



Capacity Building of the Philippine Mediation Center Program

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The Asia Foundation

Capacity Building of the Philippine Mediation Center Program (Cooperative Agreement No. 492-G-00-07-00019-00)

October 1, 2007 – October 31, 2008

This final report covers all activities under The Asia Foundation's Capacity Building of the Philippine Mediation Center Program. The program was funded through a Cooperative Agreement with the United States Agency for International Development (USAID) which ran from October 1, 2007 to October 31, 2008.¹ The program aimed to build the capacity of the Philippine Mediation Center (PMC) and its units to efficiently manage the court-annexed mediation system, and effectively contribute to court docket decongestion. This was carried out through two main activities -- (1) organizational and financial management training for PMC personnel; and (2) a study on the expansion of jurisdiction of court-annexed mediation -- which yielded the following outputs:

- *A Trainers' Training Module on the Organizational and Financial Management of PMC Units;*
- 126 personnel trained in organizational and financial management of PMC units;
- *Proposed Consolidated Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation and Judicial Dispute Resolution;* and
- *Proposed Guidelines to Implement Mediation in Regional Trial Courts Acting as Appellate Court in Appeals from First Level Courts.*

BACKGROUND

Saddled with more than 800,000 pending cases in 1999, Philippine courts were confronted with a burgeoning caseload and lengthy delays in the disposition of cases. With trial courts handling 400 to 1,000 cases, a simple complaint can take around six years to be resolved at the trial court level alone (i.e. excluding appeals to the Court of Appeals and the Supreme Court). There are multifarious reasons for such delay and one of them is that trial hearings are spaced months after another because of the inability of courts to accommodate all cases within a given trial date. With extended trials, parties bear mounting litigation costs, i.e. more lawyer's fees, expenses for paperwork, and other case-related expenditures.

This dire situation prompted the judiciary to explore other modes of dispute resolution. After a successful pilot test in 1999, the Supreme Court, through its training arm, the Philippine Judicial Academy (PhilJA), implemented court-annexed mediation as a means

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.

to decongest court dockets and as an alternative to protracted and expensive litigation. Beginning year 2000, USAID, through the Legal Accountability and Dispute Resolution Program implemented by The Asia Foundation, provided solid support to this endeavor by funding subsequent pilot tests, the establishment of mediation centers (including those for the Court of Appeals), trainings and conferences of mediators, evaluation studies, and development of information and education materials. Since then, court-annexed mediation has blossomed into an institutionalized system that has trained more than 700 mediators and successfully resolved close to 70,000 cases in a span of six years.² The system further boasts of an average success rate of 67 percent. Although USAID funding ended in 2007, the Philippine Judicial Academy, through the Philippine Mediation Center, was able to sustain the establishment and staffing operations of more mediation centers or PMC units, as well as the training and fees of additional mediators using mediation fees collected from litigants or the PMC Fund.

Despite these initial successes, much was still left to be done to ensure the effective implementation of court-annexed mediation. A USAID-funded *Organizational and Financial Study of the PMC and Its Units*³ revealed that more PMC units are being established without a clear strategy for operational efficiency. PMC units fail to submit their monthly reports on time, and their personnel are unprepared to answer litigants' questions about the mediation process. There was a need to build the capacity of the people running PMC units to ensure that mediation services are efficiently and effectively delivered on the ground. Another issue that surfaced in the study is that the narrow coverage of mediatable cases fails to meet court-annexed mediation's potential as a means of de-clogging court dockets. Cases eligible for mediation comprise only a small portion of the workload of courts. Hence, judges remain burdened with a looming backlog.

By addressing the foregoing issues, this project built on the gains of USAID's previous support to institutionalize court-annexed mediation. Training PMC personnel on financial and organizational management increased the operational capacity of the system to handle cases. Expanding the mandate of the PMC to cover other light crimes would allow more cases to benefit from mediation and be diverted away from litigation. Through these efforts, court-annexed mediation's promise to contribute to the prompt delivery of justice can be fully realized and sustained.

