



Capacity Building of the Philippine Mediation Center Program

**QUARTERLY REPORT FROM THE ASIA FOUNDATION
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The Asia Foundation

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April 1, 2008 – June 30, 2008

SUMMARY

This quarterly report covers activities from April 1, 2008 to June 30, 2008 under The Asia Foundation's Capacity Building of the Philippine Mediation Center Program. The program is funded through a Cooperative Agreement with the United States Agency for International Development (USAID) and runs from October 1, 2007 to October 31, 2008.¹ The program aims to build the capacity of the Philippine Mediation Center (PMC) and its units to efficiently and effectively manage the court-annexed mediation system, in support of the institutionalization of court-annexed mediation. This will be carried out through two main activities: (1) organizational and financial management training of PMC personnel; and (2) a study on the expansion of jurisdiction of court-annexed mediation to cover other light crimes and other civil cases.

Since the two organizational and financial management trainings proposed under the program have already been completed in March 2008, the Foundation focused its efforts this period on the court-annexed mediation expansion study. Proposed rules mandating that civil aspects of less grave felonies,² and that cases appealed from first-level to second-level courts be mediated have been drafted during this quarter.

HIGHLIGHTS AND OUTCOMES OF SIGNIFICANT ACTIVITIES

Organizational and Financial Management Training of PMC personnel. With a total of 118 mediation staff officers, mediation staff assistants, and mediation aides from various Philippine Mediation Centers (PMC) in the country³ trained in organizational and financial management during the last reporting period, the Philippine Judicial Academy (PhilJA) observed an improved efficiency in the operations of mediation centers. The PMC Central Office has been receiving timely reports of cases mediated from the field. Before, reports of cases from PMC units were three to six months late. Now, PhilJA can

¹ Per Modification of Assistance No. 1 dated June 3, 2008, extending the program's completion date from July 31, 2008 to October 31, 2008.

² Crimes where the maximum period of the imposable penalty is not more than six years imprisonment (Articles 9, 25 and 27 of the Revised Penal Code).

³ Personnel from PMC Units in Metro Manila, La Union, Baguio, Bulacan, Rizal, Cagayan and Pampanga, Batangas, Naga, Bacolod, Cebu, Leyte, Zamboanga, Cagayan de Oro, Davao, General Santos, Iligan, Marawi, Ozamis, Tacloban, Saranggani, as well as regular staff from Appellate Court Mediation Centers and the PMC Central Office.

generate statistics updated as of the previous month.⁴ Equipped with a better understanding of the mediation process and court protocol, PMC staff also now deal with litigants, mediators, judges and other court personnel in a more confident and appropriate manner, thus facilitating smoother coordination in the referral of cases.

PhilJA continues to set-up PMC units in other judicial regions.⁵ As cases continue to be referred to mediation (even more cases are expected once the coverage of court-annexed mediation is eventually expanded), PhilJA plans to hire additional personnel to run these offices and hold more management seminars where PMC staff who attended the previous trainings can serve as mentors and trainers.

Study on the Expansion of Jurisdiction of Court-Annexed Mediation. During this reporting period, the consultant alternative dispute resolution expert, who also currently serves as Vice-Chair of PhilJA's Alternative Dispute Resolution Committee, commenced the study extending the coverage of court-annexed mediation to more pending cases. The study yielded draft rules which the consultant presented on June 17, 2008 to the sub-committee created by PhilJA for the expansion of court-annexed mediation. After the presentation, members of the sub-committee shared their comments and recommendations to improve the drafts.

The rules initially proposed that libel, theft, and estafa cases -- which are already subject of judicial dispute resolution (mediation conducted by judges in selected courts)⁶ -- be likewise referred to court annexed-mediation. Members of the sub-committee supported the proposal and even liberally suggested that other criminal cases apart from the three offenses be considered. For more parties to avail of court-annexed mediation, another recommendation was to include a provision on optional coverage, i.e., a case not mandatorily covered by court-annexed mediation should be allowed undergo mediation

⁴ Latest report from PhilJA is as of June 20, 2008. From January to June 20, 2008, 16,643 cases have been referred to mediation, of which 9,602 underwent mediation proceedings. Out of those mediated, 5,817 were resolved bringing the total number of successfully mediated cases for the period 2002 to June 20, 2008 to 47,211, with an overall success rate of 68%.

⁵ As of June 30, 2008, 131 PMC Units have been established in 13 judicial regions nationwide. Fifty-three of these were established under the Foundation's Legal Accountability and Dispute Resolution (LADR) Program funded by USAID and 40 were established through the Canadian International Development Agency's Justice Reform Initiatives Support (JURIS) Project. The rest of the PMC Units were established through by the PMC Fund (mediation fees collected by PhilJA). The PMC Central Office is in the process of setting up new mediation centers in Pangasinan, Nueva Ecija, Laguna, Rizal, Camarines Sur, Iloilo, Negros Oriental and Lanao del Norte.

⁶ Judicial Dispute Resolution (JDR) is "a process by which the judge attempts to facilitate a settlement between parties undergoing litigation after a similar effort by a court-annexed mediator has failed." (Salvador S. Panga, Jr., *Judicial Dispute Resolution as an Innovative Mode of Dispute Resolution* in a Sourcebook on Alternatives to Formal Dispute Resolution Mechanisms, A Publication of the Justice Reform Initiatives Support Project, 2008). The Revised Guidelines Amending A.M. No. 04-1-12-SC for the Implementation of an Enhanced Pre-Trial Proceeding under the Justice Reform Initiatives Support Project (JURIS) include estafa, libel, and theft as cases subject to JDR in the courts of San Fernando, Pampanga; San Fernando, La Union; Bacolod; Baguio; and Cagayan de Oro. These three crimes do not fall within the jurisdiction of court-annexed mediation implemented by PMC units.

proceedings if the parties so desire and with the permission of the court. On the procedural aspect, the sub-committee suggested that parties should forgo the step of stating whether or not they accept mediation and instead immediately move to the selection of mediators to expedite proceedings. The consultant incorporated the sub-committee's inputs to the drafts and came up with two revised rules that will increase the number of cases referred to mediation.

The first draft rule is the "Consolidated Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation and Judicial Dispute Resolution". Since 75% of cases pending in first- and second-level courts are criminal in nature⁷ and Philippine law expressly allows compromise of civil liability arising from any crime, without prejudice to the filing of the criminal action,⁸ the guidelines identified which of these criminal cases are suitable for mediation.

To balance public interest in ensuring that offenders are properly held accountable vis-à-vis the goal of diverting more court cases to mediation, the rule proposes that civil aspects of less grave felonies or crimes punishable by imprisonment not exceeding six years be referred to court-annexed mediation. Unlike afflictive felonies or crimes punishable by imprisonment of more than six years,⁹ less grave felonies involve less serious offenses with penalties which are generally intended for the rehabilitation of the offender. Less grave felonies are subject to probation, and their civil aspects can even be mediated by prosecutors under the Department of Justice's Mediation Program.

Another proposed rule on "Guidelines to Implement Mediation in Regional Trial Courts Acting as Appellate Court in Appeals from First Level Courts" was also drafted. Although this rule was not originally part of the project deliverables, the consultant suggested the adoption of this rule to further expand the coverage of court-annexed mediation to cases which have already been decided by first level courts¹⁰ but have been elevated to regional trial courts on appeal. The draft rule follows the rationale behind mediation of cases in the Court of Appeals. Even if a decision has been rendered by a first-level court, a case can still be resolved by the parties through compromise, saving them from going through another long and litigious process on appeal.

PLANS FOR THE NEXT PERIOD

The consultant will present the revised draft rules for final comments in another meeting with the sub-committee in July 2008. To further refine and finalize the drafts, a

⁷ Summary Report of Cases for Years 2000 to 2006, Statistical Reports Division, Court Management Office, Office of the Court Administrator, 2007.

⁸ Article 2034 of the Civil Code provides that "(t)here may be a compromise upon the civil liability arising from the offense, but such compromise shall not extinguish public action for the imposition of the legal penalty".

⁹ E.g. murder, rape, arson.

¹⁰ Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts.

presentation *cum* validation of the proposed rules before the Supreme Court and relevant stakeholders (selected mediators, lawyers, judges, and litigants, among others) is slated in the remaining period.

As the project draws to a close, the Foundation, in coordination with PhilJA, will consolidate the gains and lessons learned from the activities, especially their impact on the future direction of court-annexed mediation.