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**INSTITUTIONAL
STRENGTHENING
OF THE
SHARI'A JUSTICE
SYSTEM
(Phase 1)**

DRAFT FINAL REPORT

June 2004

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GENERAL INTRODUCTION

1 BACKGROUND OF THE STUDY

1.1 The APJR

- 1.1.1 This study is part of the overall judicial reform program, which has for its goal the strengthening of the independence and accountability of the Judiciary and the delivery of speedy, impartial, and quality justice to all.
- 1.1.2 A series of diagnostic studies funded by the UNDP and the World Bank were initiated in 1998 and 1999 on the overall functioning of the Judiciary and the various aspects of the courts system. These diagnostic studies led to deeper thematic and area diagnostic and reform design initiatives that addressed critical reform issues identified during the first diagnostic studies. Examples of these include: a) Judicial Reform Support Project (JRSP) which will establish decentralized model courts on a pilot basis, establish mobile courts, design and implement Judiciary-wide computerization of case management, financial and administrative information systems; b) Strengthening of the Philippine Judicial Academy; c) Strengthening of the Judicial and Bar Council; d) Studies on Access to Justice; e) Development of Bench book; f) ADB TA 3693 which provided detailed design for the operationalisation of judicial autonomy, strengthening of its accountability mechanisms, decentralization of its administrative structure and operations and detailed reengineering of the judiciary's administrative and financial management systems; and g) training of justices and judges through comparative judicial reform studies. Several of these initiatives will soon be installed in selected court stations, regions and oversight offices, and implemented as well as replicated in the rest of the Judiciary over the next 3 to 6 years.
- 1.1.3 The identification of the study on the Institutional Strengthening of the Shari'a Justice System was one of the results of the overall diagnostic studies made earlier. In particular, this study provides the starting point for setting the direction and subsequently identifying, designing and implementing initiatives towards strengthening the Shari'a justice system in order that it will contribute to the integration of Muslim Filipinos in mainstream Philippine society, strengthen respect for the rule of law and institutions of law and justice, and the facilitate the realization of peace and development in Muslim Mindanao.

1.2 The Study

- 1.2.1 This study is funded by United Nations Development Program (UNDP): Portfolio for Strengthening the Foundations of Peace and Development in Southern Philippines, which works on three specified key outcomes: a) Improved capacities of target communities in partnership with their local governments for self-sustaining

- development and improved access to basic resources; b) Strengthened institutional support mechanisms to promote collaboration and enhance coordination for continuing support to peace and development; and c) Positive environment of mutual trust and confidence among the peoples and institutions leading to lasting peace.
- 1.2.2 The CPRM Consultants Inc. fielded a team of sociological, Shari'a and Philippine law, judicial system and institutions development specialists to undertake the study.
- 1.2.3 A kick off meeting with the Project Management Office (PMO) of the Supreme Court was conducted. Several inter-active meetings with the PMO counterpart team followed for planning and organizing project activities, providing data needed by the consultants, and designing the consultation mechanisms. Focus group discussions and one-on-one interviews with pertinent officials and personnel performing functions related to the Shari's justice system were undertaken. The consultants conducted an extensive review of relevant literature and studies.
- 1.2.4 The team submitted an inception report, which validated and finalized the conceptual approaches, methodologies and outputs of the study. A validation workshop was conducted with the Shari'a circuit court and Shari's district court judges and clerks of court, the head and officials of the Office of the Court Administrator, Philippine Judicial Academy, Halls of Justice Committee, PMO head and officers and other Supreme Court officials and personnel on the inception report. The inception report was subsequently approved. The consulting team proceeded with the conduct of the diagnostic study and identification of reform direction, which is contained in this final report.

2 JUDICIAL REFORM ISSUES

- 2.1.1 The study was to address the following key judicial reform issues, which were identified in previous diagnostic studies as well as in the initial stages of this study and contained in the inception report of this project.
- a) Inaccessibility of Justice
 - b) Need to enhance the perception of integrity of the system of justice and to improve confidence of our Muslim brothers in the justice system
 - c) Resources, unoperational Shari'a Courts and their performance implications
 - d) Need to improve administrative management capacity and resources
 - e) Lack of training and continuous education of Shari'a court judges and personnel
 - f) Issues on applicability and application of Islamic Laws into the Philippine Shari'a Justice System (including application of Philippine laws, rules and procedures for general application, and barangay justice policies, rules and procedures)

- g) Issues on practicing (or lack of) Shari'a lawyers, Shari'a law colleges, and Shari'a bar
- 2.1.2 While the above issues were validated during the inception report workshop and conduct of the diagnostic studies, the consultants were of one realization that there exist real issues which were much broader and deeper than the internal capacities and institutional framework of the current Shari'a justice system provided by the National Government and operated by the Judiciary. And that strengthening the Shari'a justice system requires that it be inextricably woven into the Muslim way of life, and at the same time ensuring its integration into the overall Philippine system of justice.
- 2.1.3 This challenge also requires that a deeper and wider probing into the history, culture, traditions and customs, and religion of Muslims; and their impact on the current Islamic notions of justice and current formal and informal dispute resolution norms and practices be made within the constraints of available information and project resources. Where information or baseline knowledge is needed but cannot be acquired through this study, it is recommended as part of the subsequent activities leading to the definition of the reform program for the Shari'a justice system. These are presented and discussed in the subsequent sections of this final report.

3 REFORM GOAL, PURPOSE AND OUTPUT OF THE STUDY

3.1 Reform Goal

- 3.1.1 This study provides the initial integrated effort at identifying the reforms and initiatives that will improve the contribution of the Philippine justice system in creating a Filipino Muslim society that is driven by peace, justice and the rule of law, consistent with the Islamic religion and the values and practices modeled by the Prophet Mohammad and integrated with the country's overall national institutional and legal framework.

3.2 Purpose of the Study

- 3.2.1 The inception report that was submitted and approved identified the following purposes of this study:
 - a) To conduct a review of the overall performance and the specific dimensions of the performance of the Shari'a justice system as a backdrop against which a deeper institutional diagnosis leading to reform identification will be made.
 - b) To identify the strengths and weaknesses in the various aspects of the Shari'a Justice System that promote or hinder the achievement of the stated reform objective.
 - c) To examine the societal and cultural contexts and identify the opportunities and threats that affect the functioning of a sound Shari'a justice system, as well as to assess the current Shari'a Justice System in the context of development and

peace efforts, indigenous governance, gender responsiveness and human rights approaches.

- d) To assess the administrative structure and operating systems context in the Judiciary in which the Shari'a courts operate and determine the promoting and hindering factors to efficiency and effectiveness of the Shari'a courts.
- e) To define the implications for strengthening the Shari'a Justice System and identify the appropriate reform directions within the context of the Judicial Reform Program.

3.3 Output of the Study

- 3.3.1 The outputs of the study are spelled out in detail in the inception report and will not be repeated in this final report. The main output of the study is a diagnostic report and reform directions embodied in this final report.
- 3.3.2 A validation workshop will be organized by the PMO to review the final report. Copies will be provided to key senior officials of the Judiciary. The comments and suggestions emanating from this two-track validation process will be inputted in the revision of the final report.

3.4 Scope, Conceptual Approach and Methodology

- 3.4.1 The scope, conceptual approach and methodology of the study are those indicated in the approved inception report.

4 REPORT ORGANIZATION

- 4.1.1 This report is organized into the following key parts:

GENERAL INTRODUCTION

Part 1 - ASSESSMENT OF SHARI'A COURT PERFORMANCE

Part 2 - OVERVIEW OF MUSLIM DEMOGRAPHY, JUSTICE AND HUMAN RIGHTS

Part 3 - THE PHILIPPINE SHARI'A JUSTICE SYSTEM

Part 4 - ASSESSMENT OF INTERNAL CAPACITY OF THE SHARI'A COURT SYSTEM

Part 5 - IMPLICATIONS FOR REFORMS IN THE SHARI'A JUSTICE SYSTEM

1

PERFORMANCE OF SHARI'A DISTRICT AND CIRCUIT COURTS

1 LEGAL BASIS AND JURISDICTION

1.1 Enabling Law

- 1.1.1 The Shari'a Courts were established under Presidential Decree 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, dated 4 February 1977, to provide for an effective administration and enforcement of Muslim personal laws among Muslims. The same law created two types of Shari'a Courts, the Shari'a District Courts (SDCs) and Shari'a Circuit Courts (SCCs).
- 1.1.2 The law sets forth the jurisdictional structure of the Shari'a Courts, defining and delineating their geographical jurisdiction and judicial functions. In terms of geographical jurisdiction, PD 1083 defined the localities in Mindanao that are to benefit from the judicial services of the Shari'a Courts. In terms of functional jurisdiction, the law likewise indicated the specific cases covered by Shari'a Courts, as well as the judicial services that they must render. In addition, unlike the regular courts, which have a general clientele, the Shari'a Courts are intended basically for Muslims as their sole clientele.

1.2 Jurisdiction and Access

GEOGRAPHICAL JURISDICTION

- 1.2.1 The geographical jurisdiction of a court identifies the areas (provinces, cities or municipalities) over which the court may perform its functions or deliver its services. There are, at present, 5 SDCs as prescribed under PD 1083. The geographical jurisdiction of these courts is presented in Table 1.

Table 1
SHARIA DISTRICT COURTS, GEOGRAPHICAL JURISDICTION

SHARI'A DISTRICT	PERMANENT STATION	JURISDICTION	
		PROVINCE	CITY
First	Jolo, Sulu	Sulu	-
Second	Bongao, Tawi-Tawi	Tawi-Tawi	-
Third	Zamboanga City	Basilan Zamboanga del Norte Zamboanga del Sur	Dipolog Pagadian Zamboanga
Fourth	Marawi City	Lanao del Norte Lanao del Sur	Iligan Marawi
Fifth	Cotabato City	Maguindanao North Cotabato Sultan Kudarat	Cotabato

1.2.2 PD 1083 also provides for the establishment of 51 SCCs in the 5 Shari'a Districts. Of the 51 authorized SCCs only 25 are operational (Table 2). These 25 SCCs are providing judicial services to territorial jurisdictions originally intended to be served by 51 SCCs.

Table 2
**SHARI'A CIRCUIT COURTS, GEOGRAPHICAL JURISDICTION
AND STATUS OF OPERATIONALIZATION**

SHARI'A DISTRICT	JURISDICTION		DISTRIBUTION		
	PROVINCE	CITY	TOTAL NUMBER	OPERATIONAL	NOT OPERATIONAL
First	Sulu	-	6	3	3
Second	Tawi-Tawi	-	8	1	7
Third	Basilan Zamboanga del Norte Zamboanga del Sur	Dipolog Pagadian Zamboanga	10	2	8
Fourth	Lanao del Norte Lanao del Sur	Iligan Marawi	12	12	0
Fifth	Maguindanao North Cotabato Sultan Kudarat	Cotabato	15	7	8
TOTALS			51	25	26

There are strong indications that problems in geographical access exist both at national and regional levels.

- 1.2.3 The SDCs and SCCs cover three regions (ARMM, Region 9 and Region 12) wherein about 90% of an estimated 3.86 million Muslims reside. Approximately 386,240 or 10% of the country's Muslims are spread in the other regions of the country, including Metro Manila. The issue of providing Shari'a courts in the other regions as a way of providing access is starting to be discussed in various forums. Natural growth and migration have started to create concentrations of Muslim communities in the other regions. Within the Muslim regions where the courts are located, court : population ratios registering at 1:188,028 in Region 9, 1:81.829 in Region 11 and 1:128,367 in ARMM are considerably higher than the national average of 1:37,000 as of 2003 (Table 3).

Table 3
GEOGRAPHICAL JURISDICTION OF SHARI'A COURTS AND COURT:POPULATION RATIO

REGION	TOTAL MUSLIM POPULATION	PERCENT OF TOTAL POPULATION	NUMBER OF OPERATIONAL SHARI'A COURTS AS OF FY 2003			COURT: POPULATION RATIO
			DISTRICT	CIRCUIT	TOTAL	
TOTAL PHILIPPINES	3,862,409	100.00	-	-	-	-
NCR	58,859	1.53	-	-	-	-
Region 1	4,135	0.11	-	-	-	-
Region 2	3,910	0.11	-	-	-	-
Region 3	9,465	0.25	-	-	-	-
Region 4	69,561	1.80	-	-	-	-
Region 5	3,270	0.09	-	-	-	-
Region 6	3,777	0.10	-	-	-	-
Region 7	5,351	0.14	-	-	-	-
Region 8	2,610	0.07	-	-	-	-
Region 9	564,085	14.61	1	2	3	1: 188,028
Region 10	16,582	0.43	-	-	-	-
Region 11	192,914	5.00	-	-	-	-
Region 12	736,461	19.07	1	8	9	1: 81,829
CAR	1,681	0.05	-	-	-	-
CARAGA	7,483	0.01	-	-	-	-
ARMM	2,182,245	56.50	3	15	18	1:128,367
Disputed Area*	20	-				

Source: NSO Census of Population and Housing: "Household Population by Religious Affiliation, by Sex", 2000

NOTE: Disputed areas are in locations not covered by the census/ study made by NSO

4th SDC (ARMM) services one province in Region 12 (Lanao del Norte)

5th SDC (Region 12) services one province in ARMM (Maguindanao)

- 1.2.4 The geographical distribution of the Shari'a courts indicates that there may be significant geographical access issues. Courts in the regions are mostly at the provincial level and would require distant and expensive transport within regions where poverty is more than 80%. There are no readily available statistics to indicate the rural – urban distribution of Muslim populations in provinces where the courts are located. This would have given a clearer picture of geographical access. Another issue is where do Muslims residing in regions not under the geographical jurisdiction of existing courts file their cases? Anecdotal information indicates that Muslims in Metro Manila have to file their cases in their home provinces. But the current court system has no mechanism for controlling the locations for case filing. The system is vulnerable to multiple forum shopping by Muslims outside of any court geographical jurisdiction.

FUNCTIONAL JURISDICTION

- 1.2.5 The functional jurisdiction of a court defines the judicial authority and functions granted to it by law. The original and appellate jurisdictions of the SDCs are presented in Table 4. Decisions of the SDCs, whether on appeal from the SCCs or not, shall be final, and may only be appealed to the Supreme Court.

Table 4
SHARI'A DISTRICT COURTS, FUNCTIONAL JURISDICTION

ORIGINAL JURISDICTION		APPELLATE JURISDICTION
EXCLUSIVE	CONCURRENT WITH EXISTING LOCER COURTS	
<ul style="list-style-type: none"> ▪ All cases involving custody, guardianship, legitimacy, paternity and filiations arising from PD 1083 ▪ All cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property ▪ Petitions for the declaration of absence and death and for the cancellation of correction of entries in the Muslim Registries ▪ All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations ▪ All petitions for mandamus, prohibition, injunction, certiorari, habeas corpus and all other auxiliary writs and processes in all of the court's appellate jurisdiction 	<ul style="list-style-type: none"> ▪ Petitions by Muslims for the constitution of a family home, change of name and commitment of an insane person to an asylum ▪ All other personal and real actions wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive jurisdiction of the Municipal Circuit Court ▪ All special actions for interpleader or declaratory relief wherein the parties are Muslims, or the property involved belongs exclusively to Muslims. 	<ul style="list-style-type: none"> ▪ All cases tried in the Shari'a Circuit Courts within their territorial jurisdiction

- 1.2.6 The SCCs on the other hand have exclusive original jurisdiction over the following:
- All cases involving offenses defined and punished under the Code of Muslim Personal Laws of the Philippines (PD 1083).
 - All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 of the Code, involving disputes relating to marriage, divorce under PD 1083, betrothal or breach of contract to marry, customary dower (mahr), disposition and distribution of property upon divorce, maintenance and support, and consolatory gifts (mat'a), and restitution of marital rights.
 - All cases involving disputes relative to communal properties.
- 1.2.7 The concurrent jurisdictions of the lower courts and Shari'a courts have profound access implications for the Shari'a justice system. Again there are no readily available data on how many Muslim cases have been filed in the lower courts that are also within the jurisdiction of the Shari'a courts. The lower courts are more geographically accessible. They are situated at the municipal level and are usually located in the municipal center.
- 1.2.8 Concurrent jurisdictions also render the judicial system vulnerable to forum shopping and to conflicting judicial decisions. At present the Judiciary has very limited capability to monitor cases in lower courts and to detect forum shopping.

2 CASELOAD AND PERFORMANCE

2.1 Purpose, scope and indicators of assessment

- 2.1.1 The assessment of caseload and performance is undertaken for several purposes: a) to establish the level of caseload in relation to the comparative caseload capacities of similar courts; b) to review the efficiency of judges by establishing the relationship between caseload and outputs; c) to make inferences on the quality of justice; and d) to examine if there is an indicative relationship between jurisdiction and access issues raised in the above sections, and caseload. Accordingly the assessment focuses on three aspects: the amount of caseload, the level of case disposition, and the composition of the outputs (type of action).
- 2.1.2 The assessment uses the terms and concepts as defined in various issuances of the Supreme Court, specifically Administrative Circulars 18-94 (November 29, 1994) and 61-2001 (December 10, 2000), and are reflected in Attachment A of this Report Section.

2.2 Key findings

Very low caseloads characterize the Shari'a district and circuit courts.

- 2.2.1 The total case inflow to the 5 SDCs for 4 years (from 2000 to 2003) was 135 cases, averaging at 27 cases annually for all district courts and 5 to 6 cases annually per SDC. In the case of the 25 SCCs, the total case inflow during the same period was 1,533 cases, averaging at 383 cases annually for all the circuit courts and only about 15 cases annually per circuit court. At the outset, the statistics reveal low level of cases received by the SDCs and SCCs (Tables 5 and 6)

Table 5
SHARI'A DISTRICT COURTS, CASE INFLOW, 2000-2003

PARTICULARS	2000	2001	2002	2003	TOTAL	% TO TOTAL
Newly Filed Cases	22	10	21	45	98	72
Revived/Reopened Cases	0	0	0	5	5	4
Received from Other Salas	0	0	1	3	4	3
Unclassified Inflow Cases	0	6	13	9	28	21
Total	22	16	35	62	135	100
% INCREASE/(DECREASE)		(27)	119	77		

Table 6
SHARI'A CIRCUIT COURTS, CASE INFLOW, 2000-2003

PARTICULARS	2000	2001	2002	2003	TOTAL	% TO TOTAL
Newly Filed Cases	298	313	313	354	1,278	83
Revived/Reopened Cases	4	6	3	12	25	2
Received from Other Salas	1	1	1	0	3	0
Unclassified Inflow Cases	33	26	151	17	227	15
Total	336	346	468	383	1,533	100
% INCREASE/(DECREASE)		3	35	(19)		

- 2.2.2 In the absence of adequate baseline information it would be dangerous to present definitive factors to explain the low caseload in the Shari'a courts. But there are many possibilities that should be explored and validated to explain low caseloads in Shari'a courts. These include:

- a) Lack of geographical access

As mentioned above there is strong evidence of lack of geographical access to the Shari'a courts. The concurrent jurisdictions between the Shari'a courts and

the lower courts also have profound impact on access. Lower courts were pointed out to be more easily accessible than the Shari'a courts due to their extensive local presence.

b) Lack of public information on the Shari'a courts

There are no established public education and information system on the Shari'a justice system either in the regions where they are located or nationally. There is need to study Muslim public awareness and understanding of the government established Shari'a justice system and its relationship with access and court usage.

c) Co-existence of informal and formal dispute resolution mechanisms in Muslim communities

Relevant studies and surveys (including those conducted by the Pilipinas Legal Resource Center) point to culture related factors affecting low usage of the Shari'a courts. Muslim justice is based on religion. Muslim tradition involves strong roles played by religious leaders in informally settling disputes. There are indications that informal settlements particularly on cases involving family and property matters are preferred over the formal (court) processes. This way, litigants will not suffer shame with having their private problems documented in the court records (PLRC, 2003).

The PLRC studies and the validation workshop with the Shari'a court judges and clerks of court both pointed to the extensive use of informal dispute settlements rather than the formal court process. The few judges interviewed by PLRC indicated that many cases are settled by the Agama Arbitration Council and no longer proceed to the formal court litigation process. During the project workshop on the inception report, several Shari'a judges, when asked why they have such low caseloads explained that about an equivalent if not more cases are brought by the parties to their homes and are settled amicably rather than formally filed in the courts. Therefore the Shari'a court judges themselves have assumed the role of customary elders that citizens can seek help to resolve conflicts. The fact that Shari'a court judges themselves readily assume this informal role despite their formal mandates indicates the pervasive informal nature of Muslim dispute resolution traditions that are deeply imbedded in practice.

d) Limited jurisdiction and concurrent jurisdictions

Shari'a Courts have limited functional jurisdiction and definite geographical jurisdiction and clientele. The Shari'a Courts only deal with Muslim Personal Laws, hence they are not directly comparable to Regional Trial Courts and other Lower Courts which have broader jurisdictional structure. Further, Shari'a courts and lower courts have concurrent jurisdictions, therefore offering litigants a choice of forum for dispute settlement.

- 2.2.3 Establishing the true reasons behind the low caseloads in the Shari'a courts is key to determining what reforms are needed in order to provide an Islamic system of justice that Muslims trust, are comfortable with, and would like to use.

With severely low caseloads to start with Shari'a court judges are generally able to dispose of about as many cases as there are flowing into their courts during the year.

- 2.2.4 Shari'a district and circuit courts have demonstrated consistent high disposition rates from year 2000 to 2003. Except for 2001, the SDCs achieved acceptable levels of case disposition, even exceeding the total number of cases received during the year in two instances. The SCCs on the other hand demonstrate consistency in disposing cases during year, with a disposition rate of almost 100% for the four years covered by the study. (Tables 7 and 8). Of course, these high rates have to be taken within the context of low case inflows into the Shari'a court system. Since caseloads are so low, there is little reason why all cases cannot be disposed within the statutory requirements.

Table 7
SHARI'A DISTRICT COURTS, DISPOSITION RATE FOR 2000-2003

YEAR	CASE INFLOW	CASE OUTFLOW	DISPOSITION RATE (%)
2000	22	34	150
2001	16	8	50
2002	35	27	80
2003	62	173	280
TOTALS	135	242	180

Table 8
SHARI'A CIRCUIT COURTS, DISPOSITION RATE FOR 2000-2003

YEAR	CASE INFLOW	CASE OUTFLOW	DISPOSITION RATE (%)
2000	336	302	90
2001	346	344	100
2002	468	425	90
2003	383	294	80
TOTALS	1533	1366	90

Despite low caseloads, clearance rates are notably low both in district and circuit courts, indicating low productivity of judges and existence of case backlogs.

- 2.2.5 While disposition rates were consistently high, clearance rates were notably low registering at 17%, 04%, 13% and 71% in Shari'a District courts in 2000, 2001, 2002, and 2003 respectively; and at 55%, 58%, 59% and 43% in Shari'a Circuit courts in the same respective years. This indicates that prior to the years analyzed backlog in caseloads existed and judges were not able to declog the dockets during the 4 year period. This despite the consistently low caseloads in both the district and circuit courts (Tables 9 and 10). In fact, average outputs per judge in both district and circuit courts were extremely low, with the lowest of 2 cases in district courts and 12 cases in circuit courts in 2000 & 2003, and the highest of 34.6 cases in district courts in 2003 and 17 cases in circuit courts in 2002.

Table 9
SHARI'A DISTRICT COURTS, CLEARANCE RATE FOR 2000-2003

YEAR	TOTAL PENDING CASES	AVE CASELOAD PER JUDGE	TOTAL NO. OF CASES DISPOSED	CLEARANCE RATE	AVE OUTPUT PER JUDGE
2000	201	40.2	34	0.17	7
2001	183	36.6	8	0.04	1.6
2002	210	42	27	0.13	5.4
2003	245	49	173	0.71	34.6

Table 10
SHARI'A CIRCUIT COURTS, CLEARANCE RATE FOR 2000-2003

YEAR	TOTAL PENDING CASES	AVE CASELOAD PER JUDGE	CASES DISPOSED	CLEARANCE RATE	AVE OUTPUT PER JUDGE
2000	550	22	302	0.55	12
2001	594	24	344	0.58	13.7
2002	718	29	425	0.59	17
2003	676	27	294	0.43	11.8

- 2.2.6 Low clearance rates suggest delays in the delivery of justice. In fact a substantial amount of case backlog exists at every end of the year during the study period. (Tables 11 and 12). Severe limitations in court resources cannot be directly related to delay in litigation pace since the litigation process can proceed with minimum and basic office documentation equipment and minimum supplies. Accompanied by very

low caseloads, low clearance rates point directly to judge attitude, industry and job performance.

- 2.2.7 The concurrent status of judges in the district courts may have contributed to low productivity. In fact, there are only two judges handling the five district courts. Further, these judges are actually concurrent RTC judges.

Table 11
SHARI'A DISTRICT COURTS, YEAR-END BALANCES FOR 2000-2003

YEAR	CASE INFLOW AND OUTFLOW				
	BEGINNING YEAR PENDING	RECEIVED	TOTAL PENDING DURING THE YEAR	DISPOSED	END YEAR BALANCE
2000	179	22	201	34	167
2001	167	16	183	8	175
2002	175	35	210	27	183
2003	183	62	245	173	72
Total		135		242	

Table 12
SHARI'A CIRCUIT COURTS, YEAR-END BALANCES FOR 2000-2003

YEAR	CASE INFLOW AND OUTFLOW				
	BEGINNING YEAR PENDING	RECEIVED	TOTAL PENDING DURING THE YEAR	DISPOSED	END YEAR BALANCE
2000	214	336	550	302	248
2001	248	346	594	344	250
2002	250	468	718	425	293
2003	293	383	676	294	382
Total		1,533		1,366	

The significant use of informal dispute resolution methods by Shari'a court judges undermines the impartiality and fairness of the justice system.

- 2.2.8 Shari'a Court judges were not able to provide statistics on the composition of dispositive actions in their courts. Available report in the OCA indicate that of the outputs produced 62% of cases in SDCs and 83% in SCCs were decided or resolved. It is not known how many cases were settled at the Agama Arbitration

Council level and how many settled by court decision. A significant number comprising of 29% of cases in SDCs and 12% of cases in SSCs belonged to unclassified actions.

Table 13
COMPOSITION OF JUDICIAL ACTIONS, SHARI'A DISTRICT COURTS, 2000-2003

PARTICULARS	2000	2001	2002	2003	TOTAL	% TO TOTAL
Decided/Resolved Cases	22	6	17	105	150	62
Archived Cases	0	1	0	17	18	7
Transferred to Other Salas	1	0	0	3	4	2
Suspended	0	0	0	0	0	0
Unclassified Outflow Cases	11	1	10	48	70	29
Total	34	8	27	173	242	100
% INCREASE/(DECREASE)		(76)	237	541		

Table 14
COMPOSITION OF JUDICIAL ACTIONS, SHARI'A CIRCUIT COURTS, 2000-2003

PARTICULARS	2000	2001	2002	2003	TOTAL	% TO TOTAL
Decided/Resolved Cases	274	312	292	260	1137	83
Archived Cases	7	22	21	12	62	5
Transferred to Other Salas	0	1	2	5	8	0
Suspended	1	0	0	0	1	0
Unclassified Outflow Cases	21	9	110	17	158	12
Total	313	344	425	294	1366	100
% INCREASE/(DECREASE)		10	23	(31)		

3 SYNTHESIS AND CONCLUSIONS

- 3.1.1 If the assessment of the Shari'a courts were to be based only on the statistical data on their case performance, it would be easy to conclude that generally the Shari'a judges are not working as much as they should. And that if they did work as much as they should, still the amount of work would not be heavy. These are indicated by low average annual caseloads, low average annual outputs of judges, low average annual clearance rates, and existence of backlogs that have not substantially reduced over the indicated years despite low caseloads and relatively low annual case inflows into the court system. It appears that judges would merely work on as many cases as there are coming in during the year.

3.1.2 But several data indicated other factors affecting the performance of the Shari'a courts:

- a) Judges point to a considerable number of disputes actually brought to them in their homes and settled by them outside of the court process.

Why do Shari'a judges tolerate and accommodate these informal mechanisms when they are supposed to be guardians and implementors of a formal and law mandated mechanism? It appears that as Muslims, Shari'a judges are confused between their job as court judges (which requires enforcement of formal procedures), and their role as elders of their respective communities (which involves inter-personal and elderly advise outside of the formal process). Once becoming a judge, a Shari'a court judge consequently is regarded as an elder and is therefore looked upon as an authority in the settlement of disputes.

- b) Some circuit court judges handle several municipalities and provinces and consume considerable travel time. Travel time may have significant impact on the available working hours and energy of Shari'a court judges and may have consequent effects on their individual productivity.
- c) The lack of full-time Shari'a District Judges may likewise affect the level of performance of the SDCs. All five Shari'a District Judge positions of the fully organized SDCs are vacant. Two RTC Judges have been designated as acting Shari'a District Judges on concurrent capacity. Specifically, Judge Bensaudi Arabani Sr. who is the appointed RTC judge of Parang (Sulu) is the designated acting judge of the SDCs in Jolo (Sulu), Bongao (Tawi-Tawi), Zamboanga City, and Cotabato City, while Judge Rasat Balindong who is the appointed RTC judge of Midsayap (Cotabato) is concurrently the judge of the SDC in Marawi City.

It is common knowledge that the dockets of the RTCs throughout the country are congested. The CPRM study on caseload and semestral dockets of lower courts indicated that RTCs in Regions IX and XII have an annual average caseload of 377 per court from 1996 to 2000¹. Based on the total 597 cases that entered the SDC dockets for the last four years, as previously presented, this means that about 75 Shari'a cases on the average are added annually to the already congested caseload of each of these RTC judges.

- d) Severe resource limitations may also influence performance. For example, lack of transport further delay the work of the judge. Poor working conditions and inferior equipment affect morale over prolonged periods. Poor institutional image due to lack of infrastructure may affect public perception of the court's credibility and authority.

¹ "Analysis of the Caseload and Semestral Dockets of Lower Courts", August 2002, a CPRM study under the Supreme Court Project, Formulation of Case Decongestion and Delay Reduction Strategy project (Phase I)

- 3.1.3 Access and use are two important issues that have implications on the relevance and proper role of the government established Shari'a justice system. The sections above indicated not just access issues but also use issues.
- 3.1.4 Access issues are those that make the courts convenient to access either geographically or functionally. Several geographical access issues were identified as those having to do with lack of Shari'a courts in regions outside of Regions 9, 12 and ARMM; and the difficulty and cost of traveling to the courts which are based in provincial and city centers while the Muslim population are dispersed in the wider far-flung areas.
- 3.1.5 But the other significant issue is the "use" issue. Can low caseloads be explained by the lack of use of Shari'a courts by Muslim Filipinos? In the absence of statistics on dispute incidence, and on dispute resolution forums used, it would be difficult to accurately answer this question. But there are indicators that point to the preference of traditional and customary methods of dispute resolution that are imbedded in religious traditions and practices and with which Muslim Filipinos may be more comfortable.
- 3.1.6 The ensuing sections of this report seek to find explanations to the above issues. They explore the historical, societal, religious, and cultural contexts, the legal framework, governance mechanisms, and the institutional and internal judiciary organizational and capacity aspects in the effort to understand the issues that underlie the performance of the Shari'a justice system in the Philippines. Understanding these underlying issues will pave the way for identifying the appropriate directions towards defining the appropriate justice system for Muslim Filipinos that are consistent with their religion, and integrated with the overall national justice system.