² This figure includes cases from 2002 to 2008. After the pilot tests, the first mediation centers established in Metro Manila, Cebu, and Davao began formal operations in 2002.

³ Conducted by CPRM, Inc. under the LADR Program.

HIGHLIGHTS OF ACTIVITIES

I. Organizational and Financial Management Training of PMC personnel

This activity sought to equip personnel of mediation centers or PMC Units with skills in organizational and financial management, and thereby ensure the efficient and effective implementation of court-annexed mediation. For this purpose, the Foundation worked closely with PhilJA, the Supreme Court's component unit for alternative dispute resolution mechanisms and the office designated to supervise the Philippine Mediation Center.

As an initial step, PhilJA conducted a training needs assessment in November and December 2007. The assessment involved consultations with PMC personnel, especially newly-hired staff, to identify the skills they need to develop. PhilJA also gathered suggestions from volunteer mediators who previously ran the PMC units to list topics that would be useful and relevant to people managing the daily operations of mediation centers. Results of the assessment provided basis for drafting the *Trainers' Training Module on the Organizational and Financial Management of PMC Units*. A copy of this module is attached as Annex A.

On February 12, 2008, the Supreme Court timely approved Administrative Order No. 33-2008, *Defining the Organization Powers and Functions of the Philippine Mediation Center Office and Mediation Centers*. The order laid down the organizational set up of the PMC Central Office⁴ vis-à-vis the mediation centers or PMC Units⁵ established throughout the country. The order identified a specific staffing pattern for each PMC Unit, providing legal basis for each office to have a mediation staff officer, mediation staff assistant, and mediation aide, in addition to accredited mediators.⁶ This was a welcome development since prior to such issuance, PMC Units only had volunteer mediators who performed administrative tasks such as case in-take, tracking, and monitoring on top of their mediation duties. The old set-up proved cumbersome for the mediators and hampered the efficient delivery of mediation services.

As the new order took effect, PhilJA conducted a Faculty Development Workshop on February 20, 2008 to finalize the *Trainers' Training Module on the Organizational and Financial Management of PMC Units*. The half-day workshop allowed PhilJA and

⁴ The PMC Central Office is under the operational control and supervision of Philippine Judicial Academy (PhilJA), in coordination with the Office of the Court Administrator, through the Executive Judges. The PMC Central Office is primarily responsible for the expansion, development, implementation, monitoring, and sustainability of Supreme Court Alternative Dispute Resolution mechanisms, namely, Court-Annexed Mediation, Appellate Court Mediation, Judicial Dispute Resolution, Mobile Court-Annexed Mediation, as well as other ADR Mechanisms. The PMC Central Office is also in charge of establishing and organizing PMC Units as it may deem necessary throughout the country. (Sec. 1, A.O. No 33-2008)

⁵ PMC Units are local centers through which mediation services are provided throughout the country. PMC Units are under the supervision of the PMC Central Office. (Organizational Chart appended to A.O. 33-2008)

⁶ Sec. 2[E], A.O. No 33-2008

invited resource persons to tailor the training to the Supreme Court's new issuance and ensure the smooth flow of training activities.

On March 12-14, 2008, PhilJA conducted the first organizational and financial management training for PMC staff entitled *Work Orientation and Skills Enhancement Seminar for PMC Office and Unit Staff*. Seventy-eight mediation staff officers, mediation staff assistants, mediation aides, and mediation supervisors⁷ from PMC Units in Metro Manila, La Union, Baguio, Bulacan, Rizal, Cagayan, and Pampanga, as well as regular staff from Appellate Court Mediation Centers and the PMC Central Office participated in the three-day seminar in Metro Manila. This was followed by a second seminar in Cebu City on March 26-28, 2008 for 48 PMC staff from Batangas, Naga, Bacolod, Cebu, Leyte, Zamboanga, Cagayan de Oro, Davao, General Santos, Iligan, Marawi, Ozamis, Tacloban, Sarangani, and the PMC Central Office. Using the trainers' training module developed under the program, the seminar provided participants with an overview of the judicial system; an introduction to alternative dispute resolution and court-annexed mediation; and interactive workshops on statistical reporting procedures, case and records management, ethical conduct, and human relations. PhilJA lecturers and invited speakers from government and academic institutions served as resource persons.

