

## **The Asia Foundation**

### **Legal Accountability and Dispute Resolution (LADR) Project**

**June 30, 2003**

#### **Summary**

Between January 2003 and June 2003, The Asia Foundation continued to meet with partner institutions for discussion of proposed and current projects that will work toward the institutionalization of alternative dispute resolution processes as a means to de-clog court dockets, and support judicial transparency and accountability in the judiciary.

Initiatives on alternative dispute resolution (ADR) processes were undertaken during this period primarily through partnerships with the Philippine Judicial Academy (PhilJA) for the evaluation of its court-referred mediation project, the Conflict Resolution Group (CoRe) on its effort to promote the use of ADR in executive agencies, and the Cebu Mediation Foundation (CMFI) on resolving conflicts involving family businesses. Discussions are ongoing about initiatives relating to the development and use of mediation in the Department of Justice, as well as the implementation of an on-line ADR project focusing on franchise, e-commerce and consumer disputes.

Efforts to support judicial transparency and accountability were also pursued during this period by forging partnership with civil society through the Paglilingkod Batas Pangkapatiran Foundation's (PBPF) court monitoring project, the Social Weather Stations (SWS) on its nationwide public opinion survey on courts, and the launch of the Lawyers' League for Liberty (Libertas). In collaboration with the Asian Development Bank, the Program Management Office of the Supreme Court, and the Philippine Judicial Academy, support for the conduct of education and training needs assessment workshops as well as e-learning training initiatives will also be carried out among judges and judicial educators. Conduct of surveys of the judiciary and the legal profession is now being considered.

The Asia Foundation currently has awarded eleven (11) grants with eight (8) partners focusing on legal and accountability and dispute resolution.

#### **Significant Activities of the Period**

##### *Summary of Grants*

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

- *Evaluation of the Mediation Project, Refresher Courses for Mediators, and Production of Mediation Video.* This grant primarily supported the evaluation of the court-referred mediation project initiated by the Philippine Judicial Academy (PhilJA) under the Reforming the Administration of Justice and Coalition Advocacy (RAJCA) program of the Foundation. Through individual interviews, surveys, and evaluation workshops, the project will assess the strengths, weaknesses, threats and opportunities of the previous mediation project, particularly looking at the practice, system, and process of mediation. The project will ultimately come out with an action plan that would, among others, generate concrete measures towards improving the system of mediation in the country, such as the setting up of effective monitoring and evaluation mechanisms for the practice of mediation.

Under the same grant, two other activities will be implemented by PhilJA, which are the conduct of a refresher course for its accredited mediators scheduled on September 6, 2003, and the production of a mediation video based on scripts from actual settled cases. The video will be used by PhilJA in its information dissemination activities.

- *Research on ADR in Executive Offices and Consultation Meetings for the Development of the Rules and Guidelines for the Executive Order on Administrative Justice Reform.* Submitted by the Conflict Resolution Group (CoRe Group), this project is a component of a larger initiative to gain support for the use of ADR mechanisms in the executive offices of the national government, specifically on the effort to promote the Executive Order (EO) on Administrative Justice Reform. The project will determine the extent of the presence and use of ADR in these offices; gather information on the nature, number and disposal of complaints and cases filed; explain the objectives of the EO; and formulate appropriate implementing guidelines for the EO in these offices. Initial consultation meeting will be held on July 15, 2003.
- *Mediating Family Businesses.* In collaboration with the Asian Institute of Management (AIM), the Cebu Mediation Foundation, Inc. (CMFI) organized a set of activities that sought to help family businesses better manage and resolve conflicts arising from daily business operations. The first activity was a one-day workshop on understanding family businesses that was held on March 18, 2003. The second activity was a 3-day seminar-workshop on resolving conflicts involving family and other businesses. This was immediately followed by the mediation clinic, a 5-month internship program that aims to provide family business owners to volunteer to have their conflicts resolved through a formal mediation process. Each workshop activity included approximately fifty (50) participants who were entrepreneurs, executive officers, and family business owners from Cebu.
- *Alternative Dispute Resolution (ADR) – Related Conferences.* During this period, the Foundation supported the participation of three (3) board officers and trainers

of the CMFI to the Association for Conflict Resolution (ACR) Family Section Conference entitled “A Family Affair: Making Room at the Table”. This will be held on July 10-13, 2003 in Denver, Colorado. After the conference, they will proceed to Boston for a two-day study visit of mediation groups based in area to explore collaborative undertakings on consensus building strategies. Support was also provided to the Cyberspace Policy Centre for Asia-Pacific (CPCAP) for the participation of its President as a resource speaker in the 2<sup>nd</sup> Annual Forum on Online Dispute Resolution that will be held on July 1, 2003 in Switzerland.