ATTACHMENT A

DEFINITION OF BASIC TERMS APPLIED IN CASELOAD ANALYSIS

TERM/CONCEPT	DEFINITION
Archived Cases	Cases filed in the court's archived records based on special dockets
Backlog	Cases in which all the necessary pleadings have been filed, also called "actual trial ready cases"
Caseload	Inventory of all cases with the court, or assigned to a judge, waiting to be processed in whatever stages the cases may be found. ² Within the context of this study, caseload means the total number of cases pending in court within a given year.
Caseflow	A process in the judicial system consisting of the entire events attendant to the processing of cases from filing to disposition
Cases Decided	Cases that were resolved or dismissed through a compromise agreement of the parties, plea of guilty by the accused, summary judgment, judgment on the pleadings, and dismissal for lack of interest or failure to prosecute the case
Case Inflow	Movement of cases added to the pending cases at the beginning of the month which are classified as (1) new cases filed or raffled, (2) revived or reopened cases, and (3) cases received from other salas or branches due to inhibition by judges or change of venue
Case Outflow	Movement of cases deducted from the total number of pending cases at the beginning of the month which are classified as (1) cases decided or resolved, dismissed, or with judgment rendered on the pleadings, and the like, (2) cases archived, (3) and cases transferred to other salas or branches due to the inhibition of the presiding judge or change of venue
Cases Revived and Reopened	Cases which have been decided or resolved but reopened for re-trial, and those cases retrieved from the archives due to the apprehension of the accused, or the filing of the answer by defendant
Cases Suspended	Cases wherein the proceedings were suspended due to petition for review on certiorari, petition for investigation, prejudicial questions, mental examination or rehabilitation of an accused and the like. Include all which were suspended prior to the month being reported, but these cases should not be deducted from the total cases pending at the end of the month.
Cases Transferred	Cases from co-equal courts transferred due to the inhibition of judges or change of venue
Clearance Rate	The total output that the judges have produced in relation to the total cases pending in courts at a given period
Congestion	Condition of a court burdened with a heavy volume of cases regardless of the time lag between filing and disposition, and irrespective of whether the cases hit a snag as they inch forward towards final disposition ³
Delay	Lapse of an abnormal period of time between the filing of a case and its termination ⁴
Disposition Rate	Outputs the judges have produced in relation to the total new case inflows during the year
New Cases Filled or Raffled	Sum totals of the cases falling within the court's original jurisdiction, plus the appealed cases and the criminal complaints for preliminary investigation

² "Congestion and Delay in Metro Manila Trial Courts: Causes and Remedies", Atty. Daniel T. Martinez, p.137

³ "Managing Delay in the Courts, Solutions and Changing Work Patterns", Justice Maximo Maceren, p.12

⁴ Martinez, p. 12

2

OVERVIEW OF MUSLIM DEMOGRAPHY, AND ISLAMIC JUSTICE AND HUMAN RIGHTS

1 INTRODUCTION

- 1.1.1 A country's or society's economic and overall societal development is dependent among others on its ability to uphold the rule of law and establish as well as maintain mechanisms of justice and dispute resolution that ensure the law's efficient, speedy and fair application. But a society's capacity to uphold the rule of law and operate efficient and impartial institutions of justice and conflict resolution is rooted in its history, culture, and traditions that shape its collective values and perspectives of what is right or wrong, what is just and unjust, and what processes and practices can best facilitate the resolution of disputes.
- 1.1.2 The previous section provides an assessment of the performance of the Shari'a courts, their low caseloads and their low productivity. The assessment pointed to certain factors that have little to do with the performance of judges but much to do with customs and traditions in dispute resolution which have emanated from the Muslim religion and have evolved to become customs, beliefs and traditional practices.
- 1.1.3 The 1997 Philippine Constitution provides that the state shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies (Art. XIV, sec. 17). PD 1083, enacted prior to the adoption of the 1987 Constitution, provides for the codification of Muslim Personal Laws and the establishment of a Shari'a Justice System. It implements the constitutional mandate and provides mechanisms towards integrating cultural Filipino Muslims into mainstream Philippine society. Enacted during martial law period, PD 1083 is considered as an instrument of the dictatorship government to resolve the Muslim conflict. By creating a formal system of providing justice through the creation of Shari'a courts and setting up the legal framework, the dictatorship government must have thought then that societal integration can be achieved by social delineation, that is, by recognizing the uniqueness of the beliefs, culture and traditions of Muslim Filipinos, and consequently also recognizing the divergence in their thinking of what is just and lawful on civil matters, from the thinking of the rest of the country as embodied in our civil laws.

- 1.1.4 The age-old problem of national integration between minority groups and the greater majority of Christian communities has been a result of years of struggle for our Muslim brothers and sisters. Best said by Former Senator Santanina Rasul: *"In order to be able to understand the Muslims of the Philippines and their culture one has to understand their history."* It will be important to note as well, that in order to fully grasp the nature of their culture, Islam has to be understood.
- 1.1.5 This section of the study strives to gain relevant knowledge and adequate understanding of the religious and cultural history and demography of Filipino Muslim communities. It hopes to provide information and perspectives on Islamic justice and human rights and their sources and roots, the institutions and practices. In so doing, such understanding and appreciation may provide guidance in assessing the role and relevance of the government established Shari'a justice system, in reviewing the implications of separate laws and dispute resolution institutional mechanisms on the overall coherence of a national system of justice, and in determining whether the integration of Muslim justice with the mainstream justice system of the country would be possible.

2 PROFILE OF ISLAM AND THE MUSLIM SOCIETY

2.1 History

- 2.1.1 Islam touched the shores of the Philippine Islands way before American and Spanish colonizers did (Al-Attas:1969). The Islamization of the Philippine Archipelago was part of the spread of the religion in the Southeast Asian region. Islam is not merely a religion, as noted by many Muslim scholars but is as well a way of life (Doi: 1984). Thus, when Islam spread throughout the country, it also introduced a system of government and a sophisticated culture.
- 2.1.2 Islam introduced a highly developed political structure, the Sultanate. The traditional Muslim social structure in the Philippines was headed by a sultan who assumed both religious and secular authority. The Datu assumed communal leadership, providing aid and arbitration through agama courts under his leadership. The wealth amassed by the conquests of the Datu is provided to his subjects for aid, employment, and protection when needed. Interestingly, the Datu is not determined by their wealth but by the number of his followers. Further, the holy Qur'an, the source of both secular and religious percepts and laws of Muslims, provides a sense of oneness and fraternal bond between Muslims as an Ummah or Islamic Nation (21:92). Islam changed the country's once fragmented nature into a single nation (Bangsa Tunnga).
- 2.1.3 Thus, when the colonizers came and threatened both the growth of their government, much resistance was felt, especially in Southern Philippines where Muslim communities were most concentrated. The Spanish assimilation only succeeded in creating rifts between the Christianized Filipinos under Spanish rule and the Muslim communities that refused subjugation (Majul:1973). It was the same during the American Regime, if not worst, wherein they employed a process of extermination through military troupes when the Muslims refused subjugation and resisted the

exploitation of resources within the Mindanao region (Tan: 1977). The Americans realized then that the process was futile and assumed a strategy for winning the Muslims, through the establishment of a special bureau for their affairs and concerns (Gowing: 1983).

- 2.1.4 However, through these years, from the American initiative to integrate Muslim communities with the majority of the Filipinos, divisiveness in culture and religion has spread and grown into social unrest and conflict situations. The Muslims remained isolated from the developments provided by the government in the northern regions of the Philippines, separatist movements grew, and resentments between Christians and Muslims developed (Fernando: 1979, Rahman: 1954).
- 2.1.5 The Philippine government in several instances tried to address the issues of the country regarding Muslim separatist movements through policies and the creation of several offices. A Tripoli Agreement was developed to grant political autonomy for two Muslim regions, and recognition of their "cultural values, traditions, and customary and Islamic laws, in the formulation of State policies." (379)
- 2.1.6 Several agreements have been signed since, and still much has yet to be resolved.

2.2 Philippine Muslim Communities

- 2.2.1 As a national cultural minority, the Philippine Muslim communities have a distinct religion and secular practice, culture and tradition.
- 2.2.2 A rough estimate of the Filipino Muslim community by the Office on Muslim Affairs (OMA) states that the Muslim population consists five percent (5%) of the total Philippine population. Concentration of Muslim population is apparent in the ARMM, Region 9, 11 and 12. Their population in each region is illustrated in the table below.

Table 15
TOTAL POPULATION AND MUSLIM POPULATION, 2000

REGION	TOTAL POPULATION IN THE REGION	TOTAL MUSLIM POPULATION	PERCENT TO TOTAL REGIONAL/ NATIONAL POPULATION
TOTAL PHILIPPINES	76,332,470	3,862,409	5.06
NCR	9,880,102	58,859	0.60
Region 1	4,196,276	4,135	0.10
Region 2	2,809,520	3,910	0.14
Region 3	8,021,325	9,465	0.12
Region 4	11,764,246	69,561	0.59
Region 5	4,681,111	3,270	0.07
Region 6	6,202,431	3,777	0.06

REGION	TOTAL POPULATION IN THE REGION	TOTAL MUSLIM POPULATION	PERCENT TO TOTAL REGIONAL/ NATIONAL POPULATION
Region 7	5,689,814	5,351	0.09
Region 8	3,603,708	2,610	0.07
Region 9	3,085,322	564,085	18.28
Region 10	2,743,894	16,582	0.60
Region 11	5,181,299	192,914	3.72
Region 12	2,591,473	736,461	28.42
CAR	1,360,611	1,681	0.12
CARAGA	2,091,505	7,483	0.36
ARMM	2,410,845	2,182,245	90.52
Disputed Area*	18,989	20	0.11

Source: NSO Census of Population and Housing: "Household Population by Religious Affiliation, by Sex", 2000

NOTE: Disputed areas are in locations not covered by the census/ study made by NSO

2.2.3 Historically Muslim Filipinos are not integrated as one definable and united society. There are several endemic characteristics in their separate identities: (1) language, (2) political structure, and (3) degree of Islamic orthodoxy. Each of the subgroups has been proud of its separate identity and conflict between communities has been endemic throughout Philippine Muslim history. However, their common experiences, especially in their relations with non-Muslim Filipinos, have somehow brought them together time and again.

2.2.4 Philippine Muslims consist of the following subgroups defined on the basis of language:

a) Maguindanaos

The Maguindanao refers to the people living in the Pulangi area, located in what are now North Cotabato, Sultan Kudarat and Maguindanao Provinces. Cultural communities within this region also include the Tituray, T'boli and the Manobos.

Maguindanao originally means "people of flooded plains". The name Maguindanao was also named after the Sultanate or dynasty that ruled the area for several years.

b) Maranaos of the two Lanao Provinces

Maranao means "people of the lake". Their homeland is called Lanao or "lake". Their oldest settlement started around here, and up to this day, highly populated communities still dot the lake. Their language is similar to Maguindanaon and Iranun.

The Maranaos form the largest Muslim community and cultural minority in the Philippines. Their families are traditionally large and close-knit. Feudal standing is in some parts still visible. The position, wealth and land ownership of many of those considered from an ancestry of "royalty" still maintain some political position or prominence in their areas.

The Maranaos are considered the most devout and most traditional of the Muslim communities. They have braved much of the attempts to conquer and subdue them. They are also known for their artistry in carving, boat making and creation of malongs.

c) Tausugs

"Tausug" derives from tau meaning "man" and sug meaning "current," and translates into "people of the current." Another argument made on the meaning of the name states that the name in fact translates to "brave people".

The Tausugs even before the arrival of Islam or Christianity and the people who promulgated their system of government, the Sulu Islands, where the Tausugs are found, had their own system of government. The Tausugs openly welcomed Islam and the system of government that came with it. This has bred to the establishment of the Sulu sultanate. Leaders from this region moved to other places in the country, spreading Islam and its system of government in Tawi-Tawi, Palawan, Basilan, Zamboanga, and Sabah.

The Tausug, numbering around 502,918 (NCCP--PACT) in 1988 are predominant in the northern part of Sulu province, i.e., Jolo Island and the neighboring islands of Pata, Marunggas, Tapul, and Lugus, and to a lesser extent in Siasi and Pangutaran.

d) Samas

Also in the Sulu Archipelago are the Samas consisting of five sub-groups including the Samals and the Badjaos. These people are highly dispersed in the Sulu Archipelago. They are considered boat-people, spending most of their time in constant movement throughout the islands in the area or living on the water. The Samas are also considered the sea-gypsies of the Philippines.

e) Yakans of Zamboanga del Sur Province

Yakan is the majority Muslim group in Basilan. There is a registered 196,000 population of Yakans in the area of Zamboanga (NCCP-PACT, 1988).

Yakans have generally two spheres of belief integrating Islamic principles and traditional beliefs into what is referred to as "folk Islam".

There is little known about this people. One of the highlights of their history is the arrival of Pedro Cuevas or Datu Kalun, an outsider who killed the datu of the Yakans and then was accepted as their Datu in the early 1800. The Yakans

were primarily under the Sulu Sultanate, but proving to be deliberately their own through the leadership of Datu Kalun, the Basilan Yakans had given the Spanish and Americans. However, the Yakans have remained in many instances separate from any rule, other than that of Sultanates their Datu follows. Due to much political conflict in the area of Basilan, many of the Yakans have settled in the region of Zamboanga City.

f) Ilanons or Iranuns

The Iranuns are said by many to have been the origin of the ethnic groups within the Lanao del Sur to the Maguindanao areas. The Iranun language is in fact seen in the Maranao and Maguindanao languages. The Iranuns were said to have fought under the Maguindanao sultanate. Many sultans of Maguindanao were said to have been from the Iranuns.

g) Molebugan or Molbog

The Molbogs mostly live in Balabak, Palawan. The word molbog originated from the word “malubog” which means “murky or turbid water”. Their language and practices share close affinity to the Orang Tidung (Sabah), Sama and the Tausugs. These people and other Muslim communities in Palawan were ruled by Sulu datus under the Sulu sultanate.

h) Kolibugans

Kolibugan means “half-breeds”. Originally from the Subanon tribes, these people are called such because their culture has been said to be half breed, having come into Islam through intermarriage with Muslim communities. These people live the Subanon organization and language.

The term kolibugan is as well used to refer to all peoples who have accepted Islam through intermarriage.

i) Sangil

The Sangils are found in the Balut Sarangani, parts of South Cotabato and Davao Del Sur provinces. They are said to have come from Sanghe (islands in Indonesia between the Celebes), the origin of the name Sangil. They are people who were already Muslims before they came to Philippine shores.

The Sangils are also known for their boat making. They have also been said to be the buccaneers who attacked Spanish territories in other parts of the Philippines.

j) Kaagan

The Kaagans are mostly found in the Davao provinces. Their islamization was achieved through the arrival of the Maguindaons and the Tausugs. However,

when the Maguindanao sultanate and Tausugs left, the Kaagans became marginalized and with less improvement in their social organization.

k) Muslims Inhabitants of Palawan

Palawan inhabitants (Panimusan) were islamized through the Sulu sultanate, through the Tausugs who went there to introduce to Islam to the local people. Now, the Muslim populations in the area are found in Batarasa, Quezon, Brooke's Point, Espanola, Narra, Roxas, Taytay and Aborlan.

- 2.2.5 Much has yet to be written down and history uncovered about the Muslims. Little research has been made and most literature about them has not been consistent or reliable, given that many in the Muslim population feel they have been misrepresented and manipulated in studies and information that have been made so far.

2.3 Muslim Religion and Culture

ISLAM AS THE MUSLIM RELIGION

- 2.3.1 Islam is the religion of the Muslims. Islam is the youngest of the world's major religions. Its roots are traceable to the traditions of Judaism and Christianity (Lippman: 1983). However, Islam is not merely a religion, as in the Western sense. Islam is a unified way of life, crossing both religion and secular life, from the percepts and principles of right and wrong to the system of law, government and economic life.
- 2.3.2 Islam teaches that Allah is the Lawgiver and that His percepts and the laws or Shari'a provides the path to Allah. The Shari'a also provides to Allah's people the directions for the interpretation and expansion of the Law.
- 2.3.3 There are three classifications of sources of the Shari'a: the Qu'ran, the Sunnah and Ijma, and the Qiyas (Maududi: 1970). The Shari'a in these three sources aims to regulate the relationship of man with Allah, and among men. It is important to look into the sources of Shari'a for here lay the principles that guide Muslim laws and their concept of justice.

ISLAMIC PRINCIPLES AND LAWS

- 2.3.4 The following basic principles under the Shari'a were observed (Doi: 1984), and will be discussed further in the next parts of this document:
- a) The larger interest of society takes precedence over the interest of the individual.
 - b) Although 'relieving hardship' and 'promoting benefits' are both among the prime objectives of the Shari'a the former takes precedence over the latter.

- c) A bigger loss cannot be inflicted to relieve a smaller loss or a bigger benefit cannot sacrifice for a smaller one. Conversely, a smaller harm can be inflicted to avoid a bigger harm or a smaller benefit can be sacrificed for a larger benefit.

The Qu'ran

2.3.5 The Qu'ran contains the revelations of Allah, in fact it is the Book of Allah sent through the last of the Prophets, Muhammad. The Quran:

- a) Contains the knowledge imparted by Allah and the guidance for all righteous men (2:145)
- b) Is the declaration of the truth and the light to show the right path (2:138, 4:4)
- c) Is the wise (10:1), the complete exhortation (10:57), and the clear message (14:52)
- d) Is a rope to Allah, and by holding unto it, individuals and nations are saved (3:108)
- e) Is the remedy for all the spiritual ailments of men (17:82)
- f) Is the constant reminder for all that Prophets will not come anymore for our guidance (21:50)
- g) Acts as criterion to choose between the truth and the falsehood (25:1)
- h) Is an embodiment of the fairest statements and Divine words of wisdom (54:5, 65:6)
- i) Provides a code of conduct for every believer (69:48)
- j) Is the commandment and a warrant for believers (43:1-2)
- k) Its injunctions are manifest (43:4), sublime (85:21) and blessed (21:50)

2.3.6 It is said that: *"The process of revelation of various injunctions (Ahkam) of the Qu'ran shows that the revelation came down when some social, moral or religious necessity arose, or when some Companions consulted the Prophet concerning some significant problems which had wide repercussions on the lives of Muslims"* (Doi:1984). Tafsir or the exegesis of the Qu'ran was made therefore to make the injunctions of the Qu'ran clearer to the people of Allah. Sahaba or the companions of the Prophet Mohammad provided commentaries on the Qu'ran and these are included in the Tafsirs. Tafsir is called a science that deals with studying and understanding the Book of Allah. There are a few scholars of Tafsir. They have in each of their own ways provided injunctions and passed them to their Tabi'un or successors or followers. With these, three main schools of the Qu'ranic Commentary developed:

- a) The Makka that learned from 'Abdallah Ibn 'Abbas (considered the rabbi of the community, the interpreter of the Qu'ran and the Sea during his time, as well as most knowledgeable in the Qu'ran and its messages among the companions of the Prophet);
 - b) That of Iraq which recognized Ibn Mas'ud as its main authority, and duly considered the rest of the companions ('Adballah bin Mas'ud was considered one of the most knowledgeable companions, given his constant pursuit and study of the Word);
 - c) The Madina, the first capital of the Islamic Caliphate.
- 2.3.7 Tafsir writing has gone on up to this date, thus there are innumerable amounts of them around the world, and in different languages.
- 2.3.8 There are two kinds of Tafsir: *Al Tafsir Bil Ma'thur*, which are the first books of this class and the *Al Tafsir Bil Ma'qul Wa Bil Darayah* wherein commentators rely much on their own intellectual reasoning and initiative to interpret the verses of the Qu'ran. The latter takes into several forms as well, due to the sheer number and differences of leanings of its writers: (a) The Linguistic Tafsir; (b) The Sufi or Philosophical Interpretations; (c) Al-Israiliyyat, which is based on the explanations and narrations received from Jews converted to Islam on the stories of the Qu'ran; (d) Commentaries on the Verses of Injunctions; and (e) Commentary through narration or proof.
- 2.3.9 Nonetheless, the Qu'ran serves as the best Tafsir of itself. It has two elements, those which are fundamental or have established meaning and allegories. Parts of the Qu'ran specify and define commandments of Allah while parts of it explain or help explain Allah's guidelines. Those of allegorical meaning are provided but not understood by just anyone, and is known to Allah alone. Much interpretation is provided on these meanings and may be included in the Tafsirs that follow.
- 2.3.10 The Qu'ran therefore as Tafsir and body of legal injunctions or Ahkam, forms the source of Shari'a. The verses of the Qu'ran are generally classified accordingly:
- a) Those, which teach mankind through the remembrance of the gifts of Allah.
 - b) Those, which teach mankind through the remembrance of various happenings, incidents, etc.
 - c) Those, which teach mankind through the remembrance of death and Eschatology.
 - d) Those, which teach mankind the injunctions of the Qu'ran.

2.3.11 Most relevant to this study are the injunctions taught through the Qu'ran, which can further be differentiated as follows:

- a) Concise injunctions, precise commandments contained in the Qu'ran but do not dwell on rules.
- b) Concise-cum-detailed injunctions, contained in verses (mentioned in commandments in brief or mentioned in detail and are for further provisions under the Hadith and Sunnah).
- c) Detailed injunctions, contained in the Qu'ran that provide complete details of the commandments.
- d) Fundamental principles of guidance derived from injunctions, which include principles of freedom, justice, consultation, public interest and equality.

The Sunnah

2.3.12 The Qu'ranic injunctions from which the Shari'a is derived, is further explained and translated into practice by the Sunnah. Sunnah literally means a way, practice, rule of life; and refers to the exemplary conduct of the model behavior of the Prophet in what he said, did and approved. Thus the Sunnah is second in authority to the Holy Qu'ran. The Hadith is called the "store room" of the Sunnah of the Prophet, for all the events, actions and teachings are taken together as a Tafsir of the Qu'ran. The Hadith literature therefore, is the apostolic precept and example on the duty of man, the basis for the system of law, theology and customs which is Islam (Doi:1984).

2.3.13 Thus the Shari'a clearly comes from the Sunnah or the Book called Hadith. Shari'a herein described means "Islamic Theology". Hadith is derived from "Hadatha" which means a tale or verbal communication of any kind, in its broadest sense.

2.3.14 The Qu'ran especially provides guidance from Allah for man to live a decent and refined life. It is full of life and details; however, Fatawa (religious decisions) and Traditions and the Hadith were/are developed to supply what is not specified under the Qu'ran.

2.3.15 The life of Muhammad, which is contained in the Hadith, is imitated and Muslims followed his examples. A record of all his decisions, his answers to formal inquiries, and all that he said, did, and what he kept silent about are compiled in Hadith. These were passed on through text and through Isnad or transmitters who passed Traditions by mouth. The Isnads were recorded in the Asma al-Rijal, which contains the name of men who passed on traditions. One of, if not, the earliest collections of traditions is the Musnad.

2.3.16 Traditions were recorded according to their subject matter under the heading of law books. The Isnad and the text are of equal importance for Muslims. Thus they have set principles for criticizing Isnads and texts. There are Hadith that were rejected. For non-compliance with principles set. These principles include:

- a) Principles for criticism of Isnad (Doi: 1984):
 - All Traditions must be traced back to its original reporter through a chain of transmitters. These transmitters must be of excellent character, truthful and must have a good retentive memory and high qualities of head and heart.
 - Every Tradition, which reported an event or happening that occurred frequently in the presence of a large number of people, must have been originally reported by several narrators.
 - b) Principles for criticism of Hadith (Doi: 1984):
 - The Hadith should not be contrary to the text or the teachings of the Qu'ran or the accepted basic principles of Islam.
 - The Hadith should not be against the dictates or reasons or laws of nature and common experience.
 - The Hadith should not be contrary to the Traditions, which have already been accepted by the authorities as reliable and authentic by applying all the principles.
 - The Hadith, which sings the praises and excellence of any tribe, place or persons, should be rejected.
 - The Hadith that contains the dates and minute details of the future events should be rejected.
 - The Hadith that contains some remarks of the Prophet, which are not in keeping with the Islamic belief of the Prophethood and the position of the Holy Prophet or such expression as may be suitable to him, should also be rejected.
- 2.3.17 It is necessary that these principles be appreciated in order that the different schools and different sects of Muslims can be understood. The Hadith is extremely important to Muslims because the Traditions of the Prophet lay down the precepts and laws to be followed, second to the Qu'ran. In fact, there is a very lengthy list of Hadith scholars that helped in the growth of Islamic jurisprudence and, as such, formed the basis of Shari'a throughout the world.

Secondary Sources

- 2.3.18 The **ijma** is the consensus of the opinions of the learned men and the jurists. To arrive at an ijma Juristic reasoning or the **Ijtihad** are normally conducted. Ijma is the consensus of the Ulama based on the Book of Allah, the instructions of the Prophet, and the actions, demonstrations and preaching as well as speeches of the prophet. There are three broad categories of the Ijma: the verbal consensus of opinion, the consensus of opinion on an action, and the silent consensus. Another subdivision of Ijma is that of regular (Jurist does something and the rest of the Jurists does not

- challenge him) and irregular (wherein one or more Jurists question the action of a Jurist) consensus of opinions.
- 2.3.19 The qualifications of the Jurists who can sanction the Ijma are a point of contention. According to some Jurists, only the Companions of the Prophet can sanction the Ijma. The Shi'ites on the other hand believe that Ijma can only be sanctioned by the descendants of Ali (son-in-law and cousin of Muhammad) and Fatimah (daughter of the Prophet). Imam Malik argues on the other hand that the Ijma can only be sanctioned by the Jurists of Madinah. Hanifah school argues lastly that the Ijma can be sanctioned by any qualified Jurist regardless of where he lives, or the sect where he belongs.
- 2.3.20 **Quyas** or analogical deductions gives an instrument to cope with the growing needs and requirements of society, while the **Isitihsan** or juristic preferences or equity of a jurist as against Quyas, helps in providing elasticity and adaptability to the entire Islamic legal system. There are many contentions as well on the Quyas. There are Muslims, like the Mutazilitithates, who are anti-Quyas, stating that Qu'ran is provided as guidance, that the Qu'ran is the only source and that Quyas is not acceptable. Pro Quyas Muslims on the other hand argue that according also to the Hadith of the Prophet and the Qu'ran, individual judgment on matters not mentioned in the Qu'ran and Sunnah can be rendered.
- 2.3.21 For pro-Quyas and those who agree on the use of Ijtihad, knowledge on what is lawful and unlawful is of four sorts:
- a) The kind of knowledge that no one is allowed to be ignorant or doubtful of;
 - b) The kind of knowledge on Traditions, much of which is known to the scholars, of which not all is compelled to know;
 - c) Legal knowledge derived from Ijma or consensus; and
 - d) Legal knowledge derived from Ijtihad or personal reasoning through Quyas or analogical reasoning through which the right decisions are made.
- 2.3.22 According to Jurists and the examination of Imam Shafi'i on the Quyas, the Quyas shall be accepted based on the following conditions (Doi: 1984):
- a) That the Quyas must be applied only when there is no solution to the matter in the Qu'ran or in the Hadith;
 - b) That all Quyas must not go against the principles of Islam;
 - c) That the Quyas must not go against the content of the Qu'ran neither must it be in conflict with the traditions of the Prophet;
 - d) That it must be a strict Quyas based on either the Qu'ran, the Hadith or the Ijma.

- 2.3.23 The Shi'ites, as in other sects apply Quyas but have a different name for it (aql and ra'y).
- 2.3.24 **Ijtihad** is the use of human reason to arrive at an elaboration or exploration of the Shari'a Law. Ijtihad however cannot be made on the existence of Allah, the truism or Prophethood of Muhammad and other prophets, and on the authenticity of the Qu'ran. Ijtihad starts with the principles of the Qu'ran, Sunnah, or Ijma and cannot be used to achieve that which contradicts a rule established therein. Quyas and Ijtihad are accepted by most Muslims especially the four schools of Sunni to determine the Juristic basis for reasoning on issues that have original subjects; with an object of the analogy, being a new subject; where there exists effective cause common to both subjects; and where there is a rule arrived at by Quyas.
- 2.3.25 A Mujtahid is one who is well versed in the Qu'ran and the reasons why the verses and chapters were revealed; well versed in the study of traditions of the Prophet Muhammad; knowledgeable on the principles of Ijma and on the injunctions of the Quyas and conditions surrounding it. A Mujtahid is also required to possess certain good character such as being a practicing Muslim, pious and law-abiding, not influenced by the hereticals, and just, reliable, trustworthy and pure of iniquitous practices. A Mujtahid is therefore one who is able or allowed to Ijtihad. Mujtahids are classified as those who were the companions of the Prophet, who did Ijtihad and later founded schools of jurisprudence, and following the two former Mujtahids of the present day who give Fatawa or Juristic opinions on religious matters. The Shi'ites however believe the Ijtihad is a prerogative of their Imams alone.
- 2.3.26 The concept of **Istislah, Istihsan or al-Masalih al Mursalah** (the matters which are in public interest and which are not specifically defined in the Shari'ah) was enunciated by Malik bin Anas and has also become a part of the Shari'a system. Only one school of the four Sunni schools does not recognize the Istislah as a source. However, it is argued that the principle of public welfare and general interest in the decision made by the Jurists is considered in the Quyas, even in the analogical reasoning employed by the Shafi'is.
- 2.3.27 **Istitshan** literally means legal presumption. It includes the rule of evidence, or the presumption that a state of affair known to exist still continues until it is proven otherwise. This is as well a source of Islamic Jurisprudence as a subsidiary source of the Shari'a. The presumption of innocence until proven guilty adopted by most courts is applied through this.
- 2.3.28 **Urf** or practices and **Adat** or customs are recognized by all schools of Jurisprudence in Islam, as long as they do not violate the provisions of the Qu'ran and the Sunnah.

MUHAMMEDAN COMMON LAWS VS. MUHAMMEDAN REVELATION LAWS

- 2.3.29 Pure Islam is indicated under the Muhammedan Revealed Laws. It is argued that the Revealed Law is in fact what is indicated under the Qu'ran. The Muhammedan Common Laws may partly contain the Traditions and partly other sources such as

local usages and customs, subject to the changes of the times and according to the needs of any particular community or nation.

- 2.3.30 The Muhammedan Common Laws is said to prove that "Islam is capable of progress and possesses sufficient elasticity to enable it to adapt itself to the social and political changes going on around it. The Islam by which I mean they are Islam as taught by Muhammad in the Koran, and not that Islam as taught by the 'Mohammedan Common Law,' was itself a progress and a change for the better. It has vital principles of development, of progress, of rationalism, and of adaptability to new circumstances." (Cherag Ali)

THE SUNNI AND SHI'A MUSLIMS

- 2.3.31 Accordingly, three sects of Muslims evolved because of the disagreements that manifested as religious disagreements, resentment of the power held by the third Caliph, and business rivalries between factions of prominent families and aristocracies. The war ended with a new dynasty of Caliphs who ruled Damascus.
- 2.3.32 One of the sects that were formed is the Sunni, the largest division of Islam. Sunni translates to "the people of Sunnah" in Arabic. The Sunnah is the custom, method, path or example of the Prophet Muhammad as stated in the Hadith. The Shi'a Islam is said to have emerged from the Sunni Islam. Most of their precepts are the same.
- 2.3.33 Shi'a Muslims are the followers of a particular school of Islamic thought, commonly referred to as *ahl al-bayt* or the family of the Holy Prophet. The Shi'a Muslims believe that shortly before the Prophet Muhammad's death, he publicly nominated his cousin and son-in-law 'Ali to be his successor. Such that, when the rival claims for the caliphate occurred, all other than 'Ali, the Shi'ites considered illegitimate. 'Ali was made caliphate only after two caliphs ruled. Rebellion followed, opposing 'Ali and this formed the first major schism in Islamic history. Shi'a Islam in the next years, when the Umayyads passed on the Caliphate through the ages down through their family, held their own separate Islamic community in Iraq that did not recognize the authority of the Umayyad Caliphate. The successors of 'Ali was not called Caliph anymore but given the title "Imam" or spiritual leader of Islam. When one refers to the Shi'ites one is referring to the Twelve Shi'a as opposed to the other sects under Shi'a that have evolved.
- 2.3.34 Fundamental differences can be found between the Sunni Muslims and the Shi'a Muslims. First is that the head of Shi'ites, the Imam, is considered, aside from being both a secular and spiritual leader, to be infallible and free of sin; thus he is of a spiritual status, allowing to mediate between men and the invisible world. The Sunni Muslims merely consider their caliphs as both a political head and religious leader. Second, disagreements, since time immemorial, have been on the Traditions to be followed as the Shari'a. The Shi'ites followed the firm basis of evidence in the Holy Qu'ran and the Traditions of the Prophet Muhammad as conveyed by his family whom, according to their belief, he appointed. Sunni Muslims consider the secondary sources mentioned as Quyas and Ijma as sources as well of Shari'a.

3 JUSTICE AND HUMAN RIGHTS IN ISLAM

3.1 Towards a General Description of Justice

Sources of the Islamic Justice

3.1.1 Justice is inherent in Muslim principles and laws. Three gifts that are mentioned to be given by Allah, stand as emblems of three things that hold society together (*"We sent aforetime our Apostles with Clear Signs and sent down with them The Book and the Balance (of Right and Wrong), that men may stand forth in Justice", Qu'ran ch. 57:25*):

- a) **The Book**, which is the revelation that commands Good and forbids Evil;
- b) **The Balance** or justice which gives to each person his due; and
- c) **The Iron**, which is a strong arm of the Law that maintains sanctions for evildoers.