II. Study on the Expansion of Jurisdiction of Court-Annexed Mediation

Currently, court-annexed mediation applies to civil cases and civil aspects of violations of the bouncing checks law and criminal negligence. Civil suits however comprise only 16 to 20 percent of cases filed in courts.⁸ The rest, the bulk of which are minor criminal offenses, continue to clog court dockets without a chance of undergoing mediation. This component of the program was undertaken to examine how court-annexed mediation can be expanded to cover civil aspects of other crimes, and consequently maximize its potential to decongest court dockets.

For the study, the Foundation worked with an expert consultant on alternative dispute resolution, who is also Chairperson of PhilJA's Alternative Dispute Resolution (ADR) Committee. The consultant conducted desk research and coordinated closely with a sub-committee created under PhilJA's ADR Committee and the Philippine Mediation Center Office Executive Committee (PMCO ExeCom)⁹ to finalize the study and propose rules for the expansion of jurisdiction of court-annexed mediation.

⁷ Mediation supervisors coordinate different PMC Units located within a city or province.

⁸ In 2006, civil cases constituted 20 percent of all cases filed in courts. This figure went down to 16 percent in 2007. (Data based on the 2006 and 2007 Summary of Cases in all courts except the Supreme Court from the Statistical Reports Division, Office of the Court Administrator)

⁹ Members include the PhilJA Chancellor, PhilJA Executive Secretary, Supreme Court Administrator, PMC Chief Operating Officer, Chairperson of PhilJA's ADR Committee, and four regular members from the academe, Department of Justice, and judges.

A. *Proposed Consolidated Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation and Judicial Dispute Resolution*

The study initially considered the inclusion of libel, theft, and estafa cases -- which are already subject to judicial dispute resolution (mediation conducted by judges in selected courts)¹⁰ -- in court annexed-mediation. Upon the suggestion of members of the sub-committee, the consultant looked into other criminal cases that can be referred to mediation. Since 75% of cases pending in first- and second-level courts are criminal in nature¹¹ and Philippine law expressly allows compromise of civil liability arising from any crime without prejudice to the filing of the criminal action,¹² the study proposed that the civil aspect of less grave felonies or crimes punishable by imprisonment not exceeding six years be referred to court-annexed mediation. Around 150 crimes in the Revised Penal Code are considered less grave felonies.¹³

Focusing on less grave felonies provides a healthy balance between diverting more court cases to mediation and ensuring that offenders, especially of heinous crimes, are still properly held accountable. Unlike afflictive felonies or crimes punishable by imprisonment of more than six years, 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.

In the course of the study, the consultant discovered that there are different and sometimes confusing issuances regarding the scope of court-annexed mediation and judicial dispute resolution. The consultant found it fitting to incorporate the necessary clarifications in the proposed rule to expand the jurisdiction of court-annexed mediation; hence the title "*Consolidated Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation and Judicial Dispute Resolution*".

The consultant presented the draft guidelines (a copy of which is attached as Annex B) to the sub-committee and PMCO ExeCom on June 17, 2008. Based on their comments and

¹⁰ 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.

¹¹ Summary Report of Cases for Years 2000 to 2006, Statistical Reports Division, Court Management Office, Office of the Court Administrator, 2007.

¹² 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".

¹³ E.g. physical injuries, grave scandal, libel, slander, theft, estafa, and grave threats.

recommendations, a section on optional coverage - i.e., a case not mandatorily covered by court-annexed mediation should be allowed undergo mediation proceedings if the parties so desire and with the permission of the court – was included in the draft. This will allow more parties to avail of court-annexed mediation. To expedite proceedings, the draft guidelines also authorized parties to forgo the step of stating whether or not they accept mediation and instead immediately move to the selection of mediators.