### Judicial Transparency and Accountability

- *Court Monitoring.* Initiated by the Paglilingkod Batas Pangkapatiran Foundation (PBPF), this project provides a venue for the civil society to participate in reforming the courts through informed and purposive monitoring. Monitoring of the courts will be conducted in three (3) cities in Mindanao – Davao, Cagayan de Oro and General Santos City – by teams consisting of members from different sectors, including mainstream civic organizations and church groups, as well as students and paralegals from the basic sectors. There will be opportunity for dialogue with the members of the judiciary and the court users. PBPF envisions that the project will ultimately generate recommendations to the Supreme Court and come out with a Manual for Civil Society Court Engagement.
- *Public Opinion Survey on the Courts.* In partnership with the Social Weather Stations (SWS), this project facilitated the conduct of a complementary survey on the states of opinion with respect to the Philippine justice system. Focus group discussions on the initial survey instrument were held with judges, lawyers of the Integrated Bar of the Philippines, and members of the Alternative Law Groups in April and May 2003 as preparatory activities for the implementation of the survey. The survey questionnaire will be implemented within the SWS’s 2<sup>nd</sup> quarter National Social Weather Survey this year. The survey instrument will also be implemented in the Autonomous Region of Muslim Mindanao. Results of the survey will be presented as part of a regional project of the Foundation in a symposium on Judicial Independence that will be held in Manila in August 2003.
- *Launching of the Lawyers’ League for Liberty (LIBERTAS).* The Foundation supported the formal launch of Libertas, an association of young and civic-minded professionals, mainly lawyers, who commit themselves to contribute to judicial and social reforms in the country through legal action, legal education, policy advocacy and such other legal means. One of their specific advocacies is to assist the Justice Department in investigating and prosecuting corruption cases. The launch will be held on July 25, 2003. On this date, the group will also hold its first forum entitled “Raising Ethical Standards in Governance: Issues and Initiatives in the Justice System”.
- *E-Learning Pilot Project for the Judiciary.* This project was an outcome of the Philippine Judicial Academy’s (PhilJA) resolve to embark on eLearning as a

strategy for addressing its continuing legal and skills training needs. PhilJA sought the assistance of Crimson Logic, a leading application service provider in Asia Pacific that offers e-learning solutions to various sectors, in developing a framework for collaboration starting out with a pilot Continuing Professional Development portal which will enable participants to sample a representative on-line course. Marriage Annulment and E-Commerce have been identified as the judicial courses. A User Acceptance Test of the eLearning training will be conducted after the on-line learning test portal is created.

- *Conference on Judicial Independence.* The Foundation supported the participation of Supreme Chief Justice Hilario Davide Jr. in the 11<sup>th</sup> Annual International Judicial Conference on “Courts of Ultimate Appeal: Issues of Judicial Independence” held in Washington D.C. on May 21-23, 2003. The conference focused on the independence of the judiciary and how such autonomy can be strengthened in democratic countries. The Chief Justice likewise attended the Semi-Annual Meeting of the Committee on International Judicial Relations on May 20, 2003 and made several public appearances to discuss judicial reform efforts in the country.

### **Activities Planned For the Next Period**

Below are some of the projects planned or under consideration for the next period:

- *Education and Training Needs Assessment Workshop for Judges and Judicial Educators.* To more effectively carry out its mandate as a training school for justices, judges, court personnel, lawyers and aspirants to judicial posts, the Philippine Judicial Academy (PhilJA) will train its ranks in evaluating the education and training needs of its intended beneficiaries. Results of the training needs assessment workshops will be considered in the planning and implementation of PhilJA’s judicial education programs and will provide input to the Asian Development Bank Technical Assistance on “Strengthening the Independence and Defining the Accountability of the Judiciary”, particularly in its formulation of judicial training programs that will support the judicial reform process. The workshop activities are scheduled in August 2003.
- *Expansion of the Department of Justice’s Mediation Project.* Building on the gains of the mediation project piloted with the Department of Justice (DOJ) in 2001, the Conflict Resolution Group (CoRe Group) in consultation with DOJ Undersecretary Merceditas Gutierrez submitted a proposal seeking to expand the development and use of mediation by DOJ prosecutors and public attorneys. This will be done through training and internship in areas with the largest case loads. It is envisioned that these activities will aid in the institutionalization of mediation in the DOJ to complement past and current efforts on court-referred mediation.
- *Survey of Judges and the Legal Profession.* A proposal from the Social Weather Stations, this project intends to launch a new series of surveys to find out if there

have been any changes in the attitudes and opinions on the state of the judiciary and the legal profession since the results of a similar survey was published more than five (5) years ago in a monograph entitled “Monitoring the State of the Judiciary and the Legal Profession”. The project is considered as timely because of the judicial reform program that is currently being implemented by the Judiciary.