3.1.2 The following verses show that justice is in fact embodied in the Qu'ran and the percepts of Islam:

"Allah commands justice, the doing of good, and charity to Kith and Kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition", Qu'ran, ch. 16:90

"Say: My Lord has commanded justice", Qu'ran, ch. 7:29 (A prophet of Allah is told to tell the people to do justice)

"Allah commanded you to render back your trust to those to whom they are due. And when you judge between man and man, that you judge with justice", Qu'ran, ch. 4:58 (in the Surah al- Nisa)

The Meaning of Justice

3.1.3 Justice is commanded by Allah and whosoever violates it shall face grievous punishment. Aside from justice, Allah commands that good deeds are to be performed, such as returning good for ill. The opposite of good behavior and charity as well as justice are those "shameful deeds," and those that are unjust and rebellious to the teachings of Allah.

3.1.4 As pointed out by Moulavi M.H. Babu Sahib (1983), justice is in fact of two aspects: justice as precedent to law and justice that is subsequent to law. And that justice subsequent to law is truly known as judgment. In Islam, justice is *Adl* and is a precedent to law. The laws of Islam are based on the principles stated under the Qu'ran and the Sunnah. The main and foremost source of the Law is the Qu'ran, which contains the Words of Allah – infallible in nature. The Sunnah is taught to be

infallible as well, as stated in the Qu'ran. The analogical reasoning when supported by general agreement is as well infallible and is considered an Ijma according to the words of the Prophet (*"My followers will not agree upon an error"*).

- 3.1.5 It is said that Islamic justice is something higher than Roman or other human law because it seeks the innermost motives, because whatever is acted upon Allah sees the acts and motives of all. There is an explicit emphasis that Allah is the Supreme Lawgiver and the whole Ummah (the Islam nation) is merely His trustee. Muslims may provide sound opinions on matters of the Shari'a and even interpret the Law. In this sense, Islamic policy is democratic. But no Muslim, qualified or scholarly, is allowed to form independent judgment or make alterations to the Law set by Allah (Ahmad: 1976). This is the reason mentioned why Islam offers greater stability especially in the creation of other laws since they are made not by warring politicians but by sober jurists (Council of jurist), based or guided by the Shari'a with its Divine Origin (Pickthal & Marmaduke Muhammad: 1976).
- 3.1.6 Justice in Islam means being morally righteous or just, being just before God and the observance of Divine Law. Justice means, as in Western meaning of justice, to put things in the rightful place (Sahib: 1983). The "right place" in Islam – is defined based on the precepts and laws provided by Allah through the Qu'ran and through the examples set by the Prophet Muhammad in the Sunnah. Certain precepts as well define this so called "rightful placement" of matters:
- a) Equality and impartiality of justice, without foremost regard for the powerful, rich, family and relations, sects or country of origin, etc;
 - b) Justice is based on mutual respect of human beings towards each other;
 - c) Reasonable reasoning and decision-making as well as competency of a qadi to judge (or judge or jurist), not based on his own precepts or biases but on the principles, teachings and learnings from the Qu'ran and Sunnah, as well as the Tafsirs;
 - d) Allah and his Word is foremost in the lives of Muslims, and thus all of Muslim activities must be centered on the role and guidance for living provided by Allah – which is also tantamount to saying that Islam and its precepts have to be protected from contamination, undermining and misinterpretation;
 - e) Providing the right of people to decide on matters pertaining to the law and judgment when not dealt in the Sunnah and Qu'ran, as well as ijtihad, but guided by the percepts which are based on mutual consultation of all peoples in the community or their representatives; and
 - f) Divine sanctions is integral for what is considered lawful and unlawful according to the Word of Allah and his Prophet, and is accordingly part of the laws followed by Muslims.

The Shari'a Justice System

- 3.1.7 Shari'a is categorized in to five (5) according to Thomas Patrick Hughes, cited by Justice Jainal Rasul (1984):
- a) Belief or six articles of Islam
 - b) Moralities (Adat)
 - c) Devotional worship
 - d) Transaction like law on sale, partnership, securities, persons and family relations
 - e) Punishment relating to theft, adultery, robbery, homicide, etc.
- 3.1.8 The first four as noted by Justice Rasul is embodied or guaranteed in the laws of the Philippines, while the fourth which is the criminal laws under Islam is not adopted by the Philippine Government. Much is said in criticism to the concept of "justice" of Muslims, and therefore in contention to the very basis of their culture and traditions-Islam.
- 3.1.9 This study does not in any way attempt to provide a discussion on the presence or non- existence of justice in Islam. It merely wishes to explore factually the concept of justice in Islam for greater understanding on Islamic laws and precepts in the country. Islam as a religion and as a way of life is not to be criticized on the basis of what culture or religion is right or wrong, or what is most dominant or not.

Justice is administered in the name of Allah and is According to Allah

- 3.1.10 Allah is Al-Adil or the Just and the Giver of Justice. Thus, any sin or injustice done is a direct disobedience to Allah. The fountainhead of Islam Law or the precepts and laws of Allah is the Qu'ran and the Sunnah which contains or is the Wahy al-Jali (the revelation per se) and the Wahy al-Khafi (the hidden revelation).
- 3.1.11 Justice is defined, governed and accorded through the principles and laws of Allah and through the examples in the life of Muhammad.

Equality and Impartiality of Justice

- 3.1.12 Accordingly, "All are servants of Allah, and must be judged according to the Book of Allah" (Doi:1984):

"O ye who believe: Stand out firmly for justice, as witnesses to GOD, even as against Yourself, or your parents, or your Kin, and whether it be (against) rich or poor. For God can best protect both. Follow not the lust (Of your heart),lest ye swerve, and if you distort (justice) or decline to do justice. Verily Allah is well acquainted with all that you do", Qu'ran, ch. 4:135

- 3.1.13 Justice is guaranteed to all regardless of any social and political biases. Thus the judgment is based solely on the Word of Allah and the teachings and learning from the life, actions and words of Muhammad as the Prophet. Above all human matters or considerations, which include man-made laws, is the divine law and the principles of Allah communicated to man. This is the basis of justice, and it is administered to all, not even exclusive to Muslims alone.
- 3.1.14 The Qu'ran specifies that Muslims should respect and treat those non-Muslims especially Jews and Christians kindly and justly: *"Allah forbids you not with regard to those who fight you not for your Faith nor drive you out of your homes, from dealing kindly and justly with them: For Allah loves those who are just. Allah only forbids you with regard to those who fight you for your Faith and drive you out of your homes and support others in driving you out, from turning to them (for friendship and protection). It is such as turn to them in these circumstances), that do wrong"* (Qu'ran, ch. 60:8-9). Jews and Christians are provided a special position in their teachings as people of the Book, since their books are said to be based on Heavenly Books: *"And dispute you not the People of the Book, except with means better (than mere disputation), unless it be with those of them who inflict wrong (and injury), but say 'We believe in the Revelation which has come down to us and in that which came down to you; our God and your God is One and it is to Him we bow (in Islam)'"*, (Qu'ran, ch. 29:46).
- 3.1.15 Specified under the Muslim Laws is the protection of non-Muslims within a Muslim nation. This generally reflects how non-Muslims and their rights are protected under the Shari'a. Primarily, non-Muslims are to be treated accordingly:
- a) Justly and with impartiality
 - b) Without persecution
 - c) Without usurping their property or having ill intentions towards them

Justice as Mutual Respect of Human Beings for Each Other

- 3.1.16 A just society in Islam is one that secures and maintains respect for persons through various social arrangements that are in the common interest of all members. This principle in application means respect for what may be considered lawful for non-Muslims but are unlawful to Muslims to not be made forbidden to non-Muslims.
- 3.1.17 Equality among all men is emphasized - especially in the story of Muhammad, who liberated the slaves and destitute in his tribe. "The bill of rights, suffrage, civil rights and the slogans of political equality as we know today are of a very recent origin and seem to be mere reflections of what the Shari'a taught 1400 years ago from now" (Doi: 1984)
- 3.1.18 The basis of respect for fellow man in the Taqwah of fear of Allah: "The best among you in the eyes of Allah are those who are stronger in Taqwah (fear of Allah)"

- 3.1.19 Priority of the Shari'a is on human welfare over human liberty – defined as “each person's right to equality in lifestyle, and level of living has priority over the so called economic liberty” (Doi: 1984).
- 3.1.20 Human rights in the Shari'a are based on the premise that man is the center of the universe, as the Khalifa of Allah on earth. The rights identified under the covenant are taught to every Muslim. However two concepts are taken into consideration: (1) that these rights are taught to every Muslim through the divine scriptures which provide necessary guidance to the believers in his task as Allah's Khalifa on earth; and (2) that “the individual freedom is sacred within the ethical limits imposed by the Shari'a, and it will be considered sacred only as long as it does not conflict with the larger social interest or as long as the individual does not transgress the rights of others” (Doi: 1984).
- 3.1.21 “Mutual respect” therefore in this sense is the acceptance of differences of each human being. Therefore it is not in their principles to force religion, culture or percepts to non-Muslims. However, above all matters are the Laws and principles set in the Shari'a, which shall be followed by Muslims.

Behind every legal, social or political institution of Islam, there is a divine sanction, which every believer is expected to revere no matter where he lives.

- 3.1.22 A Mu'min or a believer is guided by a set of principles and laws that will direct him towards Allah or a pleasant life after death. A believer is someone who willingly accepts Allah as his creator and is obedient of Allah. He strives to seek Allah's pleasure in all his actions in this world. He believes that there is a life after his present existence and in the Day of Judgment as well as the certainty of a good afterlife of those who obey Allah.
- 3.1.23 What is halal or lawful and what is haram or unlawful is based on the teachings of the Quran and the Sunnah. However, as in all restrictive ordinances, what is not declared unlawful, is considered lawful: *“Wherever Allah has declared lawful in His Book is lawful, and wherever he has declared unlawful is unlawful, and wherever He has remained silent are forgiven. Then accept those bounties of Allah because Allah does not forget anything”* (Al Hakim). All that is unlawful on the other hand is identified under the Qu'ran. What is considered unlawful is unlawful, despite good intentions. Further, the means of obtaining what is unlawful is also unlawful.
- 3.1.24 Aside from what is lawful and unlawful, the gray area identified as the “doubtful” is as well considered unlawful. As a matter of Taqwah (piety), Muslims should stay clear of doubtful deeds.
- 3.1.25 There are exceptions granted from the mercy of Allah: *“But if one is forced by necessity, without willful disobedience, nor transgressing the limits, then he is guiltless. For Allah is oft-forgiving, most-merciful”*, Qu'ran, ch. 2:173. Thus, when one finds himself in a condition where he is so destitute that his only means to survive is to commit haram or something unlawful then Allah in his mercy allows it. It applies as well to other situations that render one helpless.

3.1.26 In Shari'a, or the Islamic Theology actions of man are divided accordingly (Doi: 1984):

- a) Fard or Wajib: a compulsory duty and the omission of which is punished.
- b) Mendub or Mustahab: An action is rewarded, but the omission is not punished.
- c) Jaiz or Mubah: An action which is permitted but is legally indifferent.
- d) Makruh: An action which is disliked and disapproved by the Shari'a but is not under penalty.
- e) Haram: An action which is forbidden and is punishable by law.

3.1.27 Crimes in Islam by degree of penalty may be therefore categorized as: Hadd, Tazir (least serious), and Qesas (revenge crimes/ restitution) crimes. These limits provide safeguards of the right of men and nations and give men sense of responsibility to Allah and to mankind in general.

3.1.28 Hadd or punishment is meant to be a deterrent so that people may not become complacent and commit crimes simply because they find punishment to be only nominal. These are unlawful acts identified in the Qu'ran, and the punishment stated therein is not to be changed or reduced by the judge. Hadd crimes include:

- a) Murder
- b) Apostasy from Islam (defined as making war upon Allah and His messengers)
- c) Theft
- d) Adultery
- e) Defamation (or false accusation of adultery or fornication)
- f) Robbery
- g) Alcohol-drinking (including any intoxicant)

3.1.29 However, punishment can only be imposed by a judge when a person confesses to the crime or when there are enough witnesses (usually two witnesses are required, except in adultery where four witnesses are required) to the crime. When the judge is in doubt on the crime based on evidence, the judge must treat the crime with a much lesser punishment, such as that of a Tazir crime.

3.1.30 Tazir crimes are considered "lesser crimes" under the Qu'ran. Tazir crimes are punished when they harm societal or public interest, the assumption being that they will be able to prevent graver offenses from happening if offenders are punished. Historically, Tazir crimes are not written down or codified. Judges are given freedom to choose from a number of punishments, what they think will help the individual

offender, guided by their answerability to Allah and to the greater Muslim community. Some of the punishments that fall under Tazir include counseling, fines, public or private censure, seizure of property, confinement in home or place of detention, and flogging. Tazir crimes usually fall under bribery, selling tainted or defective products, treason, usury, and selling obscene pictures.

- 3.1.31 Lastly, qesas crimes apply the principle of retribution. Traditional qesas crimes include: murder, premeditated offences against human life, short of murder, murder by error, offences by error against humanity, short of murder. Qesas means that when life is lost or one is harmed, the victim or the family of the victim receives the right to claim punishment to the offender. Punishment for this crime includes diya or what others call "blood money". Diya is as in the act of setting damages done to a victim in civil cases here in the Philippines, but it applies to criminal cases as payment for "damages" done to the victim and/or the family. However, Diya is legal only when the judge mandates it, for without the formal judicial process the act is considered bribery, a tazir crime. In the past, punishment for qesas crimes would usually be carried out by the victim's family, which however in modern Islamic law has moved into requiring only the government to carry out punishments.

Justice is delivered by a just, competent and knowledgeable Al-Qadi or judge

- 3.1.32 Judicial power must always operate in conformity with equity. There are several principles identified for the upright, sober, calm and cool judgment of a judge: "No judge shall pass a judgment between two men while he is angry", Mishkat al-Masabhi, 26:55
- a) He must not feel kindness in executing the ordained sentences for the prescribed crimes: "Let not pity detain you in the matter of obedience to Allah if you believe in Allah and the Last Day and let a party of believers witness their sentences." Qu'ran, ch. 24:2
 - b) He must decide disputes with as much speed and promptness as possible, for delayed justice produces no appreciable good.
 - c) He must not accept any present or bribery from the parties concerned.
 - d) He must exert hard to arrive at just conclusion.
 - e) All must be equal to the eyes of the judge.
 - f) There is no separate Judiciary for civil, criminal and military departments.
 - g) Judges must be of deep insight, profound knowledge of the Shari'a and God-fearing, forthright, honest, sincere and men of integrity.

- h) A judge performs his functions according to the guidance provided from the Sunnah of the Prophet
- A Muslim judge must treat all his litigants equally.
 - Defendant and appellant must appear before the Qadi.
 - The defendant must be given the right to take oath before the court.
 - The judge must be careful in the awarding of Hadd punishment, that he should refrain from awarding hadd punishment if there is the slightest doubt in the establishment of the crime.
 - If a judge performs a wrong judgment but his instruments for arriving at that decision are the Book of Allah, the Sunnah of the Prophet, the decisions of the Shahabah, Tabi'in and Tabi Tabi'in and above all Taqwah (fear of Allah), Allah will forgive him and reward him.

Mutual Consultation in Shari'a for Matters Concerning a Couple, Many and Ummah (A Nation)

- 3.1.33 Accordingly, the right of the majority is treated as having almost the same sanction as that which comes forth from the divine source. In fact, in any socialist or democratic society consensus has been considered as the right means to make decisions or achieve a nation's goal. However, ***Ijma*** is framed by the divine Word of Allah, that over all that is decided by scholars and even the majority or their representative, the Word of Allah shall remain supreme.
- 3.1.34 The ***Ijma*** is complemented as well by personal reasoning and analogy. Reasoning and analogy has enabled the reduction in the number of traditions and thus reduced the limits of the prohibitive rules. In so doing, the extent of the freedom of the people to legislate in the field was allowed where specific legal rules are not available. Through consensus the people are able to enact for themselves without fear of going astray. Accordingly, any personal reasoning therefore, that is based on the Qu'ran becomes a natural right of everyone (*Islamic Jurisprudence*, Khadduri).
- 3.1.35 ***Ijtihad*** or independent reasoning is shown through the many commentaries written by several authors on various texts. The so –called rigidity of the Islamic Laws has been proven to be an ill interpretation, given that the freedom to independent reasoning is seen throughout Islamic history. In fact, it is said that the Prophet himself did not “*enjoin his followers to collect the oral traditions and random reports of the public and the private life nor even did his Companions think of doing so. This circumstance establishes beyond all contradictions the fact that he did not interfere with the civil and political institutions except those which came in direct collision with his spiritual doctrines and moral reforms*”, *The Proposed Political, Legal and Social Reforms*, Cherag Ali).

- 3.1.36 The principle behind the consensus, as developed by Imam Shafi'i, is rooted in the Qu'ranic words that state that man is a vice regent of God on earth. Imam Shafi'i therefore provides a consensus between divine revelations, the Law and the responsibility of individuals and the majority towards each other. While it provides a means to integrate principles of Islam, it has also opened doors for different schools for the translation of the Wills of Allah. All of these schools' interpretation and translation are considered equally valid and legitimate (*Unity and Variety in Muslim Civilization*, Grunebaum, G.G.).
- 3.1.37 The Divine Book should guide all affairs of Muslims. Aware of which, the Surah al-Shura states: "Those who answered the call of their Lord, and establish regular prayer, and whose affairs are a matter of counsel (i.e. they are conducted by mutual consultation), and who spend out of what we bestow on them for sustenance", Surah al Shura ch. 42:38
- 3.1.38 Consultation is based on three reasons:
- a) All people, if not their representatives, concerned with the matter being addressed must be consulted to ensure that not a singular agenda is pursued.
 - b) To ensure that no man tries to act autocratically or arbitrarily, either in the want to usurp the right of others or in consideration of himself as superior to others whom he holds in contempt.
 - c) It is a concern of great responsibility to take decisions on matters relating to the rights and interests of others or many, and it is the fear of Allah to not take in such a huge responsibility.
- 3.1.39 This is applied between small units such as husband and wife or in corporations. If the affairs are of relatives, a clan, a tribe, a whole village, or an entire town or city wherein it is impossible to take the counsel of everybody, an assembly of trusted representatives selected through an agreed procedure and method takes the matter. A head of a nation also seeks the counsel of such an assembly if it pertains to a national matter.
- 3.1.40 Affairs that are a matter of counsel demands five things for its full fulfillment:
- a) The people whose rights and interests are involved, should have full freedom of expression and should be kept informed about how their affairs are being run.
 - b) The person shouldering the responsibility of managing the collective affairs should be appointed with the express approval of the people.
 - c) The adviser of the head of the nation should also have full confidence of the people and should prove worthy of it.

- d) The people who give their counsel or considered opinion should do so according to their knowledge and conscience on full freedom.
- e) The collective advise or decision arrived at by the principle of unanimity or majority should be accepted without reservation, because if one clique is free to follow its whims in spite of listening to the consultative assembly then the process of consultation becomes meaningless, and null and void.

3.2 Human Rights

3.2.1 A nation that upholds Allah's laws is characterized by the following:

- a) Maximum freedom for the people, which include freedom of expression, freedom to travel and freedom of economy. (Qu'ran 2: 256, 10:99, 88:21-22)
- b) Guarantees human rights for all the people, regardless of race, color, creed, social status, financial situation or political affiliation. (Qu'ran 5:8, 49:13)
- c) Prosperity for the people. Allah's economic system is based on constant circulation of wealth, no usury, and productive investment. Non-productive economy such as gambling, lottery, and high interest loans are not permitted. (Qu'ran 2:275-7, 59:7)
- d) Social justice for all, through Zakat. (Qu'ran 2:215, 70:24-25, 107:1-7)
- e) A political system that is based on a unanimous consensus through mutual consultation and freedom of expression. (Qu'ram 42:38)
- f) A society that upholds and maintains the highest standards of moral behavior – strong family, no alcoholism and drug addiction, no illegitimate pregnancy, no abortion, and practically no divorce.
- g) Maximum regard for people's lives and properties.
- h) Prevalence of love, courtesy, peace and mutual respect among the people, and between this nation and other world communities. (Qu'ran 3:110, 60:8-9)
- i) Environmental protection is guaranteed through conservation and prohibition of wasteful practices. (Qu'ran 30:41)

3.2.2 Human rights is in fact said to be inherent in Islam, especially in the principles set in the Qu'ran. International Human rights according to what is modernly accepted and brought out, or what is called in the western essence of the principle is not so much different from the human rights shown under the Qu'ran. However, the Hadith, and the Traditions of Islam contain laws that are considered by many as inhuman and in violation of international human rights principles and standards.

- 3.2.3 Specifically, human rights in Islam pertains to the following (note that classification is not according to the Universal Declaration of Human Rights or what is called “international human rights”:

RIGHTS UNDER ISLAM	CORE CONTENT	BASIS
Right to Life	<ul style="list-style-type: none"> ▪ “Whosoever kills a human being without (any reason like) man slaughter, or corruption on earth, it is as though he had killed all mankind...” ▪ Taking life in retaliation for murder and the punishment for the taking of a life is made ONLY through the proper court of law. ▪ Homicide has been distinguished as destruction as well of life, and only a competent and the rightful court of law shall provide the punishment justly for the crime (homicide is declared as the greatest sin next only to polytheism) 	Qu’ran 5:32
Right to Safety of Life	<ul style="list-style-type: none"> ▪ “And whoever saves a life it is as though he had saved the lives of all mankind” ▪ To save every human life, whether through medical means, provision of food and other needs, or the literal meaning of saving lives is a principle and law pursued, regardless of race, political bias, etc. 	Qu’ran 5:32
Respect for the Chastity of Women	<ul style="list-style-type: none"> ▪ The woman’s chastity is protected regardless of race, religion or country of origin. It is protected by laws that punish those who commit adultery against or with women. 	Qu’ran 17:32
The right to basic standards of life	<ul style="list-style-type: none"> ▪ It is the duty of all Muslims to help all those who ask or those they know who are in need of food, shelter and other needs. 	Qu’ran 51:19
Individual’s Right to Freedom	<ul style="list-style-type: none"> ▪ Islam has forbidden slavery or to sell human beings for slavery. 	
Right to Justice	<ul style="list-style-type: none"> ▪ Islam pursues the provision of equal, impartial, speedy, and quality justice to all 	
Equality of Human Beings	<ul style="list-style-type: none"> ▪ Equality of man regardless of distinctions according to the Qu’ran 	
Right to cooperate and not to cooperate	<ul style="list-style-type: none"> ▪ “Cooperate with one another for virtue and heedfulness and do not cooperate with one another for the purpose of vice and aggression.” 	Qu’ran 5:2

- 3.2.4 Specifically, it will be worth noting how laws and Islamic communities, countries and peoples have applied the Qu’ran into the protection and guarantee of human rights. As argued by many, the development or application of most principles of the Qu’ran vary in countries, in sects and in cultures.

- 3.2.5 Many literature made by critics point at the incompatibility, to a certain extent, of human rights and democracy applied here in the Philippines, with “international” human rights standards. What is called “the Western” point of view is then again argued to be non-applicable to Islam or imbedded in Muslim percepts but

misrepresented and misunderstood. The standards set for what is "Islamic human rights" is one area to be explored.

Democracy, Human Rights and Islam Laws

- 3.2.6 Many argue that Islamic Laws are not democratic in nature. Democracy is defined by how it is applied in country policies: separation of state and religion; freedom of individual thought; security and respect provided through the rights of women and minorities; non-restriction of human reason, critical discussion, scientific and moral progress; and freedom to choose ones own religion, culture and belief. Pakistan, Iran and other Muslim countries have demonstrated violation of man human rights according to the "international standards". Their laws do not reflect the rights identified as Islam human rights as defended by other Muslims. Thus the question is: Is Islam (or the Words of Allah) the reason for the lack or non-existence of democracy in Muslim countries or are the laws and interpretations of Islam principles are what destroys the full recognition of the Qu'ran of human rights? This is not only an argument between "traditional" Muslims and "modernist" Muslims on the Hadith, or the Laws interpreting the Qu'ran. It is also an inward reflection of traditions and cultures throughout the years that have or may have not displayed regard for human rights.
- 3.2.7 Primarily, is human rights recognized in the same manner by so-called Westerners and Islamic countries? Could there be multiple meanings for *inherent human rights*? Apparently there is a divide between them. The world conference in Austria and Vienna declared "All human rights are universal, indivisible and interdependent". Human rights are universal because they are inextricably related to the preservation of human dignity. There are particular criticisms on the imposition of "Western" dominance over a particular culture. Regardless of the composition of the UN members, cultural relativists who dispute the claims of universality has critiqued the UDHR. They have argued that current human rights norms have a biased view and therefore delimits applicability. This argument has been prevalent through the years. Other thoughts on the matter is the undermining of human rights of Muslims specificity of culture, that re-thinking of their culture and belief will be needed to adopt so called international standards and universal values.
- 3.2.8 Foremost, the human rights under the UDHR does not claim to answer existential questions, and do not frame all aspects of life. In short, human rights focus on basic political and legal institutions' respect and protection of individual human dignity. Then again another argument is achieved, because Islam centers most (though not strictly so) on duties and not on individual rights (Khan: 2002), the community adherence to maintain social order. Islam's answer to individual rights enters in emphasis of the value of maintaining a fair society. Both protect the rights of people, but there is a difference in view of how solutions are made.
- 3.2.9 The content of Islamic laws and the basis thereof, in recognition of the rights of women and minorities in Islamic countries, is one of the major areas of conflict pertaining to justice and human rights. Accordingly, Islamic laws or the Shari'a is based on the Qu'ran as the Word of God, the practice of Muhammad in the Hadith and Sunnah, and the consensus, decisions based on analogy, customary law and

the principle of common welfare. According to some scholars and feminists, the Qu'ran embodies respect for humanity, but the Traditions and the laws specified and developed into laws of Islamic countries or Shari'a are interpretations of its fundamental source (An-Naim:1990, Othman:1999, Meyer:1999). The Hadith and the Traditions of the Companions and their followers may not have embodied the rights guaranteed through the principles of the Qu'ran. Thus there is still room for the adoption of rights-based laws in the modern setting, without of course compromising the Words of Allah. Therefore, this contentions and conflicts are areas of possible debate and discussion within the Islamic community.

- 3.2.10 In taking in universally accepted standards for human rights, there is agreement that cross-cultural dialogue will be needed to settle and highlight commonalities of cultures and experiences, as well as of principles that govern morality and philosophy. There is indeed much to talk about and achieve consensus on, especially in the areas of crime and the laws of punishment in Islam and in what is considered "internationally" accepted human rights.
- 3.2.11 Some of the contentious elements of Islam and Islamic laws with regard to human rights include:

a) **Security of Life**

Life is not to be taken by any individual unless killing is determined by an authority of the Muslim community. The taking of the life of one that has committed a crime punishable by death is part of Islamic laws. Life can only be taken for a crime by officials of government, judged by a competent and just judiciary or judge. In the past however, in the principle of recompense, the family of a victim proven through proper means (judged by a qadi through a prescribed procedure) may carry out the punishment, even to the extent of killing the offender. This is a point of contention for those who gauge compliance of human rights standards based on the UDHR because no one has the right to take anyone's life and killing is considered inhuman.

Offenses that are punishable by death in Muslim countries in some instances include adultery, murder, apostacy, robbery, and defamation or false accusation. Apostacy is a complex crime, for in some Muslim countries it is legal to kill non-Muslims for the practice of their belief. Nevertheless, their laws provide that the government is the one to carry out this punishment. Muslim apologists state that the Qu'ran as the Words of Allah accord respect for the life of non-Muslims, especially the Jew and Christians. It is the interpretation of Allah's words that lead to inhuman laws that allow the killing of man for their religion. However, in question here is the right of life, taken when government laws approve the killing for certain crimes.

Aside from the protection of Muslim's right to life and property, Islam protects the honor of citizens. They have laws that pertain to the protection of citizens against defamation, declared as blasphemy irrespective of whether the individual or victim is honorable, regardless if the reputation of the person was

harmed, or if its was done in public. Proof of the fact is what is needed in order that government will carry out the punishment for such a crime.

On the other hand, the application of certain laws in Islamic countries has raised much debate on the manner of punishment and degrees of penalties. Killing criminals which is considered the highest degree of crime, flogging and the punishments for “apostacy”, as well as punishment to women are just a few of those considered as violation of Islamic country laws against human rights.

b) The Rights of Women

Marriage in Islam is a firm covenant, being a covenant between husband and wife with the Creator.

The principle of ‘recompense-money’ is one that is most looked into. Recompense-money is fixed by the woman to serve as compensation for the loss of her virgin status. By the application of this principle, the Law is said to protect the woman from violation. The following conditions are granted:

- Consent obtained before marriage
- Recompense-money
- Parties are considered equally and fully competent to lay down their own terms of covenant

Polygamy is permitted in Islam. It is based on history, grounded on the argument that Islam did not provide polygamy as an innovation; in fact, polygamy has been existent ever since. Islam merely regulates it under certain exigencies and expediencies.

The framing Laws of Islam for divorce therefore ensures that there are sufficient grounds for the termination of a marriage contract. It is argued that divorce is a means for redress and compassion and not to undermine the status of women. Reconciliation, as a legal remedy is therefore permitted, and in some instances imposed before the parties are allowed to part. Arbitration mechanisms are set to ensure that women have a say in the proceedings. In divorce the woman is granted the right to: (1) be recompensed for the loss of her maidenhood and for her maintenance and living; and (2) remarry, under the root-principle of rehabilitation. Possible contention in the application of the principles set in Islam is born out of many incidents of polygamy without security of women and polygamy to suite the whims of men alone to take in as many women as they can.

The Laws of Islam were not meant to restrict or to impinge on women, as a weaker sex. The percepts of Imam Shafi'i on the Laws on marriage and divorce are not directed towards the favor of the husband, but instead is said to focus on guarding the interest of the woman. It is the translation into national laws

that has deviated from the principles of Islam, especially in the redress of ills, and of fairness and equality among men and women.

On the other hand, in many Islamic countries, the rights of women are said to have been trampled on, removing from them rights enjoyed by men. These issues include the following:

- Though a dress code is indeed indicated in the Qu'ran for specific body parts that need to be covered, some Muslim countries have created traditions and customs that have removed the right of women to express themselves and to be seen as men are seen.
- Application of the laws on property, especially on inheritance of women reflect that women are given only half the share of men, and in some Muslim countries are not given the right to own property at all.
- The right of women to take in positions in the government or to become leaders is not allowed in most Muslim countries. However, it is said that historically women have assumed positions such as those of men such as that of Belquees, the Queen of Sheba.
- Women are inferior to men in some Islamic laws, their testimony in court is worth only half that of a man.

c) **Rights of Non-Muslims in Muslim Countries**

Though Islam provides that justice must be kept and that respecting the rights of non-Muslims must be ensured, current laws of Islamic countries reflect partiality of the law to Muslims. These are characterized by the following:

- In Saudi Arabia for instance, non-Muslims living in Muslim countries have inferior status. Application of the law shows non-Muslims being unable to take in positions higher than Muslims.
- Atheists are killed in many instances in Muslim countries.
- One does not have the right to change their religion if one is born in a Muslim family in some countries. Marriage of converted Muslims are most of the time considered null and void, and their children taken from them to be raised by their Muslim relatives.

4 ISLAM AND ISLAMIC JUSTICE IN THE PHILIPPINES

4.1 Islam in the Philippines

4.1.1 Basically, in the Philippines, the fundamental difference between Sunni and Shi'a Muslims is that the Shi'a Muslims narrow their laws on those laws derived from consensus to those consensuses only of the descendants of Muhammad. Aside from which, Muslims in the Philippines follow laws according to the Qu'ran and the Sunnah and are therefore following the Divine Laws.

4.1.2 Most of the Muslim populations in the Philippines belong to the Sunni branch of Islam. There are a few Shi'a believers in the Lanao provinces and Zamboanga del Sur. It is essential therefore to look into both the Sunni and the Shi'a in the light of their holy scriptures, before dwelling on their differences.

4.2 The Philippine Application of Islamic Laws

THE ADAT

4.2.1 The Adat Laws or customary laws in the Philippines were primarily the governing strain of law in Muslim Mindanao, until realization of the Islamic laws grew to realization. The Adat were of the ancient Malay law, the Indian or Hindu law and then evolved into Shari'a upon the introduction of Islamic law in the Philippines (Buat: 1977). Adat pertains to the following (Barra:1988):

- a) It refers to the customary traditional law governing Moro society.
- b) It connotes the connection or genealogy that a person has to the royalty or the ruling sultanate.
- c) It applies to the specific customary 'lien' that the traditional leaders have over the dower given to a bride who is a resident or citizen of their principality.
- d) It pertains to manners and morality, or respect to the sultanate as a political institution.