In August and September 2008, two more sub-committee meetings were held to discuss, validate, and refine the provisions of the draft rules. The PMCO ExeCom is still reviewing the proposed guidelines to expand court-annexed mediation. Once it finds the provisions acceptable, it will endorse the draft to the Supreme Court for final approval.

B. Proposed Guidelines to Implement Mediation in Regional Trial Courts Acting as Appellate Court in Appeals from First Level Courts

In 2007, 4,291 cases decided by first level courts were appealed to regional trial courts.¹⁴ To further decongest court dockets, the consultant suggested the inclusion of this category of cases to court-annexed mediation and drafted the proposed *Guidelines to Implement Mediation in Regional Trial Courts Acting as Appellate Court in Appeals from First Level Courts* (although it was not originally part of the project outputs). A copy of the proposed guidelines is attached as Annex C.

Under the proposed guidelines, the following cases decided by first level courts but appealed to regional trial courts should be referred to mediation:

1. All civil cases and probate proceedings, testate and intestate;¹⁵
2. All cases of forcible entry and unlawful detainer;¹⁶
3. All civil cases involving title to or possession of real property or an interest therein; and
4. All habeas corpus cases involving custody of a minor who has not been detained for the commission of a crime.¹⁷

¹⁴ Data from CAMIS database as of December 15, 2008, Statistical Reports Division, Office of the Court Administrator. First level courts consist of Municipal Trial Courts, Municipal Circuit Trial Courts, and Metropolitan Trial Courts.

¹⁵ A probate proceeding is the procedure for the judicial settlement of the estate of a deceased person. It involves identification of his/her properties, payment of debts, identification of legal heirs, and distribution of the remaining estate to them. The distribution of the estate may be carried out based on a will (testate proceedings), or in the absence of a valid will, by operation of law (intestate proceedings). (Rules 73 to 91, Revised Rules of Court)

¹⁶ A forcible entry case is filed against a person who, by force, intimidation, strategy or stealth, deprives another of rightful possession over a land or building. On the other hand, an action for unlawful detainer may be filed against a person who initially had lawful possession of real property by virtue of a contract, but refuses to vacate the property after termination or expiration of the contract. Both cases follow the rule on summary procedure, i.e. case is resolved mostly through submission of pleadings and without a long trial. (Rule 70, Revised Rules of Court)

Inclusion of the foregoing cases follows the rationale behind mediation of cases in the Court of Appeals. Even though a lower court already rendered a decision, parties may still enter into a compromise to preclude another long and litigious process on appeal.

The proposed rule was presented to PhilJA's sub-committee on the expansion of court-annexed mediation and the PMCO ExeCom. The PMCO ExeCom approved the draft guidelines on September 2, 2008 and transmitted the same to the Supreme Court on September 15, 2008 for approval. The Supreme Court is currently reviewing the proposal.

CHALLENGES IN IMPLEMENTATION

One of the initial challenges in implementing court-annexed mediation is the reluctance of judges to refer cases to mediation, and of lawyers and litigants to participate in mediation proceedings. Intensified efforts to inform and educate stakeholders of the benefits of mediation seek to address this challenge. For instance, using their own resources, PhilJA staff have visited courts all over the country to distribute posters and brochures, and conduct dialogues to clarify procedures and explain the advantages of mediation.

To ensure that the proposed expansion will not face resistance from stakeholders, the PMCO ExeCom is carefully studying the consultant's report and the draft guidelines (especially since the rule will cover criminal offenses). Evaluation of the draft rules is however taking some time because of the busy schedules of members of the PMCO ExeCom. The validation workshop with other stakeholders (lawyers, litigants, mediators) had to be deferred to give the PMCO ExeCom sufficient opportunity to scrutinize and deliberate on the suggested provisions.