- *Multi-Door Courthouse and On-line Dispute Resolution.* This project seeks to develop and apply in the Philippine setting the complementary concepts of “multi-door courthouse” and “online dispute resolution (ODR)” in the areas of franchise, e-commerce, and consumer-related disputes. For the next period, the Cyberspace Policy Center for Asia Pacific (CPCAP) will receive support from the Foundation in the implementation of the program design phase of the project. This will involve, among others, the determination of the disputes to be covered, development of a pool of service providers, technical infrastructure design, and coordination with the Supreme Court and other relevant agencies.
- *Popularization of the Code of Muslim Personal Laws and Conduct of Focus Group Discussions with Shari’a Court Judges, Lawyers and Muslim Communities on the Shari’a.* This project will primarily expand past initiatives of the Al-mujadilah Development Foundation (AMDF) in popularizing the Code of Muslim Personal Laws in five (5) areas of the Autonomous Region of Muslim Mindanao (ARMM) by developing primers on the Code in local languages and in illustrated form and by conducting community-based education sessions for women leaders, government representatives, and other representatives from other sectors on the Code. This project will further seek to obtain an understanding of the perspectives and attitudes of Muslim communities about the Shari’a, its significance, and appropriate role in their lives. It will also aim to identify and evaluate the reflections and needs of the judges and lawyers involved with or who directly relate to the Shari’a courts and its administration.
- *Chamber to Chamber: Dialogues Between the Judiciary and the Business Sector.* The Foundation will support the initiative of the Program Management Office (PMO) of the Supreme Court in providing venues for dialogue and foster better understanding between the judiciary and the business sector. This project aims to make clear to the business sector the role of the judiciary, inform the sector about its reform agenda, and in turn convey to the judiciary the concerns of the business sector as regards the administration of justice in the country. In implementing these activities, PMO will coordinate with the Public Information Office and the Committee on Public Information of the Supreme Court.

### **Problems, Challenges and/or Successes in Implementing the Program**

Implementing the Legal Accountability and Dispute Resolution program during this period was generally successful. Of significance were the Public Opinion Survey on the Courts undertaken by the Social Weather Stations and the Family Business Mediation

initiatives of the Cebu Mediation Foundation. Both projects were not only implemented within the specified time frame, the activities were also well attended by the target participants who were able to provide valuable insights to their respective initiatives. The SWS focus group discussions with judges and lawyers on the survey questionnaire, for instance, generated important comments that a similar survey was later implemented in the Autonomous Region of Muslim Mindanao. Further, the comment to conduct a separate survey of the legal and judicial profession has been duly considered and is now part of the activities for the succeeding period.

One of the major challenges that the Foundation encountered during this period was the problem of delay both in executing a final project agreement with a partner institution and in implementing project activities by some partner organizations.

In most cases, the problem of delay was due to internal processes within an institution or with the work load or work style of contact persons assigned for specified project activities. Hence, instead of commencing such projects within the pipeline during the first two quarters, more time was demanded in order to further iron out project details with these partners. A case in point was the Evaluation of the Mediation project of the Philippine Judicial Academy where it took the Foundation and the PhilJA contact person several months of discussion and follow-up meetings before a Letter of Agreement was finally approved. Similar concerns were experienced with the Cyberspace Policy Center when the Foundation explained that it may be necessary for the Center to coordinate their project idea about on-line dispute resolution with the Supreme Court or with the Philippine Judicial Academy.

In other cases, the problem was caused by external factors, such as in the case of the project being undertaken by the Conflict Resolution Group. Under its grant, the CoRe Group aimed to submit a final Executive Order on Administrative Justice Reform or the use of alternative dispute resolution in executive agencies for signing by the Philippine President. However, during its consultation sessions with representatives of various executive agencies, the idea of an Executive Order couched in general terms was welcomed, but most agencies wanted individualized rules and regulations specific to their own agencies. This eventually dragged the submission of the final EO to the Office of the President.

As the Foundation gears itself to the implementation of the program in the next period, it realizes that it has had to consider internal processes, personalities, and other external factors that impact on initial time frames of project activities. Schemes for monitoring project activities being implemented by partner institutions and organizations also need to be improved to enable the Foundation to more promptly determine project-related issues and concerns that will be useful for future programming.