4.2.2 Adat law focuses as well on communal life, especially pertaining to the settlement of disputes. This is shown in the varied systems of justice adopted in distinct locations of Muslim Mindanao such as in Maguindanao and those adopted by the Sulu Sultanate.

4.2.3 When Islam reached the shores of the Philippines, the Moros already had their un-Islamic life ways, mores and adhere to their customs and traditions. But as years passed and when the Filipinos especially in the South embraced and developed a deeper understanding of Islam through the flocks of Muslim preachers and commercial contact with Muslim neighbors. Thus, until now, part of the Bangsamoro

strive at further understanding of the formal Islamic precepts and the other is bent at preserving the customary laws and usages that predate Islamic penetration.

- 4.2.4 There are thirteen (13) ethno linguistic groups of Muslim Filipinos, and of these thirteen, there is more than just one string of linguistic tradition that has branched out. If fusing has indeed developed, then studies on the Islamic traditions and customary traditions is necessary, to know the customs and norms that have integrated, to understand the differences of groups, and finally determine the Muslim Filipino tradition.

4.3 The Difficulty of Defining the “Muslim Filipino Tradition”

- 4.3.1 The question occurs however: To what Islamic civilization does our Filipino people belong? We are ethnically Malay, do we then belong to the “Malay Islam”? History tells us that in the 13th to 14th centuries it was the Arabic merchants and preachers who brought Islam to the Philippines. Many Filipinos who studied in other countries and brought with them learning and taught the Filipinos, acquired education in Cairo and other Arab universities. The contact of Filipino peoples as they go into their hadj has also contributed to further understanding. But are these facts sufficient for us to deduce that the Filipino Muslim communities are Arabic instead of simply Islamic?
- 4.3.2 One apparent distinction of the Islam to the Customary traditions in Mindanao is in their medical and mythical beliefs and practices. While Muslim Filipinos follow “standard” Islamic belief and tradition, such as the six articles of the Islamic faith and the five pillars of Islam, they also have their own and distinct traditions that permeate. The Maranaw for instance, view the universe as consisting of seven layers: the first level is where human beings live, carried by a huge mythical animal and the subsequent layers of the sky or the universe as well as in the underground are peopled by mythical beings such as dwarfs, nymphs and the likes. The Maranaws also seek the services of the medicine men and mediums in some areas. These beliefs however has been time and again attempted to be phased by the Islamic leaders in the area. The Tausugs and the Maguindanaons also reflects some of these beliefs. The Tausugs believe in beings that inhabit nature such as rocks and trees. The Tausugs also differ also in their views of the human soul and states of being (hell and heaven is not a distinct place but a state of being). Maguindanaons also have a distinct “folk-Islam”, characterized by certain beliefs in magical elements, both evil and good beings.
- 4.3.3 The kinship system of secular governance is persistent in Muslim Mindanao, reflective of the structure brought through the Islamization of the area. There existed several sultanates in Mindanao, the Sulu Sultanate and the Maguindanao Sultanate being the most prominent in history.
- 4.3.4 There are distinctions in practice of providing justice as well or in their interpretation of the Qu’ran. In P.G. Gowing’s Muslim Filipinos: Heritage and Horizon (also mentioned in Barra’s The Code of Muslim Personal Laws) for instance, the Maranaws were documented to have three traditional means of resolving conflict. One is through establishing filial relations by the so called “laws of kinsmen” (Ikokoman a kambata-bata-a), where when blood relations are pieced, the damages

- may not be given to the guilty party. Another mode are where customary laws govern the provision of punishments through *taritib ago igma* and penalties to a proven guilty party. Another mode is called “adjudication by the Book” or by the Qu’ran, where the case is heard through a localized *qadi* or judge and where each party represented by a their counsel (*wakil*). The Islamic justice resolution shown through the third mode includes a presentation of evidences or witnesses and when the decisions are not satisfactory to the litigant, appeal to a higher arbitration committee in larger towns or in civil courts may be availed.
- 4.3.5 The Maguindanaons also observe similar dispute resolution mechanisms as those of the Maranaws, presenting their complaints or disputes before a traditional agama council manned by community leaders who apply customary or Islamic laws, depending on the type of case presented to them. The Tausugs also have a similar system of justice among them, their disputes presented to a local headman who determines the punishment depending on the customary laws or Islamic laws that pertain to the crime or case.
- 4.3.6 There are several codes developed by the Sultanates and Islamic judges for the governance of their respective areas. These are codes that need to be explored up against the Muslim code, laws of general application in the country and even customary laws to seek their convergence and divergence. The *Luwaran* (meaning “selection”) is an example of these codes, said to have been written of the Maguindanao Sultanate, comprised of eighty-five (85) articles on the subjects of “property, slaves, transactions, partnerships, debts, nature of oaths, testimony, homicide, marriage, divorce, adultery, gifts, inheritance, wills, fines and punishments” (Barra: 1988).

Application of the Shari’a in Muslim Code

- 4.3.7 Notable to the creation of the Muslim Code is the process it entailed to come up with the substance of the law. The Code was drafted during the Marcos administration, in view of the peace and order situations in Mindanao, characterized by major sentiments identified as the Muslim’s: fear of being alienated from their religion; fear of being displaced from their ancestral home; fear of having no future in this country because they really do not participate in its government nor share fully in its economy; and the fear of losing cherished values, customs and traditions. These sentiments were identified through a letter made by Mamintal A. Tamano to the government, as noted in Dr. Barra’s Code of Muslim Personal Laws, A Study of Islamic Law in the Philippines (1988). Thus, the Marcos government sent a research group to study and gather materials on Muslim laws, compare or reconcile these laws with the Philippine law, and come up with a draft of the Code of Philippines Muslim Laws.
- 4.3.8 The findings of the research team were subsequently altered in terms of the substance of the law by the Presidential Commission to review the Code of Muslim Laws, soon after established. The commission’s recommendations then formed the Code of Muslim Personal Laws under PD 1083. The Code was developed based on the following fundamental criteria (Barra: 1988, quoted from the Report of the Presidential Commission to Review the Code of Filipino Muslim Laws, 1975):

- a) Of the Islamic legal system, which is considered a complete system comprising civil, criminal, commercial, political, international and purely religious laws, only those that are fundamentally personal in nature were to be codified;
 - b) Of the personal laws, those relative to acts the of which are absolute duties under Muslim law were to be included, and those which according to Muslim law are forbidden and demand unconditional punishment were to remain prohibited;
 - c) Where the provisions of law on certain subjects were too complicated for a Code, only the fundamental principles were to be stated, and the details left to the judges for proper implementation;
 - d) No precept, fundamental though it might be, was to be incorporated in the Code where it appeared to be contrary to the principles of the Constitution of the Philippines; and
 - e) No precept was to be included unless it was based on the principles of Islamic law as expounded by the four orthodox schools (Sunni).
- 4.3.9 The Code is not a codification therefore of Islamic laws and family laws in their entirety. Only those that fitted the criteria set were codified.

3

THE PHILIPPINE SHARI'A JUSTICE SYSTEM

1 INTRODUCTION

1.1.1 This section presents an assessment of the Shari'a Justice system within the context of the established Muslim society, culture, beliefs, traditions and practices, and within the context of the country's formal governance structures. In particular, it contains the following components:

- a) Historical Background of the System, traces the origins and evolution of the Muslim justice system, its practices and formalization, and eventually the establishment of the Shari'a courts. This assessment has for its background the previous section that provides an extensive discussion of the origins and development of the Muslim customary laws, as well as conflict resolution practices and traditions.
- b) Governance Context, which refers to the formal legislative, policy and institutional arrangements put in place by the national government in order to define the roles, decision-making authority and operations of governance affecting Filipino Muslims. This includes such functions as legislation, authority to create courts or government agencies, authority to appoint judges and supervision of the Shari'a justice system.
- c) Judicial System Institutional Framework, this presents the overall institutional framework of the Philippine justice system putting in proper context the Shari'a justice system within this broader framework and identifying institutional issues. It also discusses the internal institutional issues pertaining to the Shari'a justice system – the jurisdictions, court distribution, and concurrent jurisdictions, as well as concurrent status with the traditional justice being practiced by Muslim Filipinos.
- d) Statutory Framework, presents an assessment of the adequacy of substantive law supporting the implementation of the Shari'a justice system.
- e) Internal Capacity of the Shari'a Court System contains a review of the internal structure, key operating systems, administration and resources of the Shari'a justice system.

3.1

Historical Background of the Shari'a Justice System

1 THE BASIS OF THE MUSLIM LEGAL SYSTEM

1.1 The Muslim Legal System

- 1.1.1 The Philippine legal system is aptly described as a blend of customary usages, the Roman (civil law) and the Anglo-American (common law) systems. But in some Southern part of the islands, Islamic law is observed. This aspect of Islamic law is the result of the immigration of Muslim Malays in the 12th century or before the subsequent colonization of the islands by Spain and the United States.
- 1.1.2 The legal system of the Muslims in the Philippines has sometimes been called by scholars as the Agama System being based upon Islam as religion. Attorney Musib Buat opines that:

“ The word Agama has come to be known as practice or system. among the Muslims, it is synonymous with the word “ideology.” Agama is a Sanskrit word for Religion. The reason for this is perhaps due to the general concept of law and policy among Muslims. The Muslims do not distinguish law as either secular or divine, canon or civil law.”

The legal system of the Muslims, both customary (adat) and Islamic is quite comprehensive. It embraces all legal, social, political and civil relations.”¹

1.2 Non-State Courts and the Judicial Role of Political Rulers

- 1.2.1 “Non-state” courts were manned by functionaries known in the *Sulu* archipelago as the *panglima* and the *pandita* in Mainland Mindanao. According to Prof. Mastura, the legal scholars conceived their legalist role as advisers to the political rulers, the *qadis* as practitioners.
- 1.2.2 The recognition of an apprentice's legal aptitude took place from agama court practices that derived naturally from the theory of reputation in trial apprenticeship. This came about because the specific institutional feature of customary handling of

¹ M.M. Buat, SURVEY OF ADAT (CUSTOMARY LAW) and the ROLE OF AGAMA COURTS, 110, 111 in STUDIES ON MUSLIM LAWS AND CUSTOMARY LAWS; PAPERS OF 6th Annual Seminar on Islam and Asia; Sept. 20-23, 1973, Ateneo de Davao, 1976, 444 p.

disputes resided in the chief magistrate (*datu kali*) who presided over sessions to hear the “process of law” argued by a set of paired jurors (*wazirs*) and advocates (*wakils*) representing the party litigants.²

1.3 Sources of Muslim Customary Laws

- 1.3.1 The sources of customary or *adat* law are basically three-fold: (1) Ancient Malay *adat* law; (2) Indian-Hindu law and (3) *Shari'a* or Islamic Law. The natives embraced Islam, mixed *Adat* law with *Shari'a* or at least *Shari'a* blended with pre-Islamic practices or *Hukum Shari'a*.³ The sanction of customary law is in the *Agama* Court. Sometimes the Muslim Ecclesiastical Authority or Agama leaders like the Sultan, *datus* and *panglimas* enforced customary law.
- 1.3.2 Thus, centuries before the establishment of the Philippine government, the Muslims were already governed by *Shari'a* and/or *Adat* law with their own agama courts and judges called *Qadis*. The *Shari'a* minded jurists applied the *Luwacan* Code as well as the *Diwan* or the “Principal Sulu Code”. The former functioned to legitimate their formulation by locating the law and sovereignty in Allah and consisted of a body of selected texts from the *Shafi'a* School of Law appended to it. The latter embodied basically the seven articles of “Mohammedan Law” which did not operate in isolation of the Koran under the care of *imam* and *gadi*.⁴

2 THE BEGINNINGS OF MORO COURTS

2.1 Organization of Ward Courts

- 2.1.1 The enactment of the Organic Act of the Moro Province empowered the legislative Council of the Province to enact laws for the purpose of collecting and codifying Moro customary laws for the organization and procedure of Moro district courts.⁵ With the organization of the local Tribal Ward Courts together with the procedure and jurisdiction to consider and decide minor civil and criminal cases, the experience in the statutory enforcement of customary law brought about the transformation period.⁶
- 2.1.2 The Ward court was the counterpart of the justice of the peace courts of the Insular Government system. Under this new setting, the district governor presided over the bureaucratic systems and the ward court included the district secretaries as *ex officio* justices and such auxiliary justices as needed.

² M.O. Mastura, *SHARI'A LAW AND THE PHILIPPINE LEGAL SYSTEM*, 5 COURT SYSTEMS J. 74, 78 (2000).

³ J.D. Rasul, *SHARI'A COURT SYSTEM IN THE PHILIPPINES: Its Perception, Problems and Implementation*, Judges J. 51,53 (4th Quarter, 1987).

⁴ M.Mastura, op.cit. note 2 at 78.

⁵ Act No. 787 (1903), sec. 13 (j) and (k)

⁶ M. Mastura, *ibid.*, p. 79 citing Act. No. 1283 (1905), sec. 6 (b) and (c).

2.2 Consideration of Local Laws and Customs in the Jurisdiction of the Supreme Court, Court of First Instance and Justices of the Peace Courts

- 2.1.2 The jurisdiction of the Supreme Court and the Court of First Instance and Justices of the Peace Courts was extended to the Department of Mindanao created under Act No. 2520 (1915). The Administrative Code of Mindanao and Sulu ushered in the pivotal phase when the conditions of power and authority changed hands. Accordingly, Section 3 of the Code provides:

“ Sec. 3 Mohammedan Laws and Customs. – Judges of the Courts of First Instance and Justices of the Peace deciding civil cases in which the parties are Mohammedans or pagans, when such actions is deemed wise, may modify the application of the law of the Philippines, taking into account local laws and customs; Provided, that such modification shall not be in conflict with the basic principles of the United States of America.”

- 2.1.3 In 1917, the Administrative Code of Mindanao and Sulu was passed, empowering judges to disregard the minimum penalty provided for by law, if the accused is a Muslim, provided that the maximum cannot exceed that which is provided by law. Professor Mastura observed that the position of Islamic justice institutions vis-avis the Insular Government was misconceived by the American legal minds due to the fundamental difference between the juridical conception on which American fundamental law relating to “ecclesiastical authority” was based and that of the foundation of the Islamic legal system. As a result, severe criticism and controversies followed this misunderstanding. The agama or religious judicature remained so under the authority of the Sultan and his representative has continued to decide and settle cases. Moreover, Act No. 2520 (1915) authorized “kalis” or “panditas” or such Muslims as are versed in the local laws and cultures to settle disputes.⁷

3 THE CODIFICATION OF MUSLIM PERSONAL LAWS

- 3.1.1 After the Commonwealth government in the Philippines and during the period of the Republic, several laws were enacted recognizing certain aspects of Muslim personal laws. Republic Act No. 386 or the New Civil Code recognized marriages among Muslims or mixed marriages between a Muslim male and a non-Muslim female. Article 78 thereof provides that marriages between Mohammedans or pagans who live in non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary nor shall persons solemnizing these marriages be obliged to comply with Art. 92. The second paragraph provides that twenty years after the approval of this Code, all

⁷ Ibid. p. 80-1.

marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provisions of this Code unless extended by the President.

- 3.1.2 Article 79 of the same Code provides for mixed marriages between Muslims and Christians. In case the male is a Christian, the general provisions of the Civil Code applies but if the male is a Muslim, it may be performed in accordance with the provisions of Article 78 if the contracting parties so desire. After the expiration of the 20-year period stipulated in Article 78, Republic Act No. 6268 was approved on June 19, 1971 which extended the applications of Article 78 for another ten years. Republic Act No. 394 was passed recognizing divorce among Muslims.
- 3.1.3 On December 13, 1974, President Ferdinand Marcos issued Executive Order No. 442 creating the Presidential Code Commission to Review the Proposed Code on the Administration of Philippine Muslim Law. On August 29, 1975, the Commission submitted the Code of Muslim Personal Laws to the President, which was finally promulgated as Presidential Decree No. 1083 on February 4, 1977.⁸

4 CONCLUSION

- 4.1.1 The roots of the Muslim legal system and its system of justice are deeply imbedded in the Islamic religion. This is particularly reinforced by the practices of conflict resolution that are characterized by traditional practices and enforced by religious and community leaders.
- 4.1.2 The codification of customary laws marks the start of the formalization of the justice system and the enforcement of legal civil rights. But with the strong traditions and customs dominating current choices of conflict resolution and with the varying versions and interpretations of law and justice that underlie the diversity of practices, it would be doubtful if indeed a unified code of Muslim customary laws can be legislated for all Muslim Filipinos. If this is not possible at the least in the near future, then the Shari'a justice system will continue to compete or at least co-exist with the non-formal and traditional practices.

⁸ H. Aminoddin Barra, *The Codes of Muslim Personal Laws; A Study of Islamic Law in the Philippines* 56-7 (1988).

3.2

The Governance Context

1 UNIQUENESS IN THE GOVERNANCE CONTEXT

- 1.1.1 The governance setup of a country or community is the basis for the quality of justice that such a country or community can provide its citizens. Within the formal structures of governance lie the roles, responsibilities and tasks of law making, enforcement of laws and mechanisms for providing remedies under the laws.
- 1.1.2 The creation of the autonomous regions in the country has created a unique structure of governance. On the one hand, the national government maintains governmental functions over the autonomous regions; on the other, the regional government is accorded defined legislative and executive authority.
- 1.1.3 But the ARMM's legislative authority if exercised in the enactment of laws governing the jurisdictions of Shari'a courts may create complications in the harmonization of court jurisdictions and in the integration of Muslim Filipinos in the overall national legal framework. The performance of ARMM and the success of the granting of governance autonomy to the autonomous regions and particularly to Muslim Mindanao have yet to be assessed.
- 1.1.4 The creation of the ARMM and its corresponding institutions of regional governance have profound implications on the provision of an appropriate and harmonized justice system suitable to Muslim Filipinos both as Muslims and as Filipinos.

2 THE AUTONOMOUS REGION IN MUSLIM MINDANAO

2.1 Autonomy Formation Under the Marcos Regime

- 2.1.1 The Marcos dictatorship with the cooperation of the Organization of Islamic Conference (OIC) agreed with the Moro National Liberation Front (MNLF) to terminate the Moro national liberation war with a political settlement - autonomy for the thirteen Muslim pre-dominated provinces. Marcos proceeded to unilaterally implement the Tripoli Agreement by a series of legislative and executive issuances. Marcos proclaimed the area autonomous, before asking the people whether they consent thereto, and then called for the election of representatives to the regional legislative assembly, before enacting the law creating the assembly.

- 2.1.2 Six years of grueling war waged by the MNLF culminated in the signing of the Tripoli Agreement in 26 December 1976. However, much of the vital aspects of the agreement were left to be discussed later. Subsequent negotiations on these aspects proved futile. In 25 March 1977, due to inability to arrive at a consensus on these items to be discussed later than the Tripoli conference, then President Marcos unilaterally proclaimed the autonomy of the thirteen (13) provinces, with a provisional regional government to prepare for the referendum and the elections of the representatives to the regional legislative assembly, administer local governance therein, and perform such other functions as the President may order them to. Proclamation No. 1628 has outlined the origin of the regional autonomy from the Tripoli Agreement:

WHEREAS, in an agreement executed on December 23, 1976 between the Republic of the Philippines and the Moro National Liberation Front with the participation of representatives of the Quadripartite Ministerial Commission of the Islamic Conference and with the assistance of the Secretary General of the Islamic Conference, it was agreed that within the realm of the sovereignty and territorial integrity of the Republic of the Philippines, autonomy shall be declared in 13 provinces of Southern Philippines;

WHEREAS, in subsequent negotiations held from February 9, 1977 to March 3, 1977, also at Tripoli, Libya, the parties were unable to agree on certain vital aspects of the autonomy to be established in Southern Philippines;

WHEREAS, the First Lady Imelda Romualdez Marcos visited Libya from March 12-22, 1977 and on the occasion of said visit had discussed with Col. M. Khaddafy, the leader of the great First of September Revolution of the People's Socialist Libyan Arab Jemeheriya, the problem in Southern Philippines, in light of an impasse in the negotiations held from February 9, 1977, to March 3, 1977;

WHEREAS, in the course of said discussions, Col. M. Khaddafy proposed to break the impasse in the aforementioned negotiations with the declaration by President Ferdinand E. Marcos of autonomy for the thirteen (13) provinces mentioned in the Tripoli agreement of December 23, 1976 within the realm of the sovereignty and territorial integrity of the Republic of the Philippines, the organization of a provisional government for such areas of autonomy, in which provisional government the concerned parties of the Moro National Liberation Front and the inhabitants of the areas of autonomy shall take part and the holding of a referendum by the provisional government concerning the manner in which the inhabitants within the areas of autonomy may wish to organize themselves administratively in accordance with the Constitution of the Philippines;

WHEREAS, on the following day, March 19, 1977, President Ferdinand E. Marcos informed Col. Muammar Al Ghaddafi of his approval of the above proposal;

WHEREAS, immediately after the receipt of the telegram of President Ferdinand E. Marcos dated March 19, 1977, Col. Muammar Al Ghaddafi informed President Ferdinand E. Marcos by telegram of the approval of the agreed formula by the Members of the Quadripartite Ministerial Committee of the Islamic Conference, the current President of the Islamic Conference and the Islamic States supporting the endeavours of the People's Socialist Libyan Arab Jemeheriya and requesting that the same be implemented at the earliest possible time;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby declare autonomy in Southern Philippines to be composed of the provinces of Basilan, Sulu, Tawi-Tawi, Zamboanga del Norte, Zamboanga del Sur in Region 9, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Sultan Kudarat in Region 12, Palawan in Region 4-A, and Davao del Sur and South Cotabato in Region 11.

Prior to the establishment of the Regional Legislative Assembly and the Executive Council as envisioned in the Tripoli Agreement dated December 23, 1976, there is hereby created a Provisional Regional Government in the above-mentioned areas to be composed of seven (7) members appointed by the President, two (2) of whom shall be from the Moro National Liberation Front and one (1) member to be recommended by other liberation fronts in the provinces concerned. Its main functions, powers and responsibilities are as follows:

- 1. To prepare for the referendum in the said areas;*
- 2. To prepare for the election of the regional legislative assembly in the said areas;*
- 3. To administer said areas in accordance with the existing laws and policies governing the activities presently being undertaken by the local government units therein; and*
- 4. To exercise such other powers as the President of the Philippines may direct.*

The results of the referendum of April 17, 1977 shall determine the manner in which the inhabitants of the areas of autonomy may wish to organize themselves administratively in accordance with the Constitution of the Philippines and the formula proposed by Col. Muammar Al Ghaddafi, the leader of the great First of September Revolution of the People's Socialist Libyan Arab Jamahiriya.

- 2.1.3 On 17 April 1977, the proposition of establishing one autonomous region merging Regions IX and XII, of the Provinces of Palawan, Davao del Sur and South Cotabato joining such autonomy was submitted to the people of the aforesaid thirteen (13) provinces and were all defeated. Thus, there has to be then two autonomous regions without the Provinces of Palawan, Davao del Sur and South Cotabato. Two years thereafter, the election of representatives to Regional Legislative Assembly was called by the National Assembly through Batas Pambansa No. 20. On 25 July

1979, the President issued another Presidential Decree creating the offices for which the representatives were earlier elected on 7 May 1979. The preambular statements of PD No. 1618 were equally instructive:

WHEREAS, on February 14, 1977, Presidential Decree No. 1092, as amended, was promulgated calling for a referendum-plebiscite on April 17, 1977 in the thirteen provinces of Southern Philippines; and

WHEREAS, on February 15, 1977, the Batasang Bayan passed Resolution No. 11 recommending the promulgation of a decree attached to such resolution, providing for the functions, powers and composition of the Sangguniang Pampook (Regional Assembly) and for other purposes;

WHEREAS, on March 25, 1977, Proclamation No. 1628 was issued declaring autonomy in Southern Philippines;

WHEREAS, included in the aforementioned referendum plebiscite as Question No. 10 was the proposal of the Batasang Bayan in its Resolution No. 11 to create a Sangguniang Pampook and a Lupong Tagapagpaganap ng Pook (Regional Executive Council);

WHEREAS, on April 17, 1977, the aforementioned Question No. 10 was overwhelmingly approved by the qualified voters of the thirteen provinces in Southern Philippines with 2,499,375 affirmative votes; 65,612 negative votes; and 21,176 abstentions; and

WHEREAS, on May 7, 1977, Proclamation No. 1628-A was issued proclaiming the adoption and implementation of the results of the referendum-plebiscite of April 17, 1977, particularly the Batasang Bayan proposal contained in its Resolution No. 11 and included as Question No. 10 of the said referendum-plebiscite;

WHEREAS, on March 23, 1979, in pursuance of such Proclamation No. 1628-A, Batas Pambansa Blg. 20 was enacted providing for the organization of the Sangguniang Pampook in each of Regions IX and XII, providing funds therefor, and for other purposes;

WHEREAS, on May 7, 1979, by authority of the said Batas Pambansa Blg. 20, the election of the representative to the Sangguniang Pampook in Regions IX and XII was held and the successful candidates thereto have already been proclaimed and duly qualified;

WHEREAS, in order to fully comply with the mandate of the people expressed through the referendum-plebiscite in Southern Philippines and the provisions of Batas Pambansa Blg. 20, there is need for a Presidential issuance to provide the framework of the organization of the Sangguniang Pampook and the Lupong Tagapagpaganap ng Pook in Regions IX and XII;

WHEREAS, the establishment of the Autonomous Regions will enhance the attainment of peace and order, the acceleration of socio-economic development, and the resettlement of displaced persons and families in Region IX and XII;

WHEREAS, consistent with the provisions of autonomy, it would be desirable to effect the turnover of responsibility for undertaking development activities particularly at the community level to the Autonomous Regions; and

WHEREAS, it is likewise consonant with the concept of autonomy to grant such powers and authority to the Autonomous Regions as would enable them to adopt and implement regional policies and legislation which are germane to their particular needs and social and cultural values.

2.2 Autonomy Formation After the Marcos Dictatorship

2.2.1 In 25 February 1986, President Marcos was ousted. The Moro National Liberation Front was rejuvenated by the new President who herself went to Sulu simply to talk with the MNLF chief whom she allowed to come back after more than twenty-years of overseas revolutionary leadership. In 3 January 1987, in Jeddah, Saudi Arabia, the Government of the Philippines agreed with the MNLF to discuss the grant of autonomy on the twenty-three provinces of Mindanao, Sulu, Tawi-Tawi, Basilan and Palawan. Less than a month thereafter, the Aquino Government submitted in a plebiscite a draft constitution that the people of the Philippines ratified, a substantive portion of Article X thereof provides for the establishment of Muslim Mindanao Autonomy. The Moro National Liberation Front protested the inclusion of such provisions. The Peace Process terminated in May 1987. In 11 March 1988, the Philippine Congress enacted Republic Act No. 6649 creating the Regional Consultative Commission, with principal task of assisting the congressional enactment of the Organic Act for the Autonomous Region in Muslim Mindanao. On 1 August 1989, the Congress of the Philippine enacted Republic Act No. 6734, providing for the Organic Act of the Autonomous Region in Muslim Mindanao. The Moro National Liberation Front again protested the same as being violative of the Tripoli Agreement. On 11 November 1989, the Autonomous Region in Muslim Mindanao was inaugurated.

2.2.2 The pertinent provisions of the 1987 Philippine Constitution are as follows

ARTICLE X
Local Government
General Provisions

Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

Section 2. The territorial and political subdivisions shall enjoy local autonomy.

Autonomous Region

Section 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

Section 16. The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed.

Section 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Section 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;*
- (2) Creation of sources of revenues;*
- (3) Ancestral domain and natural resources;*

- (4) *Personal, family, and property relations;*
- (5) *Regional urban and rural planning development;*
- (6) *Economic, social, and tourism development;*
- (7) *Educational policies;*
- (8) *Preservation and development of the cultural heritage; and*
- (9) *Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.*

Section 21. The preservation of peace and order within the regions shall be the responsibility of the local police agencies, which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government.

2.3 Muslim Mindanao Autonomy

- 2.3.1 The grant of autonomy was limited to provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics.⁹ The Cordilleras and Muslim Mindanao have such uniqueness and “inferior relationship” with the dominant Filipino polity.¹⁰ There are some thirteen ethno linguistic groups in Muslim Mindanao who may not all share common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics. They have distinct histories, cultural heritage and languages. The only bonds that bind the Muslims are their Islamic faith and common, though not solidary, tradition of resistance against Spain, which together shape an assertion of distinct people-hood. It is this assertion that is the very basis for the grant of autonomy.¹¹ The Regional Assembly is empowered to legislate a change of that name.

2.4 The Organic Act and the Autonomous Regional Government

- 2.4.1 The Muslim Mindanao Regional Government is constituted by an executive department, a regional legislative assembly and special courts with personal, family and property relations jurisdiction. The Constitution mandates that the Organic Act of the Autonomous Region in Muslim Mindanao define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units.
- 2.4.2 It shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.¹²

⁹ Section 15, Article X, Philippine Constitution; Cf. 3 RECORDS OF THE CONSTITUTIONAL COMMISSION (*Records*) 175-176.

¹⁰ 3 *Records* 185.

¹¹ *Ibid.*, 195

¹² Section 18, Article X, Philippine Constitution.

The constitutional mandate that both executive and the legislative assembly to be elective precludes the constitution of a parliamentary form for the autonomous regions. The Constitution further restricts the creation of special courts therein to those of personal, family and property law.

2.5 Extent of Autonomy

2.5.1 Powers, functions, and responsibilities not granted by the Constitution or by law to the autonomous region are retained by the central government.¹³ This may indicate that the framers of the 1987 Constitution may have considered the devolution of limited powers to the autonomous region. A cursory reading of the grant of powers in both the current organic act and its forerunner Republic Act No. 6734 will indicate otherwise.

2.5.2 Section 2 of Article V of RA No. 6734 provides that the Autonomous Region is a corporate entity with jurisdiction in all matters devolved to it by the Constitution and this Organic Act as therein enumerated:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family and property relations;
- (5) Regional urban and rural planning development;
- (6) Economic, social, and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage;
- (9) Powers, functions and responsibilities now being exercised by the departments of the National Government except: (a) Foreign affairs; (b) National defense and security; (c) Postal service; (d) Coinage, and fiscal and monetary policies; (e) Administration of justice; (f) Quarantine; (g) Customs & tariff; (h) Citizenship; (i) Naturalization, immigration and deportation; (j) General auditing, civil service and elections; (k) Foreign trade; (l) Maritime, land and air transportation and communications that affect areas outside the Autonomous Region; and (m) Patents, trademarks, trade names, and copyrights; and
- (10) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the Region.

2.5.3 A cursory reading indicates that Congress has granted the minimum the Constitution mandated to be granted upon the Autonomous Region, particularly paragraphs 1 to 8 of Section 20 of Article X. It did not however stop there. It proceeded to devolve all powers, functions and responsibilities of the central government, except over those

¹³ *Id.*, Section 17.

- matters specifically enumerated under paragraph 9 thereof. Thus instead of autonomy of limited powers, Congress constituted autonomy of limited limitations. Instead of a local government unit, of which it is, with enumerated capabilities, Congress created an autonomous regional government with plenary jurisdiction restricted only by enumerated limitations.
- 2.5.4 Subparagraph 9 of Section 2 of Article V of RA No. 6734 has provided the autonomous region concurrent if not principal jurisdiction to legislate the powers, functions and responsibilities now being exercised by the departments of the National Government. It however provided the thirteen areas of concern expressly excluded from the legislative reach of the Regional Assembly.
- 2.5.5 RA No. 9054 however went further. The Regional Assembly may exercise legislative power in the autonomous region for the benefit of the people and for the development of the region except on the following matters:
- (a) Foreign affairs;
 - (b) National defense and security;
 - (c) Postal service;
 - (d) Coinage and fiscal and monetary policies;
 - (e) Administration of justice; It may, however, legislate on matters covered by the Shari'ah. The Shari'ah shall apply only to Muslims. Its application shall be limited by pertinent constitutional provisions, particularly by the prohibition against cruel and unusual punishment and by pertinent national legislation that promoted human rights and the universality accepted legal principles and precepts;
 - (f) Quarantine;
 - (g) Customs and tariff;
 - (h) Citizenship;
 - (i) Naturalization, immigration and deportation;
 - (j) General auditing;
 - (k) National elections;
 - (l) Maritime, land and air transportation, and communications. The autonomous government shall, however, have the power to grant franchises, licenses and permits to land, sea and air transportation plying routes in the province or cities within the region, and communications facilities whose frequencies are confined to and whose main offices are located within the autonomous region;
 - (m) Patents, trademarks, trade names, and copyrights; and
 - (n) Foreign trade.

EXCLUSIONS UNDER RA 9054	EXCLUSIONS UNDER RA 6734
Foreign affairs;	Foreign Trade
National defense and security;	National defense and security;
Postal service;	Postal service;
Coinage and fiscal and monetary policies;	Coinage, and fiscal and monetary policies;
Administrative of justice; It may, however, legislate on matters covered by the Shari'ah. The Shari'ah shall apply only to Muslims. Its application shall be limited by pertinent constitutional provisions, particularly by the prohibition against cruel and unusual punishment and by pertinent national legislation that promoted human rights and the universality accepted legal principles and precepts;	Administration of justice;
Quarantine;	Quarantine;
Customs and tariff;	Customs and tariff;
Citizenship;	Citizenship;
Naturalization, immigration and deportation;	Naturalization, immigration and deportation;
General auditing;	General auditing, civil service and elections;
National elections;	
Maritime, land and air transportation, and communications. The autonomous government shall, however, have the power to grant franchises, licenses and permits to land, sea and air transportation plying routes in the province or cities within the region, and communications facilities whose frequencies are confined to and whose main offices are located within the autonomous region;	Maritime, land and air transportation and communications that affect areas outside the Autonomous Region; and
Patents, trademarks, trade names, and copyrights; and	Patents, trademarks, tradenames, and copyrights

2.5.6 Practically, the exclusions are the same, except to the extent that the Regional Assembly may now legislate on the Shari'a, the restricting of the exclusion to legislations for national elections and the authorization of the Assembly to legislate over franchises, licenses and permits to land, sea and air transportation plying routes in the province or cities within the region, and communications facilities whose frequencies are confined to and whose main offices are located within the autonomous region. There is however Section 4, which allows the Assembly to legislate for the general welfare NOTWITHSTANDING the limitations set forth in Section 3 above. Civil service has been removed from the exclusion set forth in RA 9054. The Regional Assembly can now pass and adopt its own Civil Service Code. Moreover, the restrictions on legislation on elections have been limited to national elections, such that the Regional Assembly may now provide distinctly for the elections of public offices in the ARMM other than national positions and elections.

2.6 RA 9054: Expanded Act for the ARMM

- 2.6.1 The four-province Autonomous Region in Muslim Mindanao (ARMM) was established in 1990 under RA 6734 to respond to the demand of Muslims for local autonomy in areas where they are a majority or a substantial minority. The provinces comprising the ARMM are: Maguindanao; Lanao del Sur; Sulu; and Tawi-tawi.
- 2.6.2 RA 9054 amends, strengthens and expands RA 6734, which provided for the creation of the ARMM. The establishment of the ARMM likewise provided an opportunity to expand the jurisdiction of the Shari'a Courts created under PD 1083 in 1977, and determined the direction of the Shari'a in the Philippines.

EXECUTIVE POWER

- 2.6.3 The executive power in the ARMM is vested in the Regional Governor who is elected by the qualified voters in the region. The Regional Governor as Chief Executive of the Regional Government is assisted by a cabinet of not exceeding 10 members, with at least six of the members to be coming from indigenous cultural communities. The Regional Director is mandated under the law to appoint three Deputies, each representing the Christians, indigenous cultural communities, and the Muslims in the Region.
- 2.6.4 Consistent with the Constitutional and basic policy on local autonomy, the President of the Philippines exercises general supervision over the Regional Director to ensure that his/her acts are within the scope of mandated functions.
- 2.6.5 There is an Executive Council for the ARMM, which advises the Regional Governor on matters of governance of the autonomous region. It is composed of the Regional Governor, the Regional Vice Governor, and the three Deputy Regional Governors. The Regional Governor may assign powers and functions to the Executive Council to promote the general welfare of the people of the autonomous region subject to the laws enacted by the Regional Legislative Assembly.

LEGISLATIVE POWER

- 2.6.6 The legislative power of the autonomous government is vested in the Regional Legislative Assembly (RLA). However, the RLA does not have legislative powers over certain matters as provided in RA 9054 such as foreign affairs, national defense and security, postal service, coinage and fiscal and monetary policies, quarantine, customs and tariff, citizenship, naturalization/immigration/deportation, general auditing, patents/trademarks/trade names/copy rights, foreign trade, maritime/land and air transportation, and administration of justice.

JUDICIAL POWER

- 2.6.7 The judicial power is still vested in the Supreme Court of the Philippines and in such lower courts as may be established by law, including the Shari'a Courts. The RLA shall provide for the establishment of Shari'a courts. RA 9054 provides that Shar'a

- courts, which exist as of the date of the approval of this law, shall continue to discharge their duties.
- 2.6.8 The ARMM Law requires that there shall be at least one Justice in the Supreme Court and Justices in the Court of Appeals who come from qualified jurists of the ARMM. The President of the Philippines is moreover mandated to appoint a qualified individual as a consultant to the Judicial Bar Council. Also, the Office of the Deputy Court Administrator for the ARMM is created under RA 9054.

3 ADMINISTRATION OF JUSTICE

3.1 Establishment of Shari'a Justice System under RA 9054

- 3.1.1 Section 5, Article III of RA 9054 specifically provides that the RLA, in consultation with the Supreme Court and consistent with the Constitution, may formulate a Shari'a legal system, including the criminal cases. This Shari'a system is applicable only in the ARMM and to Muslims or those who profess the Islamic faith. Pertinent Constitutional provisions limit this application of the law, particularly the prohibition against cruel and unusual punishment, and by pertinent national legislation that promotes human rights and the universally accepted legal principles and precepts.
- 3.1.2 The Shari'a courts under this specific provision of RA 9054 have jurisdiction over cases involving personal, family and property relations, and commercial transactions, in addition to their jurisdiction over criminal cases involving Muslims. The RLA shall, in consultation with the Supreme Court, determine the number and specify the details of the jurisdiction of these courts.
- 3.1.3 RA 9054 also provides for the creation of a Shari'a Public Assistance Office (PAO) in each of the Shari'a judicial districts. The Shari'a PAO provides free legal assistance to the poor or indigent party litigants.
- 3.1.4 A Shari'a Appellate Court, composed of one Presiding Justice and two Associate Justices, is moreover created to exercise original jurisdiction over petitions for certiorari, prohibition, mandamus, habeas corpus and other auxiliary writs and processes only in aid of its appellate jurisdiction over all cases tried in the Shari'a District Courts as established by law. The proceedings of the Shari'a Appellate Court shall be governed by rules as the Supreme Court may promulgate. The decision of the Shari'a Appellate Court shall be final and executory. However, this does not affect the original and appellate jurisdiction of the Supreme Court under the Constitution. The Supreme Court may still review and consequently affirm, revise, modify or reverse the decisions of the Shari'a Appellate Court.

3.2 Tribal Courts

- 3.2.1 RA 9054 creates a system of tribal courts, which may include a Tribal Appellate Court. These tribal courts are intended for the indigenous cultural communities in the autonomous region. The tribal courts determine, settle and decide controversies and enforce decisions involving personal and family and property rights of members of indigenous community concerned in accordance with the tribal codes of these indigenous communities.
- 3.2.2 The tribal courts may also exercise exclusive jurisdiction over crimes committed by members of indigenous cultural communities. These include crimes whose imposable penalty does not exceed imprisonment of six years or a fine of not exceeding P50, 000 or both, or where the offended party or parties are also members of the indigenous community concerned.
- 3.2.3 The Regional Assembly shall define the composition and jurisdiction of the said courts in accordance with the Constitution, existing laws, and this Organic Act.” This means that if the Regional Assembly were empowered to establish tribal courts. How would this affect the jurisdiction and procedures for the enforcement of rights under Sections 65-70 of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997?

3.3 Codification of Indigenous Laws and Compilation of Customary Laws

- 3.3.1 The RLA is mandated under the ARMM law to provide for the codification of indigenous laws and compilation of customary laws of the Muslim and the indigenous cultural communities in the autonomous region.
- 3.3.2 The provisions of the Muslim Code are applicable only to Muslims, while the provisions of the tribal code are applicable only to the members of the indigenous cultural communities in the autonomous region. In case of conflict between the Muslim Code and the tribal code, the national law applies. In case of conflict between the Muslim Code or the tribal code on one hand and the national law on the other hand, the national law also prevails.¹⁴

3.4 Public Order and Safety

- 3.4.1 The Regional Government of the ARMM gives priority to the maintenance of law and order in the autonomous region. To meet this objective, a PNP Regional Command for ARMM has been created, as well as a Regional police force, which is civilian in nature and character, to enforce laws, investigate and prevent crimes, detain persons, process applications for firearms and initiate drives for the surrender of unlicensed firearms.

¹⁴ Sec. 22, Art. VIII, RA 9054, Organic Act for the Autonomous Region in Muslim Mindanao

4 GOVERNANCE ISSUES

4.1.1 The governance issues in Muslim Mindanao that may have implications on the Shari'a justice system include the following:

- a) The governance framework of the ARMM has not been agreed upon by the entire Muslim population and therefore lacks the needed credibility and effective force for enforcing the rule of law.

In establishing the autonomous region in Muslim Mindanao, in providing for an autonomous Muslim Mindanao in the Constitution, and in the subsequent implementing law creating the ARMM the government enunciates its effort to reconcile the national interest with the peculiar interests of the Muslim Filipinos. But not all Muslim Filipinos recognize the ARMM. Such lack of unifying recognition of the imposed governance system may be rooted both in the inter-cultural and political conflicts among major Muslim factions themselves and in the very structure and functions of the regional governance machinery.

- b) The incongruity between the national system of governance and the regional system of governance, which exist side by side over the affairs of Muslim Mindanao, are manifested in several aspects. The regional assembly is given the mandate to create Shari'a courts in consultation with the Supreme Court. And yet the machinery required for the administration and resource management of a regional Shari'a court system is not provided for but continues to be maintained in the Judiciary.

4.1.2 To date the RLA has not made efforts in the area of legislation pertaining to the Shari'a law and the Shari'a courts. The challenge of arriving at a more comprehensive code of customary laws that will respond to the varying Muslim communities may not be within the capacity of the currently weak ARMM.

4.1.3 The Shari'a justice system reform will depend on the soundness of the governance framework upon which reforms in institutions; substantive law and operational procedures will be formalized and implemented. The current weaknesses in the governance framework will certainly impose tremendous challenges.

3.3

The Institutional Framework of the Shari'a Justice System

1 THE PHILIPPINE JUSTICE SYSTEM

1.1 Five Pillars of the Justice System

1.1.1 The Shari'a justice system operates within the national justice system that has five pillars. Several agencies comprise the five pillars of the criminal justice system each performing tasks that are inextricably connected to one another:

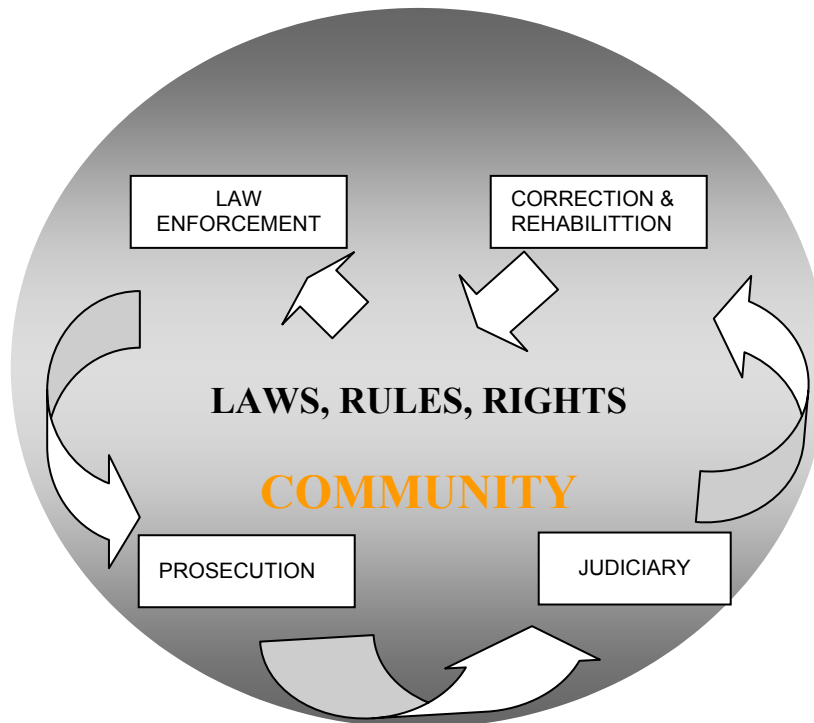
- a) The LAW ENFORCEMENT PILLAR is the principal responsibility of the Philippine National Police (under the Department of Interior and Local Government) and the National Bureau of Investigation (under the Department of Justice). This pillar primarily involves the investigation of crime, collection of evidence, arrest of suspects, and referral of the case and suspects to the Office of the Public Prosecutor or the lower courts either for preliminary investigation and/or for the eventual filing of cases and adjudication.

A PNP Regional Command for ARMM has been created, as well as a Regional police force, which is civilian in nature and character.

- b) The PROSECUTION PILLAR is under the responsibility of the Provincial, City, and State Public Prosecutors, which are all under the National Prosecution Service of the Department of Justice. Their functions include the evaluation of cases or complaints referred to by the police, by the National Bureau of Investigation or by private persons, and subsequent filing of the appropriate information or complaint in the lower courts and prosecution of the alleged offenders in court in the name of the People of the Philippines.
- c) The JUDICIARY PILLAR is responsible for the proper adjudication of cases and the rendering of judgment. The Shari'a courts are an important component of the Judiciary pillar.
- d) The CORRECTION PILLAR falls under the DOJ's Bureau of Corrections and Board of Pardons and Parole. Their functions include the meting out of punishment such as a jail sentence or execution in extreme cases, and the correction and rehabilitation of those found guilty of their crimes.

- e) The COMMUNITY PILLAR refers to the *barangay* as well as society at large where a convict goes back to after serving his/her sentence. The community also refers to government institutions, legislative agencies, educational institutions, and religious and civic organizations among others.

Figure 1
THE FIVE PILLARS OF THE JUSTICE SYSTEM



SOURCE: UNDP-SC Study on:
Strengthening the Other Pillars of Justice, Final Report, CPRM Consultants, Inc. 2003

1.2 The Philippine Judiciary

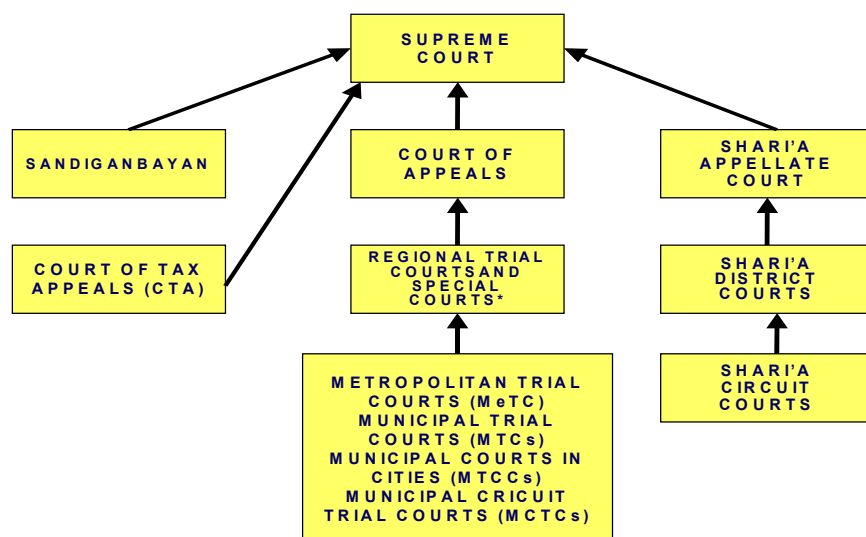
- 1.2.1 The Philippines has established a four tiered court system as the Judiciary. At the apex of the court structure is the Supreme Court, which is the highest court of the country. At the second highest level is the Court of Appeals, which is considered the intermediate appellate court. At the third level are the 950 Regional Trial Courts (RTCs) and the 5 Shari'a District Courts, which are organized along the thirteen (13) administrative regions. At the lowest tier are the 82 Metropolitan Trial Court in Cities (METCs), 425 Municipal Trial Courts (MTCS), 476 Municipal Circuit Trial Courts (MCTC) and 51 Shari'a Circuit Courts. There are two (2) special courts, the Sandiganbayan which handles cases involving graft and corruption charges against government officials and their accomplices, and the Court of Tax Appeals which handles cases involving violations of tax, tariff and customs laws.

Table 16
THE COURTS SYSTEM

COURT	No. of Courts or Divisions Authorized by Law	NO. OF AUTHORIZED JUDGES/JUSTICES
SUPREME COURT (DIVISIONS)	COURT EN BANC AND 3 DIVISIONS	15
COURT OF APPEALS (DIVISIONS)	COURT EN BANC AND 17 DIVISIONS	51
SANDIGANBAYAN (DIVISIONS)	COURT EN BANC AND 5 DIVISIONS	15
COURT OF TAX APPEALS (DIVISIONS)	NO DIVISIONS	3
REGIONAL TRIAL COURTS	950	950
METROPOLITAN TRIAL COURTS	82	82
MUNICIPAL TRIAL COURT IN CITIES	141	141
MUNICIPAL TRIAL COURTS	425	425
MUNICIPAL CIRCUIT TRIAL COURTS	426	476
SHARIA DISTRICT AND CIRCUIT COURTS	5	5
SHARIA CIRCUIT COURTS	51	51
TOTAL		2,130

Source: Supreme Court of the Philippines

Figure 2
ADJUDICATIVE STRUCTURE OF PHILIPPINE JUDICIAL SYSTEM



SHARI'A COURTS UNDER THE PHILIPPINE JUDICIAL SYSTEM

1.3 The Shari'a Court System

- 1.3.1 The Shari'a Court System is composed of the Shari'a District Courts, Shari'a Circuit Courts and Shari'a Appellate Courts. There is also a Jurisconsult in Islamic Law within the Supreme Court.
- 1.3.2 There are five (5) Shari'a District Courts and twenty-five (25) operational Shari'a Circuit Courts though the law identifies fifty-one (51) SCCs created under PD 1083. These Shari'a courts are part of the Philippine Judicial System by virtue of Art. 37 of the Code of Muslim Personal Laws, therein stating: "There are hereby created, as part of the Judicial System, courts of limited jurisdiction, to be known respectively, as Shari'a District Courts and Shari'a Circuit Courts, which shall exercise powers and functions in accordance with this title".
- 1.3.3 A Shari'a Appellate Court is established under the Organic Act for Autonomous Region of Muslim Mindanao (RA 6734). The Shari'a Appellate Court has not been organized, filled and operationalized.

1.4 Structure and Jurisdiction of the Philippine Shari'a Court System

JURISCONSULT IN ISLAMIC LAW

- 1.4.1 The Office of the Jurisconsult in Islamic Law was created by Article 164 of PD 1083, otherwise known as the Muslim Code, and is under the administrative supervision of the Supreme Court. The Office has the following functions:
- a) On the request of any interested party, have the authority to render legal opinions, based on recognized authorities, regarding any question relating to Muslim Law. For this purpose, he may consult or ask for a consensus of the 'ulama;
 - b) Consider and act on every request unless, in his opinion and for good reason, the question need not be answered; and
 - c) Keep a compilation and cause the publication of all his legal opinions.
- 1.4.2 No person shall be appointed as Jurisconsult in Islamic Law unless he is a Philippine citizen, at least 40 years of age, of good moral character and proven integrity, an eminent scholar in the *Qur'an* and *Hadith* and in Islamic jurisprudence as well as proficient in Arabic.¹⁵ His function is to render legal opinions to written requests, based on recognized authorities regarding any question relating to Muslim Law. He may, if he deems it necessary, consult or ask for a consensus of the *ulama*.¹⁶

¹⁵ MUSLIM CODE, art. 165.

¹⁶ *Id.*, art. 166.

- 1.4.3 The law mandates that the Jurisconsult keep a compilation and cause the publication of all his legal opinions. However, the Office seldom receives any request. Such that the former Jurisconsult, Justice Alauya, made legal opinions based on what he thought was important to be clarified in Muslim Law. Eventually the Office became unoperational and still is up to this day.

APPEAL MECHANISM FOR SHARI'A CASES

- 1.4.4 Decisions made by the Shari'a District Courts and Shari'a Appellate Courts may be elevated to the Supreme Court by petition for review on certiorari, where only questions of law are involved under Rule 45 of the Rules of Court.
- 1.4.5 The law establishing the Shari'a Appellate Court further has specific provisions that ensure that the "Supreme Court, the Court of Appeals, and other courts established by law shall continue to exercise their judicial powers as provided by the Constitution and national laws" (Sec. 2, RA 6734).
- 1.4.6 The Shari'a courts as presently constituted are part of the Philippine judicial system but are courts of limited jurisdiction. They are composed of the following:

a) The Shari'a Appellate Court

- a.1 This court was created by Section 2, Article IX, Republic Act No. 6734 (1989) which is entitled the Organic Act for the Autonomous Region in Muslim Mindanao. It shall have the following powers:
- Exercise original jurisdiction over petition for certiorari, prohibition, mandamus, habeas corpus and other auxiliary writs and processes in aid of its appellate jurisdiction; and
 - Exercise exclusive appellate jurisdiction over all cases tried in the Shari'a District Courts as established by law.¹⁷
- a.2 The decision of the Shari'a Appellate Court shall be final and executory *provided however*, that nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.¹⁸
- a.3 Decisions of the Shari'a Appellate Court may be elevated to the Supreme Court through petition for review on certiorari under Rule 45 of the Rules of Court where only question of law is involved. The same appeal is a matter of discretion for the Supreme Court to take cognizance with. To date, the Shari'a Appellate Court has not been organized and operationalized.

¹⁷ Rep. Act No. 6734 (1989).

¹⁸ *Id.*, sec. 6.

b) Shari'a District Courts

b.1 There are five shari'a district courts each to be presided over by one judge. Created under Pres. Decree No. 1083, it is constituted as follows:

- First Shari'a District, the Province of Sulu;
- Second Shari'a District, the Province of Tawi-Tawi;
- Third Shari'a District, the Province of Basilan, Zamboanga del Norte, Zamboanga del Sur, and the Cities of Dipolog, Pagadian and Zamboanga;
- Fourth Shari'a District, the Provinces of Lanao del Norte, Lanao del Sur, and the Cities of Iligan and Marawi; and
- Fifth Shari'a District, the Profinces of Maguindanao, North Cotabato, and Sultan Kudarat and Cotabato City.¹⁹

b.2 The Shari'a District Court shall have original jurisdiction over:

- All cases involving custody, guardianship, legitimacy, paternity and filiation under this Code
- All cases involving disposition, distribution, and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property;
- Petitions for the declarations of absence and death and for the cancellation or correction of entries in the Muslim Registries mentioned in Title VI of Book Two of this Code;
- All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and
- All petitions for mandamus, prohibition, injunction, certiorari, habeas corpus and all other auxiliary writs and processes in aid of its appellate jurisdiction.²⁰

b.3 The Shari'a District Court shall have original jurisdiction concurrently with civil courts over:

- Petitions by Muslims for the Constitution of a family home, change of name and commitment of an insane person to an asylum;
- All other personal and real actions not mentioned in paragraph (d) wherein the parties involved are Muslims except for forcible entry and

¹⁹ MUSLIM CODE, art. 137.

²⁰ *Id.*, art. 143, par. (1).

unlawful detainer which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court; and

- All special civil actions for interpleader or declaratory relief wherein the parties are Muslims or the property involved belongs exclusively to Muslims.
- b.4 The Shari'a District Court shall have appellate jurisdiction over all cases tried in the Shari'a Circuit Courts within their territorial jurisdiction. It shall decide every case appealed to it on the basis of evidence and records transmitted as well as such memoranda, briefs or oral arguments as the parties may submit.²¹
- b.5 The decisions of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.²²

c) The Shari'a Circuit Courts

- c.1 Pursuant to Article 150 of PD 1083, Shari'a Circuit Courts shall be established as follows:
 - Six courts in the Province of Sulu;
 - Eight courts in the Province of Tawi-Tawi;
 - Ten in the Provinces of Basilan, Zamboanga del Norte and Zamboanga del Sur, and the Cities of Dipolog, Pagadian and Zamboanga;
 - Twelve in the Provinces of Lanao de Norte and Lanao del Sur and the Cities of Iligan and Marawi;
 - Fifteen in the Province of Maguindanao, North Cotabato and Sultan Kudarat and Cotabato City
- c.2 Although the law specifies fifty-one (51) SCCs to be created under PD 1083, only twenty-five (25) SCCs are operational.
 - The territorial jurisdiction of each of the Shari'a Circuit Courts shall be fixed by the Supreme Court on the basis of geographical contiguity of the municipalities and cities concerned and their Muslim population.²³

²¹ MUSLIM CODE, art. 144 (1) & (2).

²² *Id.*, art. 145.

²³ MUSLIM CODE, art. 150(2).

c.3 The Shari'a Circuit Court shall have exclusive original jurisdiction over:²⁴

- All cases involving offenses defined and punished under this Code;²⁵
- All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 involving disputes relating to:
 - marriages;
 - divorce recognized under this Code;
 - betrothal or breach of contract to marry;
 - customary dower (*mahr*);
 - disposition and distribution of property upon divorce;
 - maintenance and support, and consolatory gifts (*mut'a*); and
 - restitution of marital rights.
- All cases involving disputes relative to communal properties.

1.4.7 Article 143 of the Muslim Code states that concurrently with existing civil courts, the Shari'a shall have original jurisdiction over:

- a) Petitions by Muslim for the constitution of a family, home, change of name and commitment of an insane person to an asylum;
- b) All other personal and real actions not mentioned in paragraph 1(d) wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Court; and
- c) All special civil actions for interpleader or declaratory relief wherein the parties are Muslims or the property involved belongs exclusively to Muslims.

1.4.8 This concurrent jurisdiction adds confusion of Muslims insofar as where to file their cases.

1.5 Administrative Supervision of the Shari'a Courts

1.5.1 The Supreme Court, as specified in the 1987 Constitution and as affirmed by the Muslim Code and other national laws on the Philippine Judiciary, holds administrative supervision over all courts under the Philippine Judicial System. Under the constitution, the Supreme Court also has "the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice of law, the integrated bar, and legal assistance to underprivileged. Such rules shall provide a simplified and inexpensive procedure for all courts of the same grade, and shall not

²⁴ MUSLIM CODE, art. 155.

²⁵ See *Id.*, arts. 181-185 which deal on illegal solemnization of marriage; marriage before the expiration of *idda*; offenses relative to subsequent marriage, divorce, and revocation of divorce; failure to report for registration; and neglect of duty by registrars.

diminish, increase or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court" (Par. 5, Sec. 5 of Art. VII of 1987 Constitution). Further, the Muslim Code specifies that the Shari'a courts "shall be governed by such special rules of procedure as the Supreme Court may promulgate" (Art 158, 148 of the Muslim Code).

- 1.5.2 Under the administrative supervision of the Supreme Court, is the Philippine Judicial Academy (PhilJA) that provides training and continuing judicial education for judges of Shari'a Courts.

1.6 The Agama Arbitration Council

- 1.6.1 As established by Article 160 of PD 1083, the SDC or SCC may, in appropriate cases, constitute an Agama Arbitration Council. Matters referred to this Council are divorce by *talaq* or *tafwid*, subsequent marriages and offenses against customary law.²⁶ When divorce by *talaq* or *tafwid* is pronounced by either husband or wife, a written notice is filed with the Clerk of Court and within seven (7) days from receipt of notice, the Clerk of Court shall require each of the parties to nominate a representative. These representatives shall be appointed by the Court to constitute, together with the Clerk of Court as Chairman, an Agama Arbitration Council. A report on the result of the arbitration, on the basis of which and such other evidence may be allowed, the Court shall issue the corresponding order.²⁷
- 1.6.2 This is also true of subsequent marriages. Insofar as cases involving offenses against customary law which can be settled without formal trial, the SCC may, at its discretion, direct the Clerk of Court to constitute a council of not less than two or more members, with him as chairman to settle the case amicably.
- 1.6.3 To illustrate how the Agama Arbitration Council operates, any Muslim male who has filed a divorce with the Shari'a Circuit Court must file with the Clerk of Court of such Shari'a Circuit Court a written notice of the facts and circumstances attendant to the case being heard and studied by the Shari'a court concerned. Within seven days from the receipt of notice, the Clerk of Court will require the parties concerned to nominate a representative whom the court will appoint to constitute an Agama Arbitration Council, with the Clerk of Court serving as the chairman. The Agama Arbitration Council will submit to the court a report on the result of the arbitration, on the basis of which and such other evidence as may be allowed, the court will issue the corresponding order.
- 1.6.4 There are no records to indicate just how many cases have been settled by the Agama Arbitration Council. The Supreme Court should issue a directive asking the Shari'a courts to keep statistics on how many cases have been settled so as to determine how successful the alternative dispute resolution has been.

²⁶ Ars. 161-163, MUSIM CODE.

²⁷ *Id.*, sec. 161.

- 1.6.5 Further, there are issues, which some Shari'a judges have presented during the consultants' initial discussion with them on the operation of the Shari'a justice system. One is the lack of public knowledge of the processes involved in the operation of the Agama Arbitration Council. Some judges perceived that the Council has not even been formally institutionalized. They recommend that the appropriate measures must be taken to fully inform local government units on the Shari'a court procedures, as well as the full implementation of the Agama arbitration system.
- 1.6.6 There are laws of general application such as the Barangay justice system²⁸ under the Local Government Code and their applicability to Shari'a courts. Parties before the Shari'a courts are in a quandary as to whether or not they should go to the *Katarungang barangay* as a pre-condition to the filing of an action in court. The Muslim Code in Article 160 provides that the SDC or SCC may, in appropriate cases, constitute an *Agama* Arbitration Council which performs the same function – to settle disputes amicably. Since both methods are types of alternative dispute resolution and their objective is to settle disputes amicably so as not to congest the case load of the courts, there must be a clear policy emanating from the Supreme Court regarding this matter, or an amendment to the Muslim Code by legislation.
- 1.6.7 The adoption of the Council's action especially in cases of conflict with the Barangay Justice System has been emphasized as another measure that must be taken. The Supreme Court has been enjoined to provide specific guidelines delineating which cases must be brought to the attention of the Agama Arbitration Council vis-à-vis those that must be acted upon by the local government units under the Barangay Justice System.

2 PROCEDURES UTILIZED BY THE PHILIPPINE JUDICIAL SYSTEM

- 2.1.1 Among the powers of the Supreme Court is to promulgate rules and enforcement of constitutional rights, pleading, practice and procedure in all courts. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase or modify substantive rights.²⁹ The Rules of Court shall apply in all courts, except as otherwise provided by the Supreme Court.³⁰ These Rules shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.³¹ Except in cases not herein provided, or except by analogy, these rules are suppletory in character and whenever practicable and convenient.³²
- 2.1.2 The Muslim Code provides that the Shari'a courts shall be governed by such special rules of procedure as the Supreme Court may promulgate.³³ In the same vein,

²⁸ Chapt. VII, Rep. Act No. 7160 (1991).

²⁹ CONST., art. VIII, sec. 5, par. 5.

³⁰ RULES OF COURT, Rule 1, sec. 2.

³¹ *Id.*, sec. 3.

³² *Id.*, sec. 4.

³³ Pres. Decree No. 1083, secs. 148 & 158.

- proceedings in the Shari'a Appellate Court and in the Shari'a lower courts shall be governed by such rules as the Supreme Court may promulgate.³⁴ Provisions of law governing Municipal and Regional Trial Courts would also apply to Circuit and District Courts to the extent not contrary to the Muslim Code.³⁵
- 2.1.3 On September 20, 1983, the Supreme Court *En Banc* Resolution provided for the Special Rules of Procedure in the Shari'a Courts. In Section 16 of the Rules, it provides that the Rules of Court shall apply in a suppletory manner. All offenses cognizable by the Court may be filed in such form and heard in such manner as prescribed by the applicable laws and Rules of Court. However, the Court may apply in a suppletory manner, the Principles of Muslim Law.³⁶
- 2.1.4 There are rules which the Shari'a courts may utilize such as the Revised Rule on Summary Procedure and certain Family Court Rules such as the Child Witness Rule. The procedure is ostensibly Islamized or made to appear Islamic. The adequacy of the procedure can be determined by its ability to clarify and limit the issues, establish matters in evidence and provide a clear determination of facts and applicable law coupled by the juristic command of the Judges on the procedure as well as substantive law

³⁴ Rep. Act No. 6734, sec. 12.