IMPACT

With a total of 126 trained personnel (out of 163 staff assigned to the PMC and its units as of December 2008), PhilJA observed improved efficiency in the operations of mediation centers. Since the training, the PMC Central Office has been receiving timely reports of cases mediated from the field. Prior to that, reports were three to six months late. Now, PhilJA can generate statistics updated as of the previous month, enabling it to closely monitor the trends and evaluate the implementation of court-annexed mediation. Based on PhilJA's latest report, from January 1 to December 31, 2008, 67,541 cases were

¹⁷ Habeas corpus (which means "have the body") is a special remedy provided by the Rules of Court to question an illegal confinement or detention, or the custody of a person. Once issued, a writ of habeas corpus directs a person detaining/having custody over another to present the body of the detainee to the court and justify his/her detention or custody (Rule 102, Revised Rules of Court). Habeas corpus cases covered by the proposed guidelines are intra-family disputes involving custody of children.

referred to mediation. Of this number, 43,694 underwent mediation proceedings. Out of those mediated, 28,314 cases were resolved, bringing the total number of successfully mediated cases for the period 2002 to 2008 to 69,708 and posting an overall success rate of 67 percent.¹⁸ This means through court-annexed mediation, the courts' workload was reduced by almost 70,000 cases in a span of six years.

After the February and March 2007 trainings, there was a notable increase in the number of cases referred to mediation, mediated, and successfully resolved (please refer to Table 1 below).

Table 1. Cases referred to mediation, mediated, and successfully mediated from 2006 to 2008 (as reported by the PMC Office, Philippine Judicial Academy)

Year	No. of cases referred to mediation	No. of cases mediated	No. of cases successfully mediated
2006	20,911	13,050	8,159
2007	39,923	29,905	14,300
2008	67,541	43,694	28,314

Although the establishment of new PMC units contributed to the upward trend, the figures also demonstrate the ability of the PMC and its units to effectively handle the upsurge of cases referred for mediation. Successful mediation doubled from 14,300 cases in 2007 to 28,314 in 2008. PhilJA further reported that with the hiring and training of PMC personnel, accredited mediators are now able to focus on the cases assigned to them. Each mediator, though only part-time, can now ably handle an average of 60 cases a year (2008) as opposed to only 34 cases per mediator in the previous year. With administrative support from trained PMC staff, mediators are able to successfully facilitate the mediation of more cases despite a 76 percent increase in their caseload. (Please see Table 2)

Table 2. Average caseload of mediators from 2006 to 2008 (as reported by the PMC Office, Philippine Judicial Academy)

Year	No. of cases referred to mediation	No. of cases mediated	No. of mediators	Average caseload per mediator
2006	20,911	13,050	527	25
2007	39,923	20,905	616	34
2008	67,541	43,694	723	60

¹⁸ The first set of PMC units that implemented court-annexed mediation were established in 2002 in Metro Manila, Cebu, and Davao with support from the Legal Accountability and Dispute Resolution Program funded by USAID through The Asia Foundation.

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. As of January 13, 2009, 152 PMC Units have been established in 12 of the 14 judicial regions nationwide.¹⁹ These units provide mediation services to 937 out of 2,300 trial courts.²⁰ For 2009, PhilJA plans to establish new mediation centers in Zambales, Bukidnon, Cavite, Laguna, Samar, Nueva Ecija, Tarlac, Dumaguete, Bulacan, and Bicol. These new mediation centers will be established and staffed through the Philippine Mediation Center Fund (mediation fees collected by PhilJA).

As cases continue to be referred to mediation (even more cases are expected once the coverage of court-annexed mediation is eventually expanded), PhilJA will 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. PhilJA has in fact used the module developed under this program to conduct two management trainings in Pangasinan and Manila for 30 newly-enlisted PMC personnel in 2008 (after the Manila and Cebu seminars under this program were completed).

¹⁹ 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).

²⁰ Data from the Philippine Mediation Center Office.