENR: Department of Environment and Natural Resources
- DLSG: Developmental Legal Services Group
- FLAG: Free Legal Assistance Group, a network of human rights lawyers
- Free LAVA: Free Legal Assistance and Volunteers Association
- HASIK: Harnessing Self-Reliant Initiatives and Knowledge, Inc., an NGO
- Grantee: In the context of this report, an organization that receives funds directly from USAID. For the sake of simplicity in the report, however, the term "grantee" also applies to subgrantees unless there is a need to distinguish between the two.
- IAJP: Improving Access to Justice Program
- Implementing organization: In the context of this report, an organization that actually carries out the development activities that USAID funds. It may be a direct grantee or a subgrantee that receives support through an intermediary organization.
- Intermediary organization: In the context of this report, an organization that receives grants from USAID and in turn awards and monitors subgrants carried out by implementing bodies.
- Kaisahan: Kaisahan tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (Solidarity Toward Countryside Development and Agrarian Reform), an NGO
- LDAP: Local Development Assistance Program
- LGC: Local Government Code
- Main report: main body of this report, without appendices
- NGO: nongovernmental organization. In the context of this report, an entity that carries out development activities such as training, generally in cooperation with or on behalf of disadvantaged populations. NGOs are distinguished from people's organizations (POs) in that POs generally are associations composed of members of those populations (e.g., urban poor, fishing communities, indigenous peoples) who stand to directly benefit from development efforts, whereas NGOs work to bring about those benefits for disadvantaged groups. NGOs also are known as a private voluntary organizations, or PVOs.
- NOVIB: a Dutch donor agency
- NRMP: Natural Resources Management Program
- ONRAD: USAID/Philippines' Office of Natural Resources, Agriculture and Decentralization
- OVC: USAID/Philippines' Office of Voluntary Cooperation

Panlipi: Tanggapang Panligal ng Katutubong Pilipino (Legal Assistance Center for Indigenous Filipinos), a DLSG

PARFUND: Philippine Agrarian Reform Foundation for National Development

PBPF: Paglilingkod Batas Pangkapatiran Foundation, a DLSG

PCIJ: Philippine Center for Investigative Journalism

PhilDRRHA: Philippine Partnerships for the Development of Human Resources in the Rural Areas, an NGO network

PhilSSA: Partnership of Philippine Support Service Agencies, an NGO network

PLRC: Pilipina Legal Resources Center

PO: people's organization; see "NGO" for distinction between PO and NGO

PVO: private voluntary organization; equivalent of NGO

Saligan: Sentro ng Alternatibong Lingap Panlegal, a DLSG

SCA: Strategic Course of Action

Subgrantee: An organization that receives USAID funds through an intermediary (grantee) organization.

TAF: The Asia Foundation

Tanggol

Kalikasan: "Defense of Nature," a DLSG

The team: Strategy Assessment Team (Golub, Gonzales and La Vina)

WLB: Women's Legal Bureau, a DLSG

U.P.: University of the Philippines