³⁵ Articles 149 and 159, PD No. 1083.

³⁶ Special Rules of Procedure in Shari'a Courts, sec. 17.

3.4

The Statutory Framework

1 INTRODUCTION

- 1.1.1 This section of the report presents an overview and assessment of the statutory framework and the adequacy of substantive law supporting the Shari'a justice system.

2 LEGAL FRAMEWORK

2.1 Regional Formulation of the Shari'a Legal System

- 2.1.1 The Regional Assembly, in consultation with the Supreme Court and consistent with the Constitution, may formulate a Shari'ah legal system including the criminal cases, which shall be applicable in the region, only to Muslims or those who profess the Islamic faith. The Shari'ah courts shall have jurisdiction over cases involving personal, family and property relations, and commercial transactions, in addition to their jurisdiction over criminal cases involving Muslims. The Regional Assembly shall, in consultation with the Supreme Court, determine the number and specify the details of the jurisdiction of these courts.³⁷
- 2.1.2 The formulation by the Regional Assembly of a Shari'ah legal system is restricted by the Organic Act as follows: (1) the formulation must be in accordance with the Constitution, (2) it must be in consultation with the Supreme Court, (3) it may include criminal cases, and (4) it shall be applicable only to Muslims.
- 2.1.3 Anent the first requirement, most pertinent are the non-establishment clause and the due process clause. The due process clause³⁸ simply requires among others, that the law passed is in harmony with the general powers of the legislature, reasonable in operations, enforced in regular methods of procedure and applicable alike to all of the citizens of the state or to all of the same class.³⁹
- 2.1.4 The Shari'ah being definitely Islamic, religious, should only apply to the believers of such religion, Islam. It cannot apply to non-Muslims. The Shari'ah shall apply only to Muslims. Its application is further limited by pertinent constitutional provisions, particularly by the prohibition against cruel and unusual punishment and by pertinent

³⁷ Section 5, Article III, RA 9054, Organic Act of Muslim Mindanao, as Amended.

³⁸ No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. Section 1, Article III, Philippine Constitution.

³⁹ *Rubi vs. Provincial Board of Mindoro*, 39 Phil 660, at 706-07 [1919]..

- national legislation that promoted human rights and the universality accepted legal principles and precepts;⁴⁰
- 2.1.5 Consultations with the Supreme Court may be made in the matter of administration of Justice. The jurisdiction of the Muslim Autonomous Region is not limited to legislations enacting into law substantive laws of Islam, but expands to the administration of Islamic law and justice subject to consultation with the Court. Moreover, the Muslim Autonomous Regional Government is mandated to maintain close coordination with the central government for an effective administration of justice in the autonomous region.⁴¹
- 2.1.6 The jurisdiction of the Muslim Autonomous Region on the laws of Islam is not limited to the franchise granted by the Marcos Code over personal, family and property, relations but may include criminal legislation of Islamic laws. It may also enact into law other laws of Islam, of civil, commercial, or any other nature.
- 2.1.7 Whenever a conflict arises between the Muslim and Tribal Codes, the pertinent laws of the central government shall apply. The same is true when the conflict arises between either of Muslim and Tribal Codes, and the laws of the central government. Resort should be made to the pertinent central government laws.⁴²

2.2 Administration of Shari'a Justice

- 2.2.1 Judicial power is the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights.⁴³ It also includes the duty of the courts to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.⁴⁴ Such power is vested by the Constitution in the Supreme Court and such lower courts Congress establishes.
- 2.2.2 The proper exercise of said authority requires legislative action: (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof; and (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. For this reason, the Constitution ordains that "Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts", subject to the limitations set forth in the fundamental law.⁴⁵ The Organic Act however has authorized the creation of Shari'a courts by the Regional Assembly.⁴⁶

⁴⁰ Par. (e), Section 3, Article IV, RA 9054.

⁴¹ Section 3, Article V, RA No. 9054.

⁴² Section 22, Article VIII, RA No. 9054.

⁴³ *Lopez vs. Roxas*, G.R. No. L-25716. July 28, 1966 citing Black, Constitutional Law, 2nd ed. p. 82; *Ruperto vs. Torres*, G. R. No. L-8785, February 27, 1957, citing 34 C. J. 1183-1184; *Wheeling & Elm Grove Railroad Co., Appt. vs. Town of Triadelphia. et al.* 4 LRA (NS) pp. 321, 328-329.

⁴⁴ Section 1, Article VIII, Phil. Const.

⁴⁵ *Lopez vs. Roxas*, supra.

⁴⁶ Section 5, Article VIII, RA No. 9054.

- 2.2.3 The Philippine Constitution stipulates that the state shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies (Art. XIV, sec. 17). Thus the codification of Muslim Personal Laws under PD 1083 was accomplished, which includes the establishment of a Shari'a Justice System to provide solutions towards integration and resolution of national conflicts with the cultural minority – the Philippine Muslim communities.
- 2.2.4 The earlier organic act has expressly excluded the administration of justice from the jurisdiction of the autonomous region.⁴⁷ The administration of justice was still excluded from the legislative jurisdiction of the Regional Assembly. The latter may, however, legislate on matters covered by the Shari'ah, which shall apply only to Muslims limited by pertinent constitutional provisions, particularly by the prohibition against cruel and unusual punishment and by pertinent national legislation that promoted human rights and the universality accepted legal principles and precepts.⁴⁸
- 2.2.5 Thus the two-fold legislative control over the Shari'a courts has been surrendered by Congress and delegated to the Regional Assembly. The Regional Assembly has now the power (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof; and (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. The Marcos Shari'a courts however continue to exist.

2.3 Codification and Enactment of Customary Laws

- 2.3.1 The Regional Assembly shall pursue the codification of indigenous laws and compilation of customary laws of the Muslims and the indigenous cultural communities in the autonomous region. Such Codes shall however be only to Muslims and other members of indigenous cultural communities respectively.⁴⁹ Whenever a conflict arises between the Muslim and Tribal Codes, the pertinent laws of the central government shall apply. The same is true when the conflict arises between either of Muslim and Tribal Codes, and the laws of the central government. Resort should be made to the pertinent central government laws.⁵⁰

2.4 Tribal Court System

- 2.4.1 The Organic Act created a system of tribal courts, which **may** include a Tribal Appellate Court, for the indigenous cultural communities in the autonomous region, to determine, settle, and decide controversies and enforce decisions involving personal and family and property rights of members of the indigenous cultural community concerned in accordance with tribal codes of these communities. These courts may also exercise exclusive jurisdiction over crimes committed by members of indigenous cultural communities where the imposable penalty as prescribed by the Revised Penal Code or other pertinent law does not exceed imprisonment of six (6) years or a fine not exceeding Fifty thousand pesos (P50, 000.00) or both such

⁴⁷ Section 2 (9) (e), Article V, RA No. 6734.

⁴⁸ Section 3 (e), Article IV, RA No. 9054.

⁴⁹ Section 21, Article VIII, RA No. 9054.

⁵⁰ Section 22, Article VIII, RA No. 9054.

imprisonment and fine and where the offended party or parties are also members of the indigenous cultural community concerned.⁵¹ What the law simply did was proclaim a legal system. It has to be enacted by the Regional Assembly.

2.5 Fusing Muslim And Tribal Laws: Heresy Or Synergy.

- 2.5.1 The indigenous Muslims of the Philippines are grouped into thirteen ethno linguistic groups dispersed into various parts of Mindanao. The Regional Assembly is authorized if not mandated for the codification of indigenous, customary laws of Muslims and non-Muslim indigenous inhabitants of the Muslim Autonomous Region. The Regional Assembly, in consultation with the Supreme Court and consistent with the Constitution, may formulate a Shari'ah legal system including the criminal cases, which shall be applicable in the region, only to Muslims or those who profess the Islamic faith.
- 2.5.2 The non-Muslim indigenous, customary laws will definitely not prejudice the indigenous inhabitants of the Muslim Autonomous Region. Neither can the Muslim Code, much less the envisioned Shari'ah legal system may prejudice the non-Muslim inhabitants thereof. However, there are indigenous, customary laws of the indigenous Muslim inhabitants that may not be Islamic or at worse contrary to Islamic laws. The law provides that whenever a conflict arises between the Muslim and Tribal Codes, the pertinent laws of the central government shall apply.⁵²
- 2.5.3 The national law however is clear on the matter: No 'ada (customary law) which is contrary to the Constitution of the Philippines, the **Muslim Code, Muslim law**, public order, public policy or public interest shall be given any legal effect.⁵³
- 2.5.4 It establishes the basic state policy to pursue the imposition of the Shari'ah legal system upon the Muslim Autonomous Region, even at the expense of such customary laws of the indigenous Muslim inhabitants that may be codified.

3 ADEQUACY OF THE PHILIPPINE SHARI'A JUSTICE SYSTEM IN THE RESOLUTION OF JUSTICIABLE CONFLICTS

- 3.1.1 Exploring the adequacy of the Philippine Shari'ah Justice System in the resolution of justiciable conflicts among and between Muslims will require a glance at the legislative jurisdiction of the Autonomous Region over the Shari'ah Courts and Shari'ah legal system as the Constitution and the Organic Act has provided. The confusion may be attributed to almost plenary grant of legislative franchise to the Autonomous Region over the establishment of a Shari'ah legal system.

⁵¹ Section 19, Article VIII, R.A. No. 9054.

⁵² Section 22, Article VIII, RA No. 9054.

⁵³ Article 5, PD No. 1083.

- 3.1.2 The Regional Assembly of the Autonomous Region may exercise legislative power in the Region for the benefit of the people and development of the region except among others administration of justice. The Regional Assembly may, however, legislate on matters covered by the Shari'ah applicable only to Muslims.⁵⁴ The Regional Assembly, in consultation with the Supreme Court and consistent with the Constitution, may formulate a Shari'ah legal system including the criminal cases, which shall be applicable in the region, only to Muslims or those who profess the Islamic faith.⁵⁵
- 3.1.3 The Regional Assembly is further empowered to create Shari'ah Courts.⁵⁶ Congress, the national legislature, has the power to define, prescribe and apportion the jurisdiction of the various courts, save only to the extent of the jurisdiction of the Supreme Court as provided for in the Constitution.⁵⁷ The proper exercise of judicial power requires legislative action: (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof; and (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. For this reason, the Constitution ordains that "Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts", subject to the limitations set forth in the fundamental law.⁵⁸
- 3.1.4 The Organic Act however has authorized the creation of Shari'a courts by the Regional Assembly. The Organic Act further provides that the Shari'ah courts shall have jurisdiction over cases involving personal, family and property relations, and commercial transactions, in addition to their jurisdiction over criminal cases involving Muslims. The Regional Assembly shall, in consultation with the Supreme Court, determine the number and specify the details of the jurisdiction of these courts.⁵⁹ This should be read in the light of the constitutional provision mandating the national legislation of the Organic Act for Muslim Mindanao. Section 18 of Article X of the Constitution provides that:
- 3.1.5 Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.
- 3.1.6 It is therefore clear that the Constitution simply envisioned special administration of justice with personal, family and property law jurisdiction **only**.

⁵⁴ Section 3, Article IV, RA No. 9054.

⁵⁵ Section 5, Article III, RA No. 9054.

⁵⁶ Section 5, Article VIII, RA No. 9054.

⁵⁷ Section 2, Article VIII, Phil. Const.

⁵⁸ *Lopez vs. Roxas*, supra.

⁵⁹ Section 5, Article III, RA No. 9054.

3.1.7 A cursory reading of the Organic Act of the Autonomous Region in Muslim Mindanao in the light of the 1987 Constitution will yield the following determinations:

1. The Regional Assembly may legislate on administration of justice on matters of the Shari'ah.⁶⁰
2. The Regional Assembly may formulate a Shari'ah legal system including the criminal cases, which shall be applicable in the region, only to Muslims.⁶¹
3. The Regional Assembly is further empowered to create Shari'ah Courts.⁶²
4. The Organic Act provides that Shari'ah courts shall have jurisdiction over cases involving personal, family and property relations, and commercial transactions, in addition to their jurisdiction over criminal cases involving Muslims. The Regional Assembly shall, in consultation with the Supreme Court, determine the number and specify the details of the jurisdiction of these courts.⁶³
5. The Constitution however has mandated the creation of special courts with personal, family, and property law jurisdiction ONLY.⁶⁴

3.1.8 The Constitution has allowed the establishment of Shari'ah courts, but with jurisdiction limited to personal, family, and property law jurisdiction only. Neither the Organic Act nor its creature the Regional Assembly can go beyond such constitutional authority. The Constitution is the shore of legislative authority, against which the waves of legislative enactment may dash, but over which they cannot leap.⁶⁵ The Regional Assembly may legislate a Shari'ah legal system, but it cannot provide Shari'ah courts with jurisdiction beyond what is provided for by the Constitution.

4 SUFFICIENCY OF SUBSTANTIVE LAWS

4.1.1 Presidential Decree No. 1083, the Code of Muslim Personal Laws enacted and introduced into the Philippine legal system of the Philippines by President Ferdinand Edralin Marcos, is simply limited to the personal, family and property relation laws.

4.1.2 The Constitution warrants only the establishment and maintenance of courts with limited – personal, family, and property relations – jurisdiction. The Marcos Muslim Code (1) defines enforceable and demandable rights and prescribes remedies for violations thereof; and (2) determined and established the courts with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. The Marcos Code is therefore adequately sufficient.

⁶⁰ Section 3, Article IV, RA No. 9054.

⁶¹ Section 5, Article III, RA No. 9054.

⁶² Section 5, Article VIII, RA No. 9054.

⁶³ Section 5, Article III, RA No. 9054.

⁶⁴ Section 18, Article X, Phil. Const.

⁶⁵ *Government of PI vs. Agoncillo* G.R. No. 27225. April 1, 1927

4.1 Adequacy of Philippine Shari'a Legislation

4.1.1 Another issue is whether the President Marcos' codification of Muslim law adequate. This will require an examination whether President Marcos has done justice in his codification of Muslim laws. President Marcos was precise in the statement of policy purpose in his codification of Muslim personal laws - he

- (a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective;
- (b) Codifies Muslim personal laws; and
- (c) Provides for an effective administration and enforcement of Muslim personal laws among Muslims.⁶⁶

4.1.2 President Marcos further defined what Muslim laws are - ordinances and regulations governing Muslims as found principally in the Qur'an and the Hadith.⁶⁷ He then ordained that Muslim personal laws are those all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses as provided for in his codification of said laws.⁶⁸ President Marcos therefore posits that Muslim personal laws are ordinances and regulations governing Muslims as found principally in the Qur'an and the Hadith relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses as provided for in his codification of said laws.

4.1.3 The issue therefore takes the Marcos codification of Muslim Personal laws as to whether it has adequately codified the laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses as provided by the Qur'an and the Hadith. President Marcos appears to have been comfortable that his rendition of Islamic laws on the matter is sufficiently adequate. In fact he further promulgated that should there be any conflict among the orthodox (Sunni) Muslim schools of law (Madhahib), that which is in consonance with his codification of Muslim law shall be given effect.⁶⁹

4.1.4 Proceeding with this inquiry will require whether each and every provision of the Marcos Code is sufficiently Islamic. It will require a determination whether President Marcos has employed the rules of Islamic jurisprudence in coming up with the determinations codified in P.D. No. 1083. It will require an examination whether it is in accord with the schools of Islamic law. If it is not, a constitutional question arises as to the competency of President Marcos, in particular, and the State, in sum, in imposing with the force of law a rendition of Islamic law not in accordance with any, some or all of the schools of Islamic law. It becomes an issue of Free Exercise clause.

⁶⁶ Article 2, PD No. 1083.

⁶⁷ Article 7 (h), PD No. 1083.

⁶⁸ Article 7 (i), PD No. 1083.

⁶⁹ Article 6, PD No. 1083.

- 4.1.5 In the same vein, if the determinations of the President Marcos of Islamic law as he codified into P.D. No. 1083 is sufficiently Islamic in accordance with the schools of Islamic law, orthodox or otherwise, a constitutional question arises whether President Marcos did not transgress the wall of separation between Church and State and trampled upon a basic bar against state endorse, sponsorship if not establishment of a particular Islam.
- 4.1.6 The Constitution, particularly Section 11 of Article XV of the 1973 Constitution and Section 18 of Article X of the 1986 Constitution, would have to be revisited if the framers of the same have really intended to dilute religious liberties and the principle of separation of State and Church with respect to the introduction of Muslim personal laws, in particular, and the Shari'ah legal system, in general, into the Philippine constitutional regime of law.

4.2 Equal Protection Issues

- 4.2.1 What is so special with this code that cannot be treated by laws of general application? No precept was to be included unless based on the principles of Islamic law expounded by the four. What is so special with the Muslim that they cannot be treated by laws of general application?
- 4.2.2 The continued introduction of the Shari'ah legal regime into the Philippine legal system also introduces some quite fundamental issues other than those of the separation principle, free exercise guarantee and the establishment prohibition. It also infringes on the constitutional guarantee of equal protection of citizens before the law.⁷⁰ The introduction of the Shari'ah legal regime into the Philippine legal system is the only instance when the law will not only provide for the application of the ordinances of a particular religion, but provides for a distinct set of law on personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses of a distinct group of citizens of the Republic, distinct only by virtue of the religious affiliation. Worse, the law intervenes in an intra-religious schism by recognizing a particular orthodoxy.
- 4.2.3 In the technical preparation of the compilation and eventual codification of the Muslim personal laws, the Research Commission has made definite that no precept of Islamic laws on personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses were to be included unless it is based on the principles of law expounded by the four orthodox schools of Islamic law and jurisprudence. The codification therefore respects the existence of orthodoxy and definitively excludes there from the unorthodoxy. In *German vs. Barangan*⁷¹ the Court had an opportunity to note that the "realm of belief and creed is infinite and limitless bounded only by one's imagination and thought. So is the freedom of belief, including religious belief, limitless and without bounds. One may believe in most anything, however strange, bizarre and unreasonable the same may appear to others, even heretical when weighed in the

⁷⁰ Section 1, Article III, Phil. Const.

⁷¹ 106 Phil. 2 (1959)

scales of orthodoxy or doctrinal standards.”⁷² The law has now seen fit to determine that the Muslims in the Philippines should only be bound by certain orthodoxy. The law has limited its recognition of Islamic schools of law (*madhahib*) to those it recognized as orthodox – the Hanafi, the Maliki, the Shafi’i, and the Hanbali schools of Islamic jurisprudence.⁷³

- 4.2.4 As discussed above, the Regional Assembly may formulate a Shari’ah legal system that may include criminal cases, which shall be applicable in the region, only to Muslims or those who profess the Islamic faith.⁷⁴ The Muslim Code also provides that it shall only be applicable to Muslims and nothing therein shall be construed to operate to the prejudice of a non-Muslim.⁷⁵ These post the question as to the legal situation and distinction of the Muslims sufficient to distinguish them from the rest of the citizenry and to be governed differently by another regime of law, sufficient to face the stringent requirements of the equal protection guarantee of the Constitution.
- 4.2.5 The law does not indicate the legal situation and distinction sufficient to justify a distinct legal treatment and regime for the Muslims in the Philippines.

4.3 Gender Bias in Shari’a Laws

- 4.3.1 The 1987 Constitution provides that as a policy, the State values the dignity of every human person and guarantees full respect for human rights.⁷⁶ Furthermore, the same article provides that the State recognizes the role of women in nation-building, and should ensure the fundamental equality before the law of women and men.⁷⁷ Article III of the Bill of Rights states in Section 1 that no person shall be deprived of life, liberty or property without due process of law, nor any person be denied the equal protection of laws.
- 4.3.2 An examination of the provisions of the Muslim Code shows that there is a difference in the treatment of men *vis-à-vis* women. First, insofar as access to divorce is concerned, there is a disparity in its availment by men and women. A divorce by *talaq* may be effected by the husband in a single repudiation of his wife⁷⁸ while the wife who files a divorce by *faslah* has to petition the court for a decree of divorce.⁷⁹ This is also true insofar as shares in inheritance are concerned.⁸⁰ : These provisions are a violation of the above constitutional provision on fundamental equality before the law of women and men, and UN Convention on Elimination of All Forces of Discrimination Against Women of which the Philippines is a signatory.

⁷² at pp. 9-10, quoted in Mr. Justice Fernando’s Separate Opinion in *Victoriano vs. Elizalde*, G.R. No. L-25246. September 12, 1974.

⁷³ Cf. Article 6 par 2 and, Article 7 par (e), P.D. No. 1083.

⁷⁴ Section 5, Article III, RA No. 9054.

⁷⁵ Article 3, par (3), P.D. No. 1083.

⁷⁶ Art. II, sec. 11.

⁷⁷ Art. II, sec.

⁷⁸ PD 1083, art. 46.

⁷⁹ *Id.*, art. 52.

⁸⁰ *Id.*, arts. 111 & 112.

4.4 The Shari'a Regime in the Philippine Legal System

- 4.4.1 The Marcos Muslim Code is the national personal laws of Muslims in the Philippines, while the Muslim Mindanao Shari'ah system of law is a territorial legal system of the believers of a particular faith-tradition. The Code of Muslim Personal Law, constitutional or otherwise, simply provides for a set of laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses applicable to Muslims and nothing therein construed to operate to the prejudice of a non-Muslim.⁸¹ The Shari'ah system of law as envisioned in the Organic Act of Muslim Mindanao is only applicable in the region, only to Muslims or those who profess the Islamic faith.
- 4.4.2 The Muslims outside of the Autonomous Region continue to be governed by all Philippine laws except to the extent that the same may infringe or run contrary to the laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations as provided for in the Muslim Code. The Muslims however inside the Autonomous Region will have to face the possibility of being governed by a Shari'ah legal system, which may include penal situation.
- 4.4.3 The Muslim Code will continue to be subject to the national legislature; it having been enacted by the latter, the latter may amend or even repeal the same. Legislative power is the authority, under the constitution, to make laws and to alter and repeal them.⁸² Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes.⁸³
- 4.4.4 The Supreme Court will continue to exercise certiorari jurisdiction over resolutions of the Shari'ah District Court. While the decisions of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not are final, it does not affect the certiorari jurisdiction of the Supreme Court as provided for in the Constitution.⁸⁴
- 4.4.5 The Shari'ah legal system envisioned by the Organic Act of the Autonomous Region in Muslim Mindanao provides for the authority of the Regional Assembly to establish Shari'ah Courts.⁸⁵ It also creates a Shari'ah Appellate Court which shall powers to issue the certiorari, prohibition, *mandamus*, *habeas corpus*, and other auxiliary writs and processes only in aid of its appellate jurisdiction and exclusive appellate jurisdiction over all cases in the Shari'ah district courts as established by law.⁸⁶ This renders an interpretation that decisions of Shari'ah District Courts are not final and executory as provided for under Article 145 of Presidential Decree No. 1083. It failed

⁸¹ Article 3, par (3), P.D. No. 1083.

⁸² *Government vs. Springer*, G.R. No. 26979. April 1, 1927.

⁸³ *Duarte vs. Dade*, G.R. No. 10858. October 20, 1915.

⁸⁴ Article 145, P.D. No. 1083.

⁸⁵ Section 5, Article VIII, R.A. No. 9054.

⁸⁶ Section 9, Article VIII, R.A. No. 9054.

to establish however whether which of the appellate and original jurisdiction decisions of the Shari'ah District Courts are liable for appeal to the Shari'ah Appellate Court.

- 4.4.6 The Shari'ah Courts outside of the Autonomous Region in Muslim Mindanao shall remain to be governed by Presidential Decree No. 1083. Decisions of the Shari'ah Circuit Courts continue to be appealable to the Shari'ah District Courts which decisions are final and executory that may only be reviewed by the Supreme Court on *certiorari*. However, the Shari'ah Appellate Court shall exercise appellate jurisdiction over decisions of Shari'ah District Courts within the Autonomous Region in Muslim Mindanao.

4.5 Persistence of Extrajudicial Settlement of Justiciable Conflicts

- 4.5.1 If we look at the total number of cases disposed by Shari'a District Courts from 2000-2003 which is 60 cases annually or 12 cases disposed annually by each Shari'a District Court on the average, the Shari'a Circuit Courts dispose a total of 1,366 cases for the same year or 14 cases disposed annually by each Shari'a Circuit Court. As observed by a Field Report conducted by the Filipinas Legal Resource Center from March 20, 2002 – March 31, 2003,

“the flock of undocketed cases before one of the judges' sala is attributed to his personality as an *aleem*, a Muslim religious leader.

- 4.5.2 This experience of being swamped by informal consultations and invitations to mediate or arbitrate within the sala of his court as well as that of his home, finds basis in the way the Muslims look up to their religious leaders. People run to him for advice and for conflict-resolution notwithstanding the fact that he is not a Philippine bar passer. For these people, what is more important is that he knows the law of Allah.”
- 4.5.2 This practice which is replicated by other judges which indicates that in Muslim areas, they are not aware of the existence of Shari'a courts. This practice of extrajudicial settlement of judicial issues is vulnerable to abuse and misuse.
- 4.5.3 Examination may also be required as to reasons why Muslims continue to resort to extrajudicial settlements of justiciable controversies notwithstanding the establishment of Shari'ah Courts. This examination should consider public perception of the competence of those professionals the Supreme Court has authorized to appear and prosecute causes before the same courts. It should also involve an appreciation of people's appreciation of the competence and integrity of Shari'ah judicial officials and other personnel. Ultimately, it should also determine whether the Shari'ah legal regime currently in existence concretely and appropriately define enforceable and demandable rights and prescribe efficient remedies for violations thereof.

- 4.5.4 The inquiry should also extend into a determination whether the Shari'ah legal system really provide an economical, swift resolution of their causes. In traditional conflict resolution mechanisms, often lawyers are not necessary. Often, causes are presented and determined in one or few sittings. It should also be borne in mind that extrajudicial resolution of controversies often avoids a proclamation of winner or loser.
- 4.5.5 At the end of the day, alternative, extrajudicial conflict resolution mechanisms – arbitration, mediation and concilitation – are promoted under Philippine laws. It should not be begrudged that the Muslims may need no prodding in seeking the same instead of seeking resort with the courts President Marcos created to enforce his codification of Islamic laws, or those courts the Regional Assembly or its Organic Act may have created.
- 4.5.6 The Muslims in the Autonomous Region in Muslim Mindanao are Filipinos, Muslims and Moros. As Filipinos, they are basically bound by the same law except to the extent that another set of laws govern them by virtue of their being a Muslim. As Moros, they have indigenous customs, laws and traditions as well as mechanisms of conflict resolution.

4

HUMAN RESOURCES MANAGEMENT AND INTERNAL CAPACITY OF THE SHARI'A COURT SYSTEM

1 INTRODUCTION

- 1.1.1 This chapter focuses on two major groups of topics. The first group presents a review of the human resources system supporting the Shari'a court system, the legal education, judicial education and appointments and career development processes. The human resources system assessment identifies the issues on the availability and maintenance of qualified and quality human resources to the Shari'a courts. The second group of topics presents an assessment of the internal organization structure, key systems and operational capacities of Shari'a District Courts and Shari'a Circuit Courts. The review clarifies pervading issues and dysfunctions that may become the basis for determining capacity requirements and reform directions.

2 JUDICIAL APPOINTMENTS AND CAREER DEVELOPMENT

2.1 Shari'a Appellate Court

- 2.1.1 As created by the Organic RA 6734 (1989), the Shari'a Appellate Court is composed of one Presiding Justice and two Associate Justices. They must be natural-born Philippine citizens, at least 40 years of age and has for 15 years been a judge of a lower court or engaged in the practice of law in the Philippines, a person of proven competence, integrity, probity and independence, and learned in Islamic law and jurisprudence.
- 2.1.2 According to Section 4, nominees for the position are chosen from a list of recommendees submitted by the Regional Assembly and such recommendations submitted to the Judicial and Bar Council (JBC). In turn, the JBC submits a list of 3 nominees for each position to the Presidents from which the President of the Philippines appoints. Such appointments need no confirmation.¹ Thus far, the Shari'a Appellate Court is unorganized.

¹ Rep. Act No. 6734 (1989), sec. 4.

2.2 Shari'a District Courts

- 2.2.1 The qualifications for Shari'a District Court judges are the same as Regional Trial Court (RTC) judges as fixed by the Judiciary Act² which are: a natural-born Philippine citizen; member of the Philippine Bar, at least 35 years old, engaged in practice of law for at least 10 years or has held public office requiring admission to the Bar. The judges must also learned in law and jurisprudence and are appointed by the President through the JBC. He is appointed to serve during good behavior until they reach the age of 65 years old³ which has been amended by the Constitution to 70 years old.⁴ The Shari'a Court judges have the same compensation and privileges as RTC judges. To date, only one judge out of five judgeships is filled up.

2.3 Shari'a Circuit Courts

- 2.3.1 No person shall be appointed judge of the Shari'a Circuit Court unless he is a natural-born citizen of the Philippines, at least 25 years old, and passed the Shari'a Bar Examinations given by the Supreme Court for admission to special membership in the Shari'a Courts.⁵ The judges of the Shari'a Circuit Courts shall have the same qualifications as judges of the Municipal Circuit Trial Courts or the Metropolitan Trial Courts and in addition, they must be learned in Islamic law and jurisprudence.⁶ These judges are appointed to serve during good behavior until they reach the age of 70 years.⁷ They receive the same compensation and enjoy the same privileges as judges of Municipal Trial Courts.

3 QUALIFICATIONS AND APPOINTMENT PROCESSES FOR COURT OFFICERS AND PERSONNEL

3.1 Constitutional Provisions

- 3.1.1 Section 5, Article VIII of the Constitution provides that "the Supreme Court shall have the following powers:

x x x

"(6) Appoint all officials and employees of the judiciary in accordance with the Civil Service Law."

² Batas Pambansa Blg. 129 (1980), sec. 15 in relation to Muslim Code, art. 140.

³ MUSLIM CODE, art. 141.

⁴ Art. VIII, sec. 11.

⁵ MUSLIM CODE, art. 152.

⁶ Rep. Act No. 6734 (1989), art. IX, sec. 13.

⁷ MUSLIM CODE, art. 153 as amended by the CONST., art. VIII, sec. 11.

- 3.1.2 Since the 1987 Constitution has widened the authority of the Supreme Court to cover all officials and the employees of the judiciary, including the Court of Appeals and all other lower courts, it is no longer possible for the Court of Appeals, Sandiganbayan and the Court of Tax Appeals to continue appointing its own personnel pursuant to its internal rules. Thus, the appointment of all officials and employees shall be made directly and exclusively by the Supreme Court.⁸
- 3.1.3 The power of appointment is a highly discretionary prerogative that generally may not be delegated by the authority in whom confidence has been reposed by law for its proper exercise.

3.2 Appointments to Positions in the Shari'a Appellate Court

- 3.2.1 Insofar as the Shari'a Appellate Court is concerned, the pertinent provisions of existing law regarding the qualifications, appointment, compensation, functions, duties, and other matters relative to the personnel of the Court of Appeals are applicable to the Shari'a Appellate Court.⁹
- 3.2.2 Upon recommendation of the Presiding Justice, the court administrator and clerk of court, the Supreme Court appoints the Presiding Justice as may be necessary.¹⁰ This provision has been amended by the 1987 Constitution. However, this Court is not yet operational.

3.3 Positions in Shari'a District and Circuit Courts

- 3.3.1 Article 146 of PD 1083 provides that the Shari'a District Courts shall have the same officers and other personnel as those provided by law for the Regional Trial Court (RTC). The pertinent provisions of Judicial Law regarding the number, qualifications, appointment, compensation, functions, duties, and other matters relative to the personnel of the RTC.
- 3.3.2 In the organizational chart of the Shari'a District Courts, the Personnel under the Judge are the following: Clerk of court VI, Court Legal Researcher II, Interpreter III, Court Stenographer III, Sheriff III, Clerk IV, Clerk III, Process Server, and Utility Worker I.¹¹
- 3.3.3 Article 156 of PD 1083 also provides that the Shari'a Circuit Courts shall have the same officer and other personnel as those provided by law for Municipal Circuit Courts (MCTC). The pertinent provisions of the Judiciary Law regarding the number, qualifications, appointment, compensation, functions, duties, and other matters relative to the personnel of the MCTC shall apply to those of the Shari'a Circuit Courts.

⁸ Supreme Court *En Banc* Resolution dated April 9, 1987 as implemented by Circular No. 7, dated April 27, 1987.

⁹ Rep. Act No. 6734 (1989), sec. 9(2).

¹⁰ *Id.*, sec. 9(1).

¹¹ The 2002 Revised Manual for Clerks of Court 657 (2002).

- 3.3.4 In the organizational chart of Shari'a Circuit Courts, the personnel under the Judge are the following: Clerk of Court II, Interpreter I, Court Stenographer I, Clerk II, Process Server, and Utility Worker I.¹²

3.4 Appointment Process to Vacant Positions¹³

- 3.4.1 For collegiate courts, recommendations for appointment of court personnel shall be submitted to the Supreme Court through their Presiding Justice/Judge insofar as they involve their respective office staff. Recommendations to all other positions in the aforesaid courts shall be made by their respective Presiding Justice/Judges and submitted to the Supreme Court.
- 3.4.2 Recommendations for appointments of court personnel in all other courts shall be submitted to the Supreme Court by the Presiding Judges thereof through their respective Executive Judges, insofar as they involve their respective branches. Recommendations to all other positions shall be made by the Executive Judges concerned. These recommendations shall be transmitted to the Office of Services, Office of the Court Administrator (OAS-OCA) for consideration and deliberation by the Selection and Promotion Board for Lower Courts (SPB-LC).
- (a) For vacancies in the Office of Clerk of Court, recommendations shall be made by the Executive Judge.
- (b) For all other positions, the Presiding Judge/Acting Presiding Judge, or the Executive Judge, as the case may be through the Executive Judge who shall forward to the OAS-OCA all other applications submitted to his office for inclusion in the deliberation of the SPB-LC.
- 3.4.3 After assessment of competence and qualifications of the candidate, the SPB-LC approves and submits a list of recommended candidates which should reflect the comparative competence and qualifications of the top five (5) ranking candidates to the Office of the Chief Justice.
- 3.4.4 The Chief Justice and the Chairpersons of the Divisions assess, select and appoint the candidate who is deemed most qualified for the appointment to the vacant position.

3.5 The Selection and Promotion Board for the Lower Courts (SPB-LC)

- 3.5.1 The Selection and Promotion Board for the Lower Courts (SPB-LC) is tasked to assiduously study and screen applications for positions in the lower courts, and thereafter make recommendations thereon to the Supreme Court for approval.¹⁴

¹² *Id.*, p. 661.

¹³ Adm. Circular No. 50-2001, September 19, 2001 as implemented by OCA Circular No. 1-2002, April 25, 2002.

¹⁴ This was reorganized by Supreme Court Administrative Circular No. 42-2001-A dated September 19, 2001.

COMPOSITION

3.5.2 The SPB-LC is composed of the following:

- Chairperson – Court Administrator
- 1st Vice-Chairperson – Most Senior Deputy Court Administrator
- 2nd Vice-Chairperson – Senior Deputy Court Administrator
- 3rd Vice-Chairperson – Deputy Court Administrator
- Members – Representative of the Office of the Chief Justice; Assistant Court Administrator in charge of Office of Administrative Services; Head, OAS-OCA; and 2 representatives of the Philippine Association of Court Employees (PACE), one from first level position and 1 from 2nd level positions to serve for 2 years, representatives shall participate only in the level which they represent; Secretary-Recorder; and Assistant Secretary Recorder.

FUNCTIONS FO THE SPB-LC

3.5.3 The SPB-LC shall act on the following matters:

- When an applicant who is not yet in service is recommended to a vacant position although there are qualified applicants thereto who are already in service.
- When more than 1 applicant for the same position are recommended by the Presiding Judge.
- When the applicant recommended by the Acting President Judge is his designated court is different from that recommended by the permanent judge therein who is detailed to another court.
- When the applicant recommended by the Acting Presiding Judge or by regular Presiding Judge detailed in another court is different from the recommendee of the Executive Judge.
- When the recommendee of a judge is objected to by a co-employee of the nominee belonging to the same court; and
- Such matter as may be referred to the SPB-LC for resolution.

3.5.4 Factors to Determine Comparative Competence and Qualifications of Candidates

- Performance
- Eligibility
- Education and training
- Experience and outstanding accomplishments
- Psycho-social attributes and personality traits

- Potentials
- Greater percentage is allocated to performance

MERIT SELECTION AND PROMOTION PLAN

- 3.5.5 Pursuant to Section 32 of Book V of the Administrative Code of 1987 and the Civil Service Commission Memo Circular No. 3, series of 2001, Supreme Court Administrative Circular No. 50-2001 dated September 19, 2001 established the Merit Selection and Promotion Plan for the Lower Courts (MSPP-LC). It aims to:
- Establish a system that is characterized by strict observance of the merit, fitness and equality principles in the selection of employees for appointment to positions in the career service; and
 - Create equal opportunities to all qualified men and women for employment and career advancement in the lower courts.
- 3.5.6 The MSPP-LC covers career positions in the 1st and 2nd level or the equivalent in the lower courts, namely, RTCs, Shari'a District Courts, MetTCs, MTCCs, MTCs, MCTCs, and Shari'a Circuit Courts.

3.6 Gender Bias in the Implementation of the Appointment Process

- 3.6.1 To date, there is only one woman judge appointed to the Shari'a Circuit Court. The JBC Records, as of May 12, 2004 show that there are 3 female applicants for the SDCs while there are 59 female applicants out of 474. In the recent appointments of the President, all were male judges. There are qualified women applicants who are RTC Clerks of Court or private practitioners but they have not been nominated.

3.7 Adequacy of the Requirements in the Appointment of Judges in the Efficient and Effective Shari'a Administration of Justice

- 3.7.1 No person shall be appointed judge of the Shari'a Circuit Court unless he is a natural-born citizen of the Philippines, at least twenty-five years of age, and has passed an examination in the Shari'a and Islamic jurisprudence (fiqh) to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the Shari'a Courts.¹⁵
- 3.7.2 Any Shari'a lawyer is qualified to be appointed to Judge of a Shari'a Circuit Court. The concerns over the competence of Shari'a lawyers to advocate legal causes is aggravated in the case of Shari'a Circuit Court judges as in as much as they will be providing the basic determinations in the causes presented and prosecuted before them.

¹⁵ Article 152, PD No. 1083.

- 3.7.3 The concerns on the competence of Shari'a District judges may be lesser as no person shall be appointed Shari'a District judge unless, in addition to the qualifications for judges of Courts of First Instance fixed in the Judiciary Law, he is learned in Islamic law and jurisprudence. However, the concern on the adequacy of instruction in Islamic Law and Jurisprudence for classes of judges may also have to borne in mind again. The sufficiency of the 45-day training to prepare a Shari'ah Circuit or District Court judge in Islamic law and jurisprudence becomes relevant again.

4 LEGAL EDUCATION FOR SHARI'A JUDGES AND COURT PERSONNEL

4.1 Judicial Education

- 4.1.1 Continuing judicial program is being undertaken by the Philippine Judicial Academy (PHILJA).¹⁶ It administers judicial education to all judges at two levels:¹⁷
- a. ***The Orientation Program for Newly-Appointed Judges*** which aims at preparing judges for the problems and cases they must deal with during the first three years of their judgeship. There are three areas of concern: *The Judicial Person* which deals with the whole area of attitudes, values, ethics, social context and human rights as well as the underpinnings of judicial office; *Judicial Knowledge* which introduces the new judges to a judicial perspective of law; both substantive and procedural; *Judicial Skills*, which covers such items as decision-writing, legal research and reasoning, court management and case flow efficiency.
 - b. ***The Career Enhancement Program*** which constitutes the Academy's principal assistance to judges in the course of their careers. It has the added feature of taking judicial education to the regions, thirteen altogether, where the judges are. It is an annual 4-day program that covers the range of judicial knowledge, skills and attitudes. Each year, a new set of topics and sessions is designed. For the past two years, all judges – 100% of them benefit from the program.
 - c. There are also ***Special Focus Programs*** which are occasioned by the promulgation of new rules or the enactment of new laws, or the constitution of specialized courts all calling for immediate training and specialization. These courses are offered at the Academy's Development Center in Tagaytay City. The Academy usually engages different academic groups, foreign partners and local NGO's in partnerships for the delivery of these programs.¹⁸
 - Discussion Sessions involve the justices of superior courts. At these sessions, Supreme Court justices, academics, foreign lecturers or the

¹⁶ Rep. Act No. 8557 (1998).

¹⁷ R.C. Aquino, Levels of Judicial Education, 2 APJEF Newsletter 3 (Jan. 2004).

¹⁸ *Ibid.*

justices themselves propose themes for discussion, offer inputs and elicit participation on the part of the justices.¹⁹

- PHILJA educational programs are also included in conventions of judges and court personnel. Likewise, special programs of 3-days length are given to clerks of court, legal researchers and court social workers.
- PHILJA has conducted two (2) seminars for Shari'a judge and clerks of court. They are:
 - Judicial Career Development Seminar for Judges and Clerks of Court of Shari'a District Courts and Circuit Courts held at Grand Astoria Hotel, Zamboanga City from March 15-17, 1999. Their program consisted of the following:
 - An overview of the Philippine Judicial System (to include Circulars and Administrative Orders of the Court)
 - An overview of Shari'a and Significant Features of Islamic Family Relations as Applied in the Philippines
 - Highlights of Judicial Ethics and Supreme Court Doctrines on Judicial Conduct
 - Decision Writing
 - Comparative Studies on Civil Law and Islamic Law on Succession
 - Highlights of the Special Rules of Procedures for Shari'a Courts
 - Pre-Trials, Pre-Trial Orders, Amicable Settlements
 - Specific Offenses under P.D. 1083 and the Rules of Court; Finality of Judgment
 - Case Flow Management
 - Dialogue with Chief Justice Hilario G. Davide, Jr.

Written evaluative exercises are given daily together with evaluation sheets.

- Seminar for Shari'a Court Judges and Clerks of Court held from September 15 to October 5, 1999 at the Philippine Judicial Academy Tagaytay City. The Seminar endeavors to (1) Acquaint participants with the different areas of Philippine law; (2) Familiarize them with legal issues and problems and their solutions in Philippine law; and (3) Foster desirable values and attitudes as judicial officers. Methodology and learning activities consist of lectures and open forums, workshops and written evaluative exercises. The one-month seminar consists of:
 - The fundamental concepts and principles underlying the Constitution (including the social, political and economic rights)
 - The Indigenous People's Act and the Agrarian Reform law

¹⁹ *Ibid.*

- Problem Solving in Judicial Ethics
- Legal and Judicial Ethics
- Interplay of National Law and the General Principles of Islamic Law
- Conflict of Laws
- The Judge and the Clerk of Court – their functions, Duties and Responsibilities
- Bill of Rights
- The Legal Structure and Basic Functions of Government
- Administrative Law and the Law on Public Officers
- Local Governments
- The Commission on Elections and Election Laws
- International law as Part of National Law
- Human Rights and Philippine Laws
- Environmental Law
- Persons and Family Relations
- Property and Modes of Acquisition Including the Condominium Act
- Law on Succession
- Obligations and Contracts and Sales
- Partnership, Agency and Trusts
- Torts and Damages
- Labor Relations Law
- Law on Labor and Social Legislation
- Criminal Law I: Basic Concepts and Principles of Criminal Law and Penology
- Criminal Law II: Specific Offenses and their Penalties –Part I
- Specific Offenses – Part II
- Crimes Punishable by Special Laws
- Omnibus Investment Code and Foreign Investment Law
- Commercial Documents
- Transportation Law
- Banking Law
- Intellectual Property Law
- Insurance
- Corporate Law
- Consumer Protection Law
- Taxation
- Transfer, Business and Other Taxes

- Credit Transaction
- Judicial Power, The Judicial Reorganization of Courts
- Civil Procedure
- Special Proceedings
- Criminal Procedure
- Fundamentals in Evidence
- Rules on Summary Procedure
- Supreme Court Administrative Issuances

4.2 The Shari'a Bar

4.2.1 When the Muslim Code of Personal Laws took effect on 04 February 1977, the Ministry of Muslim Affairs (now Office) started training students in Shari'a law and instituted review courses for the Special Bar Examinations at the Regional Training Center at Marawi City. Initially, an interval of three (3) years was allotted for training and review until it was shortened to two years in 1991.

4.2.2 Pursuant to Article 152 of the Code, the Supreme Court issued guidelines for the admission to special members in the Philippine Bar to practice in the Shari'a courts. The Special Bar Examinations were to be conducted by the Office of the Bar Confidant under the strict supervision of the Supreme Court.²⁰ Applicants for admission take their examinations in English or Arabic. Accordingly, there are three (3) categories of persons who admitted to take the examinations.²¹ They are:

- (1) Lawyers who are regular members of the Bar who aspire to be appointed to the Shari'a Courts.
- (2) Non-lawyers who are non-degree holders who have completed the Seminar on Islamic Law and Jurisprudence required and authorized by the Supreme Court.
- (3) *Ulama* who are Muslim holders of college degree in Islamic Law and Jurisprudence from Al-Azhar and other Islamic institutions of the same category in other countries recognized by their respective governments.

4.2.3 According to Art. 152 of the Muslim Code, no person shall be appointed judge of the Shari'a Circuit Court unless he is a natural born citizen of the Philippines, at least twenty-five years of age and has passed an examination in the Shari'a and Islamic jurisprudence (fiqh) to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the Shari'a Court. Thus, the Supreme Court issued guidelines for the admission to special members on September 20, 1983. Persons allowed to take the Special Bar Examinations are:

²⁰ M. Mastura, *Shari'a Law and the Philippine Legal System*, 5 COURT SYSTEMS J. 74, 86 (2000).

²¹ *Id.*, at 87.

A. Non-lawyers

- All degree holders who have completed the Seminar on Islamic law and jurisprudence required and authorized by the Supreme Court ;
- All college degree holders in Islamic Law and Jurisprudence of the Al-Azhar University and of Islamic institutions duly of the same category and in other countries duly recognized by their respective governments; and
- All graduates of the Islamic secondary schools duly authorized by the Philippine government where Islamic law and jurisprudence are taught as part of the curriculum and who have completed the seminar on Islamic Laws and Jurisprudence required and authorized by the Supreme Court.

B. Lawyers

Members of the Philippine Bar who aspire to be appointed to any of the Shari'a Courts must first pass the examinations to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the Shari'a Courts.

4.2.4 The examinations are administered by the Supreme Court thru the Office of the Bar Confidant. Subjects covered by the Special Bar examinations are:

- Jurisprudence (*Fiqh*) and Customary Law (*Adat*).
- Persons, Family Relations and Property;
- Succession, Wills/Adjudication and Settlement of Estates; and
- Procedure in Shari'a Courts.

4.2.5 Initially, a training program was especially designed for prospective judges of the Shari'a courts, thus giving birth to the Philippine Shari'a Institute on March 12, 1983. The Ministry of Muslim Affairs, University of the Philippines—Islamic Studies and other institutions of higher learning, spearheaded this program.

- 4.2.6 The figures below indicate the low passing numbers of candidates of the Shari'a Bar examinations since its inception:

YEAR	NO. OF CANDIDATES WHO PASSED	PASSING PERCENTAGE
1. 1983	14	7.69%
2. 1987	13	15.29%
3. 1991	63	52.50%
4. 1993	32	28.07%
5. 1995	48	41.38%
6. 1997	44	32.35%
7. 1999	43	32.58%
8. 2001	30	38.96%
9. 2003	13	20.63%

- 4.2.7 So far there are a total of 300 passers. During the 2003 examinations 63 took the exams and only 13 passed. The above table indicates the low passage of bar examinees, which may be attributed to several factors:

- a) Inadequate preparation of lawyers in the practice of Shari'a law

In the practice of any other special field of law, only members of the Philippine Bar are allowed to practice, without any requirement of passing a special Bar examination. In the practice of Shari'a, albeit any member can practice the same, non-members of the Bar may be allowed to practice the same and appear before the special Shari'a courts by simply passing a special "Bar" examination. It does not require a degree in law to take the examination. A bachelor's degree in any field of study is sufficient to be admitted in a 45-day training, which is required in taking the special "Bar" examination. While laws and rules of general application are of suppletory character to Shari'a law and practice, command of the other laws of general application is not sought in this training. There are publications on the Muslim Code and annotations thereof. There is however a paucity in materials on Islamic law that has gained judicial recognition of persuasive authority or otherwise. There is also a dearth in lecturers of authority or command in the subject. There are trainers who are of academic background and sufficient training skills and there are those whose training skills may need to be improved.

The 45-day period may also not be sufficient a time to train in the Philippine Muslim Law. This insufficiency are found in the following:

- (1) The adequacy of the training for instruction in Islamic Law and Jurisprudence, Muslim Code and Judicial Processes.

Discerning the quality of preparation of Shari'a lawyers in the fundamentals of the Muslim Code – Islamic Law and Jurisprudence – would require a look in the quality of instruction and instructional and research materials available to prospective Shari'a lawyers in Islamic law and juristic processes. An elementary area of inquiry will be on the professorial capabilities of the lecturers of the subject matter. Another area of concern will be the sufficiency of time, instruction and instructional materials in the substantive and remedial provisions of the Muslim Code. While Shari'a lawyers may be limited to representation to causes in the Shari'a Courts, they cannot represent their clients before the Supreme Court, which to this time has the exclusive certiorari review powers over decisions of the District Courts. Shari'a lawyers must have been prepared to pursue their cases before the Supreme Court from the moment they commence proceedings before the special courts.

- (2) The adequacy of the training for instruction in developing skills in legal counseling and representation.

The 45-day training may also be discerned as to its effectiveness in providing the Shari'a lawyers skills in legal counseling and representation before the Shari'a courts. Legal counseling presupposes a legally systematic comprehension of pertinent facts, identification of legal issues and the determination of relevant, applicable laws. The Shari'a Training Program may also be discerned whether it has provided the trainees the necessary skills for responsible legal counseling. Moreover, those facts must have to be established in evidence before the Courts. Thus, the pleading preparation, evidence presentation and summative capabilities of the trainees should have been addressed in the training.

- (3) The adequacy of the training for instruction in legal research and trial practice.

The articulation of applicable law and jurisprudence will depend on the depth of the documentation and evidentiary formation of counsels. The capabilities of the Shari'a lawyers to substantiate allegations and basis in law and jurisprudence would have to be established before and by the admission proceedings they undergo. Their trial capabilities would also have to be established before and by the very admission proceedings.

- (4) The adequacy of the training for instruction in relating the Muslim Code with Laws of General Application.

The Shari'a system is but a part of the Philippine legal system. Substantial and remedial provisions of the Muslim Code will definitely be affected by laws and rules of general application. The application of Muslim Code as well as the proceedings before the Muslim Courts cannot proceed in a vacuum. More so when both law and rules of general application are of suppletory character to the Muslim Code and court processes.

- b) Poor command of English language.

One of the reasons for the low passing rate is the inability of the examinees to sufficiently express their answers in English which is one of the languages used.

- 4.2.8 Shari'a lawyers who pass the special bar examinations cannot practice law before the regular courts. In Bar Matter No. 681 dated August 05, 1993, *Re: Petition to Allow Shari'a Lawyers to Exercise Their Profession at the Regular Courts*, the Supreme Court ruled that a person who has passed the Shari'a Bar Examinations is only a special member of the Philippine Bar and not a full-fledged member thereof, even if he is a Bachelor of Laws degree holder. The Court opined that the matter of full admission to the practice of law is, at its base, related to requisite knowledge. The subject matter of the Examination covers the entire range of Philippine laws and jurisprudence while the Shari'a Bar Examination covers Muslim personal laws and jurisprudence only. Thus, a person who has passed the Shari'a Bar Examination who is not a lawyer, is not qualified to practice before the regular courts because he has not passed the requisite examination for admission as a member of the Philippine Bar.
- 4.2.9 As to the question on whether or not a Shari'a lawyer can be appointed as notary public, the Supreme Court resolved it in the negative. In Bar Matter No. 702 dated May 12, 1994, the Court made clear that since a person who has passed the Shari'a Bar Examination does not automatically become a regular member of the Philippine Bar, he lacks the necessary qualifications to be appointed a notary public. As a general rule, a Shari'a lawyer is not possessed of the basic requisite of "practice of law" in order to be appointed as a notary public under Section 233 of the Notarial Law in relation to Section 1, Rule 138 of the Rules of Court.
- 4.2.10 However, the Supreme Court also stated that a Shari'a bar lawyer may appear before the Municipal Trial Courts as agent or friend of a litigant, if appointed by the latter for the purpose.²²

5 COURT SUPPORT STRUCTURE

5.1 Structure of Shari'a Court

- 5.1.1 The operational structure of the Shari'a Court refers to how functions and processes in the courts are organized, to adjudicate cases and deliver judicial services. The operational structure of the court has the following configuration:
- a) **Adjudicatory structure**, to refer to the actual functions of the court to hear, study and decide on cases filed thereto, all of which are directly performed by the judge, being the adjudicator.

²² Bar Matter Nos. 681 dated August 5, 1983 and 702 dated May 12, 1994.

b) Support structure, to refer to the functions and activities supportive of the adjudicatory process of the court and the day-to-day court administration or “housekeeping”, as performed by various court personnel under the supervision of the judge, being the court administrator. These functions and activities are assigned to the following:

b.1 Adjudicative-support component, to pertain to caseflow management functions involving the procedures and resources necessary to move a case from filing to disposition.

b.2 Administrative-support component, to refer to internal administrative and financial management functions of the court.

5.1.2 The internal capacity assessment of the Shari’a Courts focuses on functions, activities and processes under the Support Structure.

5.2 Adjudication Support Structure

5.2.1 The adjudicative support structure refers to the organization of functions and activities directly supporting the functions of the court, particularly the case adjudication process (i.e., from the time that a case is filed in court to the time that the case has been acted upon, with court action partaking the form of transfer, archival, or judgment and execution of judgment). The structure provides for the documentation of every action and decision associated with a case and for the coordination of the different activities of the court to ensure the continuous flow of case proceedings.

5.2.2 The adjudication support activities basically consist of receiving/filing of pleadings, summons, orders and other court documents; docketing and records keeping; calendaring and scheduling; standard forms preparation and processing; and recording or documentation of court proceedings/activities.

5.2.3 The existing procedures in caseflow management in the Shari’a Courts are basically provided for under the Revised Rules of Court, the 2002 Revised Manual for Clerks of Court, and PD 1083. The Supreme Court likewise has issued a set of Special Rules of Procedure for the Shari’a Courts covering general procedures for commencing actions, servicing summons, pre-trial, hearing or trial, judgment, appeal, legal opinion, and filing of pleadings, petitions or motions. The Special Rules of Procedure for Shari’a Courts include supplemental proceedings (suppletory rules in civil cases and special offenses) and arbitration proceedings.

5.2.4 The 2002 Revised Manual for Clerks of Court applies to all the courts at all levels, including the SDCs and SCCs. The manual details the functions and duties of all clerks of court in every stage of the litigation process.

5.2.5 It is a general knowledge that there is delay and congestion in all court salas throughout the country. The caseload profile of the Shari’a courts presented in previous sections of this report is indicative of the delay problem in these specific courts. The Supreme Court and certain research institutions have made diagnostic

studies and provided measures to address these issues. The problems on delay and congestion are complex that involve not only dysfunctions and weaknesses in systems and processes of the courts, but also those that concern the judges and justices themselves, the court personnel, the lawyers and counsels, the law enforcers, and other external concerns. There were certain measures that have been identified that must be considered as possible solutions, including the improvement of existing procedural rules in courts, strengthening accountability mechanisms, and enhancing the capacity building programs for judges, justices and court staff, among immediate requirements.

- 5.2.6 Other studies point to the need of improving the case management information system of courts. A separate study commissioned by the Supreme Court specifically supports the adoption of a Judiciary-wide automated case management information system (CMIS) to enable the Judge to make informed and efficient decisions on the management of caseload in general and specific cases in particular. The study stresses the importance at each step of the litigation process of such CMIS to support the management of caseload, not only for the purpose of monitoring its progress. The automated CMIS would further enable the judges to prevent delay and track case progress in relation to time standards.²³
- 5.2.7 Case management and caseload management problems in Shari'a Courts must thus be addressed not as an independent concern, but through a holistic approach of identifying and setting reform initiatives like the abovementioned automated case management information system that would benefit the whole Judiciary and all courts at all levels.
- 5.2.8 But the unique features of the Shari'a court operations should be addressed. For example, caseload management and case information systems should capture cases resolved by the Agama Arbitration Council.

5.3 Administrative Support Structure

- 5.3.1 The administrative support structure consists of administrative and financial services, including personnel administration, physical assets management, budgeting and accounting, and general administrative services.
- 5.3.2 The Supreme Court through the Office of the Court Administrator (OCA) exercises administrative supervision over the lower courts, including the Shari'a Courts and their personnel. OCA's administrative supervision over the lower courts covers personnel, payroll administration, financial management and budgeting, supervision of revenue generation, procurement and property management, performance assessment, and other logistical support and administrative functions. A Deputy Court Administrator for Mindanao has been designated. His duties include the supervision of the Shari'a courts.

²³ "Judiciary-wide Case Automated Case Management Information System (CMIS)", a study made in 2003 by the CPRM for the Supreme Court of the Philippines and the World Bank

- 5.3.3 A very limited scope of administrative responsibility pertaining to disbursements and personnel has been delegated to individual judges. However, as in other lower courts, the Supreme Court (SC) exercises direct authority and responsibility over all judicial and administrative operations of the Shari'a Courts. The SC also exercises supervision over disciplinary actions over employees of the Judiciary which include employees of the SDCs and SCCs. Payroll administration, processing and issuance of checks, review of requisition vouchers, purchase of equipment and supplies and all other financial and logistical requirements of the lower courts are processed, approved and carried out by the SC. Since judges are not given cash advances, court personnel even down to the sheriff advance payment from their personal pockets and submit requests for reimbursement thereof to the SC in Manila. Deliveries of supplies and equipment are done by mail often taking so much time that courts may run out of supplies. Lower courts complain of delays and inferior quality of supplies and materials provided by SC. Personnel administration is likewise overcentralized, e.g., SC processes the time records, applications for leave, applications for salary loans and overtime pay, and requests for service records required in applications for loans and housing. All these are processed manually in the central office in Manila and approvals and/or replies are mailed back to the various courts located in the municipalities and cities across the country.
- 5.3.4 This overcentralization of administrative functions reinforces effects of severe shortage of resources through delayed delivery and poor quality of already limited services to the courts. It likewise erodes initiative of judges to properly manage their operations in the practically total absence of control over any resource. The lack of authority and control over the management of inputs in the adjudicative functions practically renders accountability over the quality of judicial performance vague. During interview of Shari'a court judges some declared that they spent their personal money to buy supplies or do needed repairs.
- 5.3.5 Limited efforts at administrative decentralization have been attempted through the designation of Executive Judges. The Chief Justice designated executive judges for a group of lower courts and accorded them some authority on personnel deployment and discipline as well as in the approval of certain disbursements. They are also made responsible for the management of the work distribution and management of the judicial operations of the various court branches under their assigned administrative jurisdictions. But the delineation between the authority exercised by the judge of the branch and the executive judge has not been clearly defined and delineated. The executive judge does not manage workloads of various sala outside of the regular raffling of cases. Nor did the branch judges report to the Executive Judge on the status of pending cases in their courts, as these are directly submitted to the SC.
- 5.3.6 The need to decentralize authority and responsibility for administrative operations has already been recognized through the several studies conducted by the Supreme Court. One study funded by the Asian Development Bank recommends the decentralization of the Judiciary's administrative structure and operations to facilitate the provision of support services to lower courts. The study recommends the creation of regional level offices to be responsible for the management of administrative and financial management operations in the various regions.

6 ASSESSMENT OF RESOURCES

6.1.1 It may be said that most of the administrative issues and concerns in the Shari'a Courts are inter-related and stem from inadequate resources. The lack of resources is evident throughout the Shari'a system and is manifested in the continuing dormancy of at least 26 SCCs, lack of personnel, particularly judges, and poor state of physical infrastructure, equipment and supplies.

6.2 Manpower Resources

6.2.1 The staffing pattern of the SDCs is comparable with that of the Regional Trial Courts, while that of the SCCs is similar to the staffing complement of the Municipal Circuit Courts. There are 12 positions that comprise each SDC, while 9 positions are provided to each SCC, including the judge position in each of these courts.

6.2.2 Table 17 shows the current staffing profile of the five SDCs. While all the five courts have been organized as provided under PD 1083, the position of the Shari'a District Judge is still vacant. Certain RTC judges were designated to serve concurrently as Shari'a judges and oversee the operations of the courts. Vacancy rate in SDCs is 33%. Except for the Shari'a District Judge position whose filling is deemed critical, the judge being the focal person in the operation of the court, the filling of other vacant positions must be rationalized vis-à-vis the relatively very low caseload level in these courts.

Table 17
SHARI'A DISTRICT COURTS, STAFFING PROFILE

POSITION	SG	JOLO, SULU	BONGAO, TAWI-TAWI	ZAMBOANGA CITY	MARAWI CITY	COTABATO CITY	TOTAL
Shari'a District Judge	29	V	V	V	V	V	F=0; V=5
Clerk of Court VI	25	V	F	F	F	F	F=4; V=1
Court Legal Res'rcher II	15	F	F	F	F	F	F=5; V=0
Interpreter III	12	F	V	F	F	F	F=4; V=1
Court Stenographer III	12	F	F	F	V	F	F=4; V=1
Court Stenographer III	12	F	F	F	V	F	F=4; V=1
Court Stenographer III	12	V	F	V	F	V	F=2; V=3
Sheriff III	10	F	F	F	F	F	F=5; V=0
Clerk IV	8	F	F	F	F	V	F=4; V=1
Clerk III	6	F	F	F	F	F	F=5; V=0
Process Server	5	F	V	F	F	F	F=4; V=1
Utility Worker I	1	F	V	F	F	F	F=4; V=1
		F=9; V=3	F=8; V=4	F=10; V=2	F=9; V=3	F=9; V=3	F=45; V=15

Legend: F=filled; V=vacant

- 6.2.3 Table 18 on the other hand presents the current staffing profile of the 25 organized SCCs. Except for 39 vacant items which are mostly Court Stenographer I positions, a substantial number of the Shari'a Circuit Court positions (overall 83%) is filled. There are three Court Stenographer positions in the approved staffing pattern of each court, and each SCC has at least one filled item of Court Stenographer to take stenographic notes on all matters that transpire during court hearings and transcribe them in final form.

Table 18
SHARI'A CIRCUIT COURTS, STAFFING PROFILE

POSITION	STANDARD STAFFING PATTERN			ACTUAL COMPLEMENT		
	SG	PER COURT	TOTAL	FILLED	VACANT	TOTAL
Shari'a Circuit Judge	26	1	25	17	8	25
Clerk of Court II	18	1	25	23	2	25
Interpreter I	8	1	25	20	5	25
Court Stenographer I	8	3	75	58	17	75
Clerk II	4	1	25	23	2	25
Junior Process Server	3	1	25	25	0	25
Utility Worker I	3	1	25	20	5	25
Grand Total		9	225	186	39	225
% to Total			0	83	17	100

6.3 Physical Assets and ICT Resources

- 6.3.1 The Shari'a Courts have standard equipment provisions consisting of typewriters, filing/storage/safe cabinets, electric fans and books. Office tables and chairs are primarily sourced from the local government units. Table 19 indicates the equipment profile of the SDCs, while the current equipment inventory of the 25 operational SCCs is shown in Tables 20, 21, and 22.

Table 19
SHARI'A DISTRICT COURTS, EQUIPMENT PROFILE
AS OF FEBRUARY 28, 2004

ITEM	SULU	TAWI-TAWI	ZAMBOANGA CITY	MARAWI CITY	COTABATO CITY
Typewriter, electric	-	-	-	-	-
Typewriter, manual	7	5	1	6	7
Filing/storage cabinet	4	6	-	6	2
File safe	2	2	1	2	2
Electric fan	6	1	-	-	1
Computer	1	1	1	1	1
Duplicating machine (mimeo)	1	-	-	-	-
Books	11	1	-	20	3
Executive table/chair	-	-	-	-	-
Clerical table/chair	-	-	-	-	-

Source: Supreme Court of the Philippines

- 6.3.2 Typewriters are basic and very important equipment items in the Shari'a Courts. As indicated in the tables, however, each Shari'a Court has on the average four typewriters being shared by six to eight staff per court (Researchers, Court Stenographers, Clerks, etc.). The typewriters are mostly old-model manual type purchased in 1983 to 1999. One or two units of these items are not in good working condition.
- 6.3.3 Seven of the SCCs in Sulu, Basilan, Lanao del Norte, and Lanao del Sur were able to acquire one or two electric typewriters each, which are more efficient than the manual ones. The Property Division of the Office of the Administrative Services in OCA has moreover deployed in 2002 one computer to each of the SDCs. While the computers, which are usually placed in the Office of the Clerk of Court, can be very useful in report preparation, they are not optimized since they are primarily used only for data storage, retrieval and processing rather than on more meaningful information systems that will support case management, case monitoring and general management of case load and court information.

Table 20
SHARI'A CIRCUIT COURTS, EQUIPMENT PROFILE
AS OF FEBRUARY 2004

Item	1	2	3	4	5	6	7	8
Typewriter, electric	1	-	-	-	3	-	2	-
Typewriter, manual	3	5	6	6	6	5	7	2
Filing/storage cabinet	5	-	-	11	2	6	3	3
File safe	-	-	-	2	2	2	1	-
Electric fan	2	5	6	1	7	4	5	1
Computer	-	-	-	-	-	-	-	-
Duplicating machine	-	-	-	-	-	-	-	-
Books	21	12	11	34	18	47	16	37
Executive table/chair	-	-	-	-	2	-	-	-
Clerical table/chair	-	-	-	-	6	-	-	-

Source: Supreme Court of the Philippines

Legend:

- | | |
|------------------------|--------------------------------|
| 1. Jolo, Sulu | 5. Maganoy, Maguindanao |
| 2. Siasi, Sulu | 6. Bongao, Tawi-Tawi |
| 3. Parang, Sulu | 7. Isabel, Basilan |
| 4. Parang, Maguindanao | 8. Pagadian, Zamboanga del Sur |

6.3.4 The Shari'a Courts will benefit from the computerization plan of the Supreme Court on library services, which will eventually install networking facilities with the Offices of the Chief Justice, Associate Justices en Banc, the three Divisions, and other offices, including the OCA, the court libraries and the lower courts. The current computerization program on the resources of court libraries is limited to the library's card catalog, inventories of books, and indexes. The Library Services in the Office of the Clerk of Court en Banc is responsible for the overall maintenance of the court libraries, but its relationship with the lower courts, including the Shari'a Courts is at present confined to the acquisition and distribution of books and reference materials considering the limited functionality/scope of its computerization program.

6.3.5 Books are other indispensable items in all courts, including the SDCs and SCCs. Basic references like the Manual for Clerks of Court, SCRA Quick Index Law Books, SC Rulings, Rules of Court, Effective Pre-Trial Technique Books, and various codes (election, civil, local government, civil service, penal, etc) generally comprise the book inventory of Shari'a Courts. The Shari'a Court library in Jolo, Sulu is a new one having been furnished with its core collection of books and legal periodicals only in 2001.²⁴

²⁴ 2001 Annual Report of the Supreme Court of the Philippines, August 15, 2002

- 6.3.6 During the initial meeting of the consultants with the Shari'a Judges on this study, it was represented that among the issues that need to be addressed immediately is the provision of adequate reference materials to the Shari'a Courts to include the court decisions, which are necessary in their judicial functions. Some judges have further commented that even routine administrative issuances from the Supreme Court Proper do not sometimes reach the SDCs and SCCs. They all agree that a compilation of decisions that pertain to cases involving the application of Muslims laws would be very beneficial to the Shari'a Courts.

Table 21
SHARI'A CIRCUIT COURTS, EQUIPMENT PROFILE (CONT...)
AS OF FEBRUARY 2004

Item	9	10	11	12	13	14	15	16
Typewriter, electric	1	-	-	-	1	-	-	-
Typewriter, manual	4	6	4	3	8	8	2	2
Filing/storage cabinet	3	-	2	1	7	5	2	3
File safe	1	-	1	1	2	2	-	1
Electric fan	3	2	1	4	2	8	2	2
Computer	-	-	-	-	1	-	-	-
Duplicating machine	-	-	-	-	-	-	-	-
Books	78	11	14	40	22	11	9	214
Executive table/chair	-	-	-	-	-	-	-	-
Clerical table/chair	-	-	-	-	-	-	-	-

Source: Supreme Court of the Philippines

Legend:

- | | |
|----------------------------------|--------------------------------|
| 9. Tubod, Lanao del Norte | 13. Marawi City, Lanao del Sur |
| 10. Baloi, Lanao del Norte | 14. Balindong, Lanao del Sur |
| 11. Iligan City, Lanao del Norte | 15. Ganassi, Lanao del Sur |
| 12. Kapatagan, Lanao del Norte | 16. Malabang, Lanao del Sur |

- 6.3.7 Filing and storage cabinets at three to four units on the average are available to each Shari'a Court for safekeeping of records and case evidences. Each of the courts likewise has one file safe for cash and valuable materials. In terms of number, the Shari'a Courts appears to still have to make do with these available units meanwhile that they do not have any provision for capital outlay. The OAS, OCA on the other hand finds the need for a bundy clock to be installed in each of the court premises, to generate accurate/actual information on the attendance of Shari'a Courts personnel. These are necessary in personnel action like processing of leave application and computation of leave credits. OCA has noted that most staff get perfect attendance in submitted manually prepared daily-time-records, which may not be realistic.

Table 22
SHARI'A CIRCUIT COURTS, EQUIPMENT PROFILE (CONT...)
AS OF FEBRUARY 2004

Item	17	18	19	20	21	22	23	24	25
Typewriter, electric	-	2	-	2	-	-	-	-	-
Typewriter, manual	1	2	5	1	6	5	6	6	6
Filing/storage cabinet	2	2	2	2	1	2	3	3	8
File safe	-	1	1	1	1	2	1	-	1
Electric fan	-	2	-	-	1	1	-	2	4
Computer	-	-	-	-	-	-	-	-	-
Duplicating machine	-	-	-	-	-	-	-	-	-
Books	-	16	17	-	10	30	10	11	16
Executive table/chair	-	-	-	-	-	-	-	-	-
Clerical table/chair	-	-	-	-	-	-	-	-	-

Source: Supreme Court of the Philippines

Legend:

- | | |
|-------------------------------|------------------------------|
| 17. Lumbatan, Lanao del Sur | 22. Isulan, Sultan Kudarat |
| 18. Tamparan, Lanao del Sur | 23. Midsayap, North Cotabato |
| 19. Malundo, Lanao del Sur | 24. Buluan, Maguindanao |
| 20. Wao, Lanao del Sur | 25. Kabacan, North Cotabato |
| 21. Palimbang, Sultan Kudarat | |

6.4 Halls of Justice

- 6.4.1 Sec. 147 (3) of PD 1083 specifically provides that "... the provinces, cities or municipalities concerned shall provide such court with adequate court offices, supplies and equipment in accordance with the provision of the Judiciary Law". Accordingly, majority of the Shari'a courts have been provided with office space by the local government units concerned. However, there are others, which are renting like the 8th Shari'a Circuit Court in Malabang, Lanao del Sur.
- 6.4.2 The annual report of the Supreme Court indicates the existence of a courthouse/hall of justice in Kabacan, North Cotabato, which had been specifically constructed for the Shari'a court in the area. This facility is among the existing 276 halls of justice constructed under the Justice System Infrastructure Program (JUSIP) of the Supreme Court and the Department of Justice mandated under Administrative Order No. 99 dated December 1, 1998. The program undertakes the rehabilitation and construction of courthouses or Halls of Justice for the use and occupancy of the lower courts and other offices in the DOJ (e.g. Public Attorney's Office, National Prosecution Service, and Parole and Probation Administration), and the Registers of Deeds. While there are other courthouses in the Marawi City, Kidapawan (North Cotabato) and Zamboanga del Sur, these are all intended for the RTCs, MTCs, MTCCs, and MCTCs in the areas.

- 6.4.3 The Supreme Court's Committee on Halls of Justice, which will assume the responsibility of even the construction of the courthouses under a DOJ-SC Memorandum dated June 9, 2000 (the task is assigned to the DOJ under AO 99), in addition to maintaining these halls of justice, has yet to determine whether Shari'a courts may be given priority for relocation in the courthouses to be constructed under the program, in addition to the 276 existing ones which are located in 241 different areas of the country.

7 CONCLUSIONS

- 7.1.1 The administrative and resource problems of the Shari'a court system are no different from those of the other lower courts in the Judiciary – lack of equipment, lack of supplies and materials, late deliveries in supplies and materials, delayed personnel support services, poor infrastructure, deficient court information support, etc. The solution to these problems lie in the overall administrative and financial management reform process that is underway in the Judiciary. But the implementation of the reforms will take time, possibly about at least 5-10 years before real improvements to desired standards in all lower courts including the Shari'a courts could realize conditions.
- 7.1.2 The issue of improving the resources of the Shari'a courts hinges on the determination of what the role of the Shari'a courts will be and should be in the light of the various cultural, political and judicial system factors that affect the actual usefulness of the Shari'a court system to the Muslim Filipinos; to the ultimate widespread and common recognition of the Shari'a court systems (rather than the traditional informal systems) as the proper forum for the settlement of justiciable disputes.

5

SYNTHESIS AND DIRECTIONS FOR REFORM

1 INTRODUCTION

- 1.1.1 This study started as just an institutional study, which was expected to examine the strengths and weaknesses of the current Shari'a justice system. But as the study progressed the consulting team reached a realization that the issues in the Shari'a justice system is deeply rooted in the history and religion of our Muslim Filipinos. An expansion of the scope of the study was therefore made – covering history, culture, religion and the evolution of the concepts, traditions and processes of justice of Muslim Filipinos.
- 1.1.2 It was only when the institutional review was placed within a broader historical, cultural and religious context as well as the governance context that an understanding of the performance of the Shari'a justice system, and a logical thinking of the directions for reforming it can be made possible.
- 1.1.3 The results of the reviews are contained in the previous sections of this report. This particular section contains a synthesis of those issues. From the synthesis, the objectives that reform initiatives will pursue are proposed. From the objectives the principles that will guide the reform are defined and the directions as well as areas of reform are identified. These will serve the basis for the future design of the reform program on the Shari'a justice system.

2 SYNTHESIS OF ISSUES AND CHALLENGES

2.1 Societal Issues

LACK COMMON RECOGNITION BY MUSLIM FILIPINOS OF THE SHARI'A JUSTICE SYSTEM AS THE FORUM THEY TRUST FOR THE SETTLEMENT OF JUSTICIABLE DISPUTES

- 2.1.1 The previous sections have shown clearly the very low caseloads in the Shari'a courts. Some may readily attribute this to lack of courts in several areas within Muslim Mindanao and in other areas of the country where concentration of Muslims are found. The lack of Shari'a courts is caused by the high vacancies in Shari'a Circuit Courts and by the absence of adequate geographical presence of courts where they can be easily accessed. It can also be attributed to the absence of a public information and education system supporting the Shari'a courts. Certain judges pointed to the lack of adequate public knowledge of the existence of Shari'a

courts in their communities, lack of awareness of the Islamic law and the Muslim Code.

- 2.1.2 But a review of the history and culture of Muslim Filipinos would show that informal mechanisms of justice have existed for centuries and continue to be practiced to the present day. These customary and religion based practices are so deeply rooted in the culture of Muslim Filipinos that even Shari'a court judges themselves perform roles as elders amicably settling disputes instead of being a formal arbiter and judge of the application of the law. The problem with these practices is that while all Muslim customary laws and practices are based on the Koran, the varying interpretations of the provisions thereof created divergence in the concepts and practices of justice. Such that in Muslim society there is lack of rule of law and there is really no unifying rule of law.
- 2.1.3 The challenge of an effective Shari'a justice system is how to integrate such formal mechanism of justice into the customs and traditions of Muslim Filipinos, without being inconsistent with national laws. The challenge is how to gain the trust and confidence of Muslim Filipinos in a government provided and enforced system.

WIDESPREAD EXTRA JUDICIAL SETTLEMENT OF JUSTICIABLE DISPUTES RENDER MUSLIM FILIPINOS VULNERABLE TO INJUSTICE

- 2.1.4 Associated with the lack of recognition of the Shari'a system as the proper forum for justice is the widespread extra-judicial settlement of justiciable disputes. Ironically, Shari'a judges admitted that a good portion of their work is performing the function of elder settling disputes in their homes instead of in their courtrooms. This system is extremely vulnerable to abuse and misuse. It also undermines the very objectives for which the Shari'a justice system has been provided by the government and which Shari'a judges are supposed to protect and uphold.
- 2.1.5 Shari'a judges themselves require considerable change in perspective, deeper and more nuanced understanding of their roles and responsibilities as judge, in advocating the use of the formal system rather than the extra judicial mechanisms. These are daunting challenges that the legal education on Shari'a law as well as the Shari'a judicial training program of PhilJA must address.

2.2 Governance Issues

PARALLEL GOVERNMENTS AND PARALLEL SYSTEMS OF JUSTICE AS WELL AS OVERLAPPING SYSTEMS OF GOVERNANCE CREATE CONFUSION AND UNDERMINE THE TRUE GOVERNANCE FOUNDATION UPON WHICH A WELL – FUNCTIONING JUSTICE SYSTEM FOR MUSLIM FILIPINOS SHOULD BE BUILT

- 2.2.1 Parallel government of liberation groups operate in Muslim Mindanao, each with its system of government and system of justice. The formal governmental mechanisms likewise overlap – national government, regional government and local government. To date, after several years of ARMM implementation a sound inter-governmental relations system among the three levels of governance have yet to be established.

- 2.2.2 By ARMM law, ARMM is given the power to establish a legal system. There will be potentially two shari'a systems, one national under PD 1063 and the other regional under RA 9054 within the ARMM.
- 2.2.3 Beneath these overlaying formal governmental mechanisms and parallel liberation group governance are the actual customary systems of governance that guide the real functioning of the Philippine Islamic society. These are the customs and traditions based on religion and practiced by communities that are overseen by their community elders. These informal customary practices are very strong in the area of justice where community elders settle most disputes rather than in the courts.
- 2.2.4 Unlike the rest of the country where the law is above all customs and traditions, among Muslims, what is considered lawful is deeply rooted in customs and traditions based on religion and the writings of religious leaders. The harmonization of the customary laws among the diverse groups and ensuring their consistency with national laws is a long-term challenge upon which a Muslim society governed by the rule of law can be hoped to evolve.
- 2.2.5 A sound and credible system of justice is anchored on a coherent governmental system that has the trust and confidence of the majority of the people. In the case of Muslim Filipinos, the lack of unified, coherent and credible system of governance that is accepted by a majority of the people undermines the credibility of the Shari'a justice system.

2.3 Weaknesses in the Shari'a Justice System

SHARI'A JUSTICE SYSTEM DOES NOT RESPOND TO ALL JUSTICIABLE CONFLICTS OF MUSLIM FILIPINOS

- 2.3.1 Shari'a judges themselves expressed the need to expand the jurisdiction of the Shari'a courts. But the sufficiency of the jurisdiction of the Shari'a courts should be seen not just in the light of the sufficiency of jurisdiction in civil and criminal cases, but also on the sufficiency of jurisdiction on justiciable conflicts that cover all Muslim Filipinos regardless of their religious or tribal affiliations. This will require an integration of all customary laws of all Muslim groups.

CONCURRENT FORUMS, JURISDICTION AND LAWS CREATE CONFUSION, ENCOURAGE FORUM SHOPPING AMONG FORMAL MECHANISMS OF JUSTICE, AND REINFORCES THE CONTINUATION OF INFORMAL MECHANISMS OF DISPUTE RESOLUTION

- 2.3.2 Concurrent jurisdictions between Shari'a courts and the other lower courts, as well as duplication between the Shari'a law and national laws create opportunities for forum shopping, which will potentially result in inconsistent justice. At present the Judiciary does not have the mechanism to detect forum shopping. The integration of the forum (integration of Shari'a courts with lower courts) for settling disputes should be seriously considered to avoid confusion and forum shopping. This is also a way of improving geographical access to all Muslim Filipinos.

- 2.3.3 Further, the duplication of functions between the Barangay Justice System and the Agama Arbitration Council further adds to the confusion and inefficiency of the System. There are two options in addressing this issue. One is to delineate functions. Either maximize the use of the Barangay Justice System in Muslim areas or adopt the Agama Arbitration Council (AAC) in case of conflict with that of the Barangay Justice System. The Supreme Court must specify what cases are to be brought before the BJS and the AAC. The local government units should also be informed regarding the Shari'a court procedures vis-à-vis the BJS. But the other is to simply remove the duplication and streamline the system. Delineation would only maintain user confusion. Only one must exist.
- 2.3.4 Concurrent fora and laws can be found not only among the formal systems of justice but also between formal and informal mechanisms. As mentioned earlier, Muslim Filipinos extensively use extra judicial means of dispute resolution. These informal mechanisms are governed by customary and uncoded laws based on the Koran and its interpretations. Efforts towards reducing demand by Muslims for informal settlement of disputes which are vulnerable to abuse and increasing demand for the formal mechanisms will contribute to the long term effort in establishing a sound system of justice for Muslim Filipinos and a Muslim society governed by the rule of law. Again these will require reforms towards integrating and harmonizing as well as codifying divergent customary laws and strengthening the formal systems of justice that can relate to the customs and traditions of Muslim Filipinos.

ISSUE OF JURISDICTION WITH RESPECT TO MUSLIMS OUTSIDE THE GEOGRAPHICAL JURISDICTION OF EXISTING SHARI'A COURTS

- 2.3.5 A ruling of the Supreme Court on the jurisdiction over cases filed by Muslim Filipinos residing in areas not within the geographical jurisdiction of existing Shari'a courts is necessary.

EQUAL PROTECTION ISSUES IN SUBSTANTIVE LAWS HAVE PROFOUND JUSTICE, HUMAN RIGHTS AND GENDER EQUALITY IMPLICATIONS

- 2.3.6 While the Constitution provides that customs and traditions of Muslims should be respected, there are fundamental justice, gender equality and human rights issues that legislation should address. Two of these issues involve equal protection under the law and includes access to divorce (where there is disparity in the availment of divorce between man and woman) and share in inheritance (where men's inheritance is double that of women's).

WEAK ACCESS

- 2.3.7 Weakness in the accessibility of the Shari'a Justice System has several dimensions – geographical access, accessibility related to information or lack of it, and accessibility related to adequacy of the justice system being provided.

- 2.3.8 Geographical accessibility has been the most obvious and visible problem. For example the need to establish or to provide the services of Shari'a Courts in areas with Muslim communities where there are no Shari'a courts such as in Malabang, Lanao del Sur, and in regions outside of Mindanao. There is a need for clear direction on where to file cases in areas where there are no Shari'a courts and where the judiciary cannot immediately provide direct access to them.
- 2.3.9 Also, access to justice is curtailed because there are so many vacancies for judgeships in certain courts.
- 2.3.10 The unoperational status of many components of the Shari'a justice system such as the appellate courts and Jurisconsult may have effectiveness implications that are difficult to measure. But operationalizing these components will depend largely on the extent of use of the Shari'a district and circuit courts and the need for cases to flow higher into the appeals ladder. Where caseloads are extremely low and where court usage is comparatively much lower than those of the lower courts the need to establish separate formal appeals mechanisms and other judicial oversight mechanisms may not be immediately needed.
- 2.3.11 The completion of the implementation of the institutional framework of the Shari'a justice system must be taken within a holistic reform process that will improve use of the System and which will consequently warrant the provision of a complete system of Shari'a justice.

A WEAK EDUCATION SYSTEM ON ISLAMIC JUSTICE RESULTS IN LACK OF QUALIFIED LAWYERS AND JUDGES. IT UNDERMINES THE PUBLIC'S TRUST AND CONFIDENCE BY UNDERMINING THE EFFICIENCY AND EFFECTIVENESS OF THE SHARI'A COURTS.

- 2.3.12 In the administration of the Special Bar Examiners, it has been observed that the Shari'a Bar examinees are not even members of the Shari'a Bar. It is recommended that Supreme Court must come up with a policy of appointing examiners to be at least a member of the Shari'a Bar.
- 2.3.13 Members of the Integrated Bar who appear in Shari'a courts have inadequate knowledge of Shari'a courts and procedures. Thus, they must first undertake training on Shari'a laws and jurisprudence. At present, just as long as one is a college degree holder, one can make the Shari'a Bar.
- 2.3.14 The current education system does not ensure the generation of lawyers that will have the competency to act as Shari'a lawyers or Shari'a judges. Training on Islamic justice have been obtained mainly from foreign educational institutions.
- 2.3.15 There is considerable need to improve the competency of lawyers and Shari'a judges in Islamic law and jurisprudence, but there is lack of qualified teachers as current teachers also lack the necessary education. Further the lack of education facilities and materials reinforces the education system weaknesses.
- 2.3.16 Where it is not profitable to provide quality education, the government must intervene and directly provide quality education on Islamic justice.

2.4 Internal Organizational and Capacity Issues

- 2.4.1 An assessment of the human resources development system and internal capacity of the Judiciary Shari'a Court system indicates several human resources and organizational issues:

SUFFICIENCY OF JURISDICTIONAL HIERARCHY

- 2.4.2 Since the Shari'a Appellate Court has not been organized, the Court of Appeals, which has at least two competent Muslim justices, should be designated to handle cases on appeal or to assist the Supreme Court in appropriate cases.

LACK OF RULES ON SHARI'A JUDICIAL FEES

- 2.4.3 The Shari'a courts are not expected to contribute substantially in financing the court system through the collection of legal fees. But the imposition of the legal fees should include the Shari'a courts. Court users should contribute to the funding of the court system consistent with Supreme Court's policy of seeing to it that access to justice by the poor is ensured in legal fees impositions.

- 2.4.4 There is lack of uniform rules for judicial fees for registration/certification of marriages, divorce and conversion. The Shari'a judges suggest that Rule 141 of the Rules of Court be amended to include such fees in the P150.00 (P100 [JDF] and P50 [SAJJ]).

INFERIOR STATUS OF THE SHARI'A COURTS

- 2.4.5 There is perceived inferiority of the Shari'a courts to the other lower courts. Shari'a courts are considered simply as quasi-judicial (Bar Matter 702, May 12, 1994). This perception is affecting the morale of Shari'a judges and personnel. The implication of this status on the public perception on the usefulness of the Shari'a court system should be looked into.

WEAK CASE MANAGEMENT SYSTEM

- 2.4.6 Severe weaknesses in the case management systems in the Shari'a courts were noted. There are no records to indicate just how many cases have been settled by the Agama Arbitration Council.

- 2.4.7 The overall weaknesses in the case management system in the Shari'a courts is no different from those identified in the other lower courts – lack of managerial competencies particularly in the management of caseload, lack of technology, lack of more specific case tracking and monitoring procedures, and non-compliance with reporting requirements and recording procedures. Supreme Court should issue a directive asking the Shari'a courts to keep statistics on how many cases have been settled so as to determine how successful the alternative dispute resolution has been. But the improvement in the overall case management system of the Shari'a court should be an integral part of the on-going reforms in case management of the Judiciary.

THE HUMAN RESOURCES DEVELOPMENT SYSTEM OF THE SHARI'A COURTS IS CHARACTERIZED BY INADEQUATE TRAINING, LACK OF QUALIFIED CANDIDATES TO JUDGE POSITION, LACK OF CAREER DEVELOPMENT OPPORTUNITIES AND HIGH VACANCIES

- 2.4.8 The weaknesses in the human resources development system of the Shari'a courts are mutually reinforcing. On the one hand, the 45 day training provided by the PhilJA is inadequate and does not produce judges with the minimum competencies required as judge in a Shari'a court. Since one does not have to be a lawyer to be a Shari'a Circuit judge, then the 45 day training will not guarantee minimum proficiency in the basics of jurisprudence and court procedures. It was suggested that the training be increased to 6 months and should include a mandatory course of the Rules of Court. Most of the Shari'a Circuit Court judges must obtain an LL.B. degree and pass the requisite bar examinations. How can they accomplish this and at the same time attend to their duties as judges?
- 2.4.9 It is recommended that there should be a policy for those who are allowed to take the special bar examinations should at least be a degree holder in law whether English or Islamic.
- 2.4.10 One added qualification that is needed for a Muslim lawyer or a lawyer admitted to the Bar to be appointed to a judgeship is to be learned in Islamic law and jurisprudence. According to Judge Ameladin Masacat Alauya, this phrase "learned in Islamic law and jurisprudence" has been unofficially interpreted by the Judicial and Bar Council to mean one who passed the Shari'a Bar Examinations being given by the Supreme Court.¹ However, one woman judge in the Career Enhancement Program in Zamboanga City remarked that should one get a Master's degree in Islamic law and jurisprudence in order to be learned in it? The opportunities to get such a degree is limited by their duties in court as well as the availability of such a course offering here and abroad. The Supreme Court should look into this issue and define the term "learned in Islamic law and jurisprudence." Moreover, qualifications of all Shari'a judges should be clearly defined.
- 2.4.11 While lack of qualified Shari'a lawyers is pervasive, the Philippine Shari'a Institute would be reactivated to provide training on Islamic law and jurisprudence. Since there is a lack of Shari'a lawyers in areas where there are Shari'a courts, the Philippine Judicial Academy should provide adequate and appropriate training for Shari'a lawyers.
- 2.4.12 A person who passed the Shari'a Special Bar Examinations should also be civil service eligible just like lawyers who passed the bar examinations. A legislation to amend RA 1080 is recommended.
- 2.4.13 There must be continuous training by PHILJA to Shari'a judges and court personnel. Intensive training on computer operations must also be made. Likewise, intensive training in English must be given.

¹ SHARI'A REMEDIAL LAW COMPENDIUM, 11 (2003).

- 2.4.14 The continuing judicial education of Shari'a judges is plagued with the problem of dearth in legal materials in Islamic law and jurisprudence. The Philippine Judicial Academy should provide adequate legal materials for them. Initially, a compilation of Supreme Court decisions specially for Shari'a cases and distribute it to all Shari'a courts.
- 2.4.15 The issue of limited opportunity for judges to be promoted should be looked at since career progression is mainly vertical. Shari'a judges would rather be transferred to RTC courts and Shari'a circuit court judges cannot be promoted to Shari'a district courts because they have to be members of the Philippine Bar.
- 2.4.16 Also gender bias in appointments should be addressed by policy. Appointments to the Shari'a District and Circuit Courts have been mainly given to male judges. There are qualified women applicants to the position and the JBC should at least nominate them to the President for appointment. This is in accordance with the fundamental equality before the law principle of the Constitution as well as fulfilling our international commitment with the U.N. Convention on the Elimination on All Forms of Discrimination Against Women.

2.5 Weaknesses in the Other Pillars of Justice Supporting the Shari'a Courts

- 2.5.1 Weaknesses in the other pillars of justice undermine the Shari'a court system in many ways. Lack of qualified lawyers has been identified. The prosecution pillar is also affected by this problem. It has been suggested by Shari'a judges that there is need to appoint Shari'a lawyers as prosecutors and public attorneys by the Department of Justice to handle Shari'a cases. However, this would depend on whether they have been admitted to the Bar.

2.6 Conclusions

- 2.6.1 Reforming the Shari'a Justice System should be taken within a much broader societal and governance context. It would have been easy just to identify the internal organizational weaknesses of the Shari'a courts and Shari'a court administration. These problems are straightforward and exist as part of the overall weaknesses in the Judicial system which have already been extensively analyzed in previous diagnostic studies.
- 2.6.2 But an effective Shari'a Justice System, one that has the trust and confidence of the Muslim Filipinos, and one that they will use as the only forum for resolving justiciable conflicts depends not only on the internal capacity of the Judiciary to provide an efficient Shari'a system but more importantly to the readiness of the Muslim society to accept and use the system.
- 2.6.3 Reforming the Shari'a Justice system therefore would involve first and foremost a societal reform process. Such that the role of the reforms in the Shari'a justice system should also serve that desired societal transformation from one that is driven

by diverse customs and traditions to one that is driven by rule of law that is based on a unified set of laws.

3 GOALS AND OBJECTIVES THAT THE REFORM SHOULD ADDRESS

3.1 Development Goal

- 3.2.1 The reforms that will be eventually identified, designed and implemented are proposed to address the overarching goal of facilitating the realization of peace and development in Mindanao.

3.2 Objectives

- 4.1.1 The stated goal will be achieved by reforms in the Islamic Justice system that will pursue the following reform objectives:
- a) To support the integration of Muslims into the mainstream Philippine Society.
 - b) To facilitate the development and realization of a Philippine Islamic society that respects the rule of law.
 - c) To provide a justice system for Muslim Filipinos that is accessible, efficient, speedy and impartial.

4 GUIDING PRINCIPLES

- 4.1.1 The identification and design of the reforms in the Islamic Justice system in general and the Shari'a court system in particular will be governed by the judicial principles of fairness and impartiality and by following key principles:
- a) **RULE OF LAW:** The reforms will strive to establish an integrated Muslim community that has the rule of law as the basis for its relationships, transactions and contracts, as well as dispute resolution.
 - b) **INTEGRATION:** Integration means achieving a unified set of customary laws for all Muslim Filipinos that are acceptable and are not in conflict with national laws.
 - c) **EQUAL PROTECTION AND GENDER EQUALITY:** This principle ensure equal protection under the law regardless of sex, age, ethnic association and economic status.
 - d) **HUMAN RIGHTS:** This principle states that all laws and system that will be modified or formulated will ensure the protection of the fundamental rights of all

Muslim Filipinos as enunciated in the international human rights instruments and in the Constitution.

5 DIRECTIONS FOR REFORM

5.1 Reform Approach

- 5.1.1 The study proposes a comprehensive and long-term reform approach. This means that strengthening the Shari'a justice system will require the development of a new and unified consciousness among Filipino Muslims about what is right and what is wrong, about what is just and unjust, and what are the precepts that should be agreed upon to guide the formulation of laws. The integration and formalization of customary roles into codes and their application as the universal law will be the foundation upon which a culture of rule of law can evolve.
- 5.1.2 It will also involve the strengthening of the various institutions that make up the Islamic justice system which include the following: legal education and training institutions, the Shari'a Court system, and the other pillars of justice. Also a clearer delineation of the system of governance in Muslim Mindanao should be achieved.

5.2 Proposed Strategies and Reform Directions

- 5.2.1 In accordance with the stated long term, comprehensive approach the following strategies and reform directions are proposed:

A. PROMOTION OF THE RULE OF LAW

- 5.2.2 These will involve a set of coordinated initiatives towards creating a societal environment that is based on a unified rule of law and will include the following:
- (1) Baseline Surveys (demography, awareness, culture, customary laws and dispute resolution practices, other sociological studies and comparative studies)
 - (2) Design and implementation of public awareness and education program (on the Islamic justice, on women's rights, on access to and procedures of the Shari'a courts, on legal services, etc), including public assistance/referral programs and networks
 - (3) Strengthening of the Shari'a Legal Framework (comprehensive studies on customary laws, feasibility studies on integration and codification, preparation of an integrated Muslim Code, other studies on improving jurisprudence)

B. STRENGTHENING OF THE SHARI'A LEGAL EDUCATION SYSTEM

5.2.3 These will involve an overall strengthening of the Shari'a Legal Education System both academic and continuing education and will include the following:

- (1) Establishment of an Islamic Justice Institute to serve as research and academic institution for the formal education leading to law degrees in Islamic justice. The institute should be funded by the national government
- (2) Establishment of cross-country scholarship programs for Shari'a lawyers and judges
- (3) Strengthening of the PhilJA training program for Shari'a lawyers, judges and court personnel
- (4) Institution of Bar Reforms on Shari'a

C. STREAMLINING OF THE INSTITUTIONAL FRAMEWORK FOR SHARI'A JUSTICE

5.2.4 Reforms in this area will involve improvements in the jurisdictional scope and structure of the Shari'a court system and its rules and will include the following:

- (1) Review of the jurisdiction of Shari'a circuit and district courts
- (2) Improving the rules of court of Shari'a courts

D. STRENGTHENING OF THE SHARI'A JUSTICE SYSTEM'S CAPACITY AND INTEGRITY

5.2.5 Recommended reforms will involve strengthening the organizational capacity and integrity of the Shari'a courts and will include the following:

- (1) Development of Shari'a Code of Ethics
- (2) Formulation of a career development program for Shari'a judges
- (3) Improving case management capacities and operations
- (4) Structuring of Shari'a legal fees and charges