

TABLE OF CONTENTS

[Aide Memoire](#)

[Speakers](#)

[Welcome Remarks](#)

[Overview of the Diliman Governance Forum](#)

[The Problems and Challenges in Shepherding and Institutionalizing
Reforms in the Justice System](#)

Hon. Portia Hormachuelos

[The Alternative Reforms in Enhancing Access to Justice
of the Basic Sectors](#)

Atty. Marlon Manuel

[Policy Reforms and Other Initiatives on Enhancing Access
to Participation of Vulnerable Sectors](#)

Dr. Ledivina Cariño

[Open Forum](#)

[Lessons Learned](#)

[Primer/ Policy Brief](#)

[Programme](#)

[Photo Documentation](#)

PROCEEDINGS OF THE 17TH DILIMAN GOVERNANCE FORUM

**“SHEPHERDING REFORMS IN ACCESS TO JUSTICE
AND PARTICIPATION OF THE DISADVANTAGED
SECTORS”**

Aide Memoire on

“Shepherding Reforms in Access to Justice and Participation of the Disadvantaged Sectors”

**24 November 2006
12:30-5:00 pm, Assembly Hall, UP NCPAG**

A. Introduction

Access to justice is one of the major determinants and components of a good and functioning justice system. A justice system that is accessible to all particularly the poor, marginalized, and disadvantaged sectors is the idealized system. Furthermore, an accessible justice system truly embodies its constitutional mandate of providing equality, regardless of cultural, economic and social status before the law.

To improve people's access to justice, countless reforms and programs have been implemented. These reforms may be categorized as institutional or procedural. These reforms may include the provision of legal aid or assistance and advice for the poor and marginalized, strengthening of the system of alternative dispute resolutions, and other forms of court reforms.

These actions not only by the primary actor, the judiciary, but also by law groups and other civil society organizations may have helped make justice more accessible to all. However, a question still remains. Are these reforms and efforts sufficient to make our justice system more accessible?

B. Objectives

To explore responses to this basic policy question and to another equally important collateral concern, e.g., shepherding reforms in access to participation of the disadvantaged sectors, the 17th Diliman Governance Forum (DGF) is planned to be conducted on 24 November 2006. It generally aims to provide a venue for the continuing discourse, dialogue, and dissemination of ideas, interactions and consultations with relevant publics on policy issues, reform initiatives, and recommendations of the Fostering Democratic Governance (FDG) Programme.

Specifically, it aims to:

- ❖ Discuss recent policy and reforms and other in access to justice and participation of vulnerable sectors; the problems and challenges in shepherding and institutionalizing these reforms; and
- ❖ Explore ways to better promote and advance these reforms in our policy systems.

C. Intended Outputs

At the end of the day, the forum hopes to have helped raise the level of understanding of the relevant publics on the problems, challenges, issues, and complications in shepherding reforms

in access to justice and participation of the basic sectors. The lessons learned from this Forum will be used as a basis and framework for future policy reforms in making justice more accessible, and the disadvantaged sectors more participative in policy making and governance.

D. Programme

TIME	ACTIVITIES
12:30–1:00 p.m.	Registration
1:00-1:30 p.m.	<p>Opening Ceremonies National Anthem Welcome Remarks</p> <p>Dr. Sergio S. Cao Chancellor, UP Diliman</p> <p>Overview of the Forum and Introduction of Resource Speakers Dr. Alex B. Brillantes Jr. Dean, UP NCPAG Head IP, FDG Programme</p>
1:30-2:00 p.m.	<p>“The Problems and Challenges in Shepherding and Institutionalizing Reforms in the Justice System”</p> <p>Hon. Portia A. Hormachuelos Justice, Court of Appeals</p>
2:00-2:30 p.m.	<p>“The Alternative Reforms in Enhancing Access to Justice of the Basic Sectors”</p> <p>Atty. Marlon Manuel Project Director, Alternative Law Group</p>
2:30- 3:00	<p>“Policy Reforms and Other Initiatives on Enhancing Access to Participation of Vulnerable Sectors”</p> <p>Dr. Ledivina V. Cariño University Professor, UP NCPAG</p>
3:00-3:15 p.m.	Working Break
3:15-4:15 p.m.	<p>Open Forum Dr. Ebinezer R. Florano Forum Officer, PGF</p>
4:15-4:30 p.m.	<p>Synthesis and Closing Remarks</p> <p>Dr. Ma. Fe V. Mendoza Project Director, PGF</p>

E. Participants

Some 200 participants/stakeholders from the business sector, civil society organizations, government, law groups, FDG partners, academe, donor community, media, and other sectors were invited to seriously commit themselves to help enhance the access to justice and participation of the poor, marginalized, and disadvantaged sectors.

[Back to Table of Contents](#)

WELCOME REMARKS

Dr. Sergio S. Cao

I welcome everyone to the 17th Diliman Governance Forum. Welcome to the University of the Philippines Diliman. Technically, my job is done, for I am just supposed to welcome you as Chancellor. Let me, however, say a few more words in my capacity as President of the Philippine Deaf Resource Center, a non-stock, non-profit corporation committed to helping the Filipino deaf Community. While I will speak for them, I am most certainly speaking for many other disadvantaged sectors.

The improvement of individual and collective access to law and justice contributes to social development. Legal and judicial reforms give marginalized sectors such as the Filipino deaf community, the opportunity and the power to assert themselves. With greater accessibility to law and justice, Deaf Filipinos can overcome the economic, psychological, informational and physical barriers they have faced for decades.

Our group is presently working on a project called Equal Access to Communication for the Deaf in Legal Proceedings. And this is the project that won in the World Bank 2006 Panibagong Paraan Competition, and is presently being funded by the Asia Foundation. We are also doing a project sponsored by the National Commission for Culture and the Arts Committee on Language and Translation which is Pagsasalin at Pagbuo ng Talatinigang Pambatas sa Wikang Senyas ng mga Binging Pilipino. These projects aim to provide access to, and ensure fairness in the justice system for the at least 121,000 Deaf Filipinos in the country (NSO 2000). In particular, it addresses a fundamental inequity in access to communication in legal proceedings by deaf women victims of abuse.

In a courtroom environment where a deaf client interacts with the hearing judge, hearing lawyers and other hearing legal professionals and officers of the court, adequate and impartial relaying of information is of paramount importance. At the core of this problem is a lack of understanding of deafness, deaf people, and their needs in communication.

There is a high incidence of physical and sexual abuse among deaf women and children. They are vulnerable from two perspectives: as person with disability, and as women. Being both deaf, and a woman, multiplies the risk of vulnerability many times over. Poverty adds further to the already daunting obstacles.

For the past decade, reported cases of rape and physical abuse to deaf women filed in court have been either dismissed or archived (CMDP, 2005)¹. Officials of the court such as judges, lawyers and court administrators are generally lacking in experience with the deaf, and awareness of deaf issues. They may not recognize sign language as a true language, or even be convinced of the fundamental role of interpreting for deaf clients. This reflects the serious need for information and perhaps even attitudinal improvements in legal education and judicial training. Again, while I said I was speaking on behalf of the deaf community I know I would have touched on issues also real and also very much related to other disadvantaged sectors.

I hope you will have a lively and fruitful exchange of ideas in this forum. Magandang hapon sa inyong lahat.

¹ Catholic Ministry of Deaf People

OVERVIEW OF THE DILIMAN GOVERNANCE FORUM

Dr. Alex Brillantes

The Diliman Governance Forum is a contribution, if you may, of the National College of Public Administration and Governance on the continuing debate on many burning issues and concerns on governance. We can say that it evolved on what we used to have as the Policy Issues Forum started by Dr. Cariño about 5 years ago. I am very happy that it has somehow become a tradition. The College of Public Administration continues to be involved in the discourse of issues ranging from corruption, election, reengineering, etc. In fact, even as I speak now there is also an ongoing consultation workshop at the Sulu Hotel on the formulation of proposed 5-year action plans for electoral reforms attended by the major stakeholders on electoral reforms, such as the NGOs, the COMELEC, etc., again, as our attempt to contribute on the discourse of key issues on governance, and today we talk about access to justice. Even as I speak I would like to acknowledge the presence of Assistant Commissioner-General Atty. Car Miranda whose heart is really for the disadvantaged sectors. Atty. Miranda continues to work with one of the most disadvantaged sectors in our society who are the inmates. (Let me also acknowledge, by the way, Justice Portia Hormachuelos.) Atty. Miranda continues to work for the inmates, and NCPAG is happy to be involved through his efforts in an educational program for the prisoners in Muntinlupa.

The DGF today is very important because if you look at it from governance perspective, it will talk about access. This is part of our attempt to advocate democratic governance. Our college is fortunate to be part of the Fostering Democratic Governance Program sponsored by the UNDP. What is democratic governance? It talks about access, it talks about participation, it talks about transparency, rule of law, etc. Towards the ultimate goal of fostering democratic governance, we have three areas: political reforms, public administration reforms, and justice reforms. What we are having at the Sulu Hotel is on political reforms, and what we will talk about here is not only on public administration reforms but also on justice reforms.

We are privileged to have a distinguished set of speakers. We have Associate Justice Portia Hormachuelos, of course our very own University Professor Ledivina Vidallon Cariño who has the distinction of one of the only two University Professors in the University, and Atty. Marlon Manuel. Again, this is an effort of the College to be involved in the debate and some of the materials here will be included in our training modules, or will be used for materials development. And we also are happy that the NCPAG is a major convenor of the Association of Schools of Public Administration in the Philippines, and these materials find their way into training modules, teaching materials, not only of the College but also these schools of Public Administration. (I see Undersecretary Susan Abaya there, I am sorry I did not acknowledge you earlier.)

Let me end by thanking you for coming. We hope to have a fruitful discussion, and at the end of the day let us think of our disadvantaged sectors, for they are for whom good governance really exists. Welcome once more, maraming salamat.

[Back to Table of Contents](#)

The Problems and Challenges in Shepherding and Institutionalizing Reforms in the Justice System

***Justice Portia Aliño- Hormachuelos
Chair, 3rd Division
Court of Appeals***

Dean Alex Brillantes, former Dean Ledivina Vidallon Cariño and other distinguished participants in this Forum, good afternoon. I am greatly honored to be here as a representative of Chief Justice Artemio V. Panganiban. I also come in my capacity as a judicial practitioner for 20 years, a participant in the justice system for 40 years and, like you, a student of judicial reform. I am also pleased to return to the school, which gave me the degree of Master of Public Administration, under its earlier and shorter name, UP College of Public of Administration.

The Supreme Court is rightly called the bulwark of democracy and the guardian of the Constitution and the Rule of Law. And it is well to mention that opinion polls on latest decisions of the Supreme Court on a number of high profile cases that they have decided show high acceptability by the public and is encouraging to us in the judiciary. This is encouraging as public confidence is a fundamental goal of judicial independence which in turn is a pre-requisite to the Rule of Law and a fundamental guarantee of justice and fairness.

In the history of the Supreme Court, the current Chief Justice Artemio V. Panganiban stands out as its most prolific writer. He has written a dozen books, one for each year of his incumbency as member of the Court along with numerous articles, essays, and commentaries. Although he has had only a year to sit as Chief Magistrate, he has done exceedingly well, including the successful hosting the recent International Global Forum on Liberty & Prosperity, the twin points of his judicial philosophy. He also worked very closely with his predecessor former Chief Justice Hilario G. Davide Jr., who is acknowledged as the progenitor or the father of the Action Program for Judicial Reform (APJR).

To prepare for today's presentation, for which I was given all of two days, I have reviewed the thoughts of these two imminent eminent jurists and have liberally culled from their writings.

When Chief Justice Davide assumed office in November 1998 as 20th Chief Justice of the Philippines – an office he held for 7 years – he promulgated a vision-mission statement to serve as a roadmap for the Philippine Judiciary. It was entitled THE DAVIDE WATCH: Leading the Philippine Judiciary and the Legal profession Towards the Third Millenium. This is His vision: “ A Judiciary that is independent, effective and efficient, and worthy of public trust and confidence; and a legal profession that provides quality, ethical, accessible, and cost effective legal service to our people and is ready and willing and able to answer the call to public service”.

This vision and mission is articulated in the judiciary's Action Program for Judicial Reform or APJR. The APJR is a grand plan to build and strengthen confidence in judicial governance which, as Chief Justice Davide enunciates, is “the genuine bedrock of effective good governance in all democratic societies”.

The Action Program for Judicial Reform (APJR) was crafted on the proposition that stability and predictability in the dispensation of justice is an indispensable requirement of good governance, which is in turn a precondition of economic development. The observance of the Rule of Law is necessary in a democracy to enable the government to improve the economic plight of the people. Indeed, speedy justice, democracy and the economy are intertwined into one tapestry

of governance.

The APJR has received endorsements, grants, and loans from several international developmental agencies – including the United Nations Development Fund (UNDF), World Bank (WB), Asian Development Bank (ADB), and The Asia Foundation (TAF). It has also been assisted by several foreign governments like Canada, Japan, the Netherlands, Great Britain, the European Union, the United States, and Australia.

The APJR (spelled out) is a comprehensive and all-encompassing program that has six distinct components, namely: 1) Judicial Systems and Procedures, 2) Institutions Development, 3) Human Resource Development, 4) Integrity Infrastructure Development, 5) Access to Justice by the Poor, and 6) Reform Support Systems.

The first component, Judicial Systems and Procedures, concerns itself with the administration of cases and courts. Initiatives in alternative dispute resolution, computerized case management system, streamlined court rules, and similar activities are programmed under this section.

The second component, Institutions Development, seeks to establish mechanisms to strengthen the judiciary as an institution independent from other branches of government. Included in this component are systems to implement the constitutionally mandated fiscal autonomy of the judiciary, to improve judicial accountability, and to devise personnel and financial policy that will give the judiciary the flexibility needed to address the many demands upon it.

The third component, Human Resource Management Development, covers the selection, hiring, education, promotion and remuneration of justices, judges, and other judicial officials and employees. This is the field where Atty Manuel is involved in.

The fourth component, Institutional Integrity Development addresses concerns on graft and corruption and puts in place mechanisms to detect and punish corrupt practices of some judges and lawyers.

The fifth component, which is the subject of our forum today, Access to Justice by the Poor, ensures that the marginalized, disadvantaged, dispossessed and other vulnerable sectors will always have affordable and effective means of attaining justice.

The sixth and last component, Reform Support Systems, installs mechanisms to ensure the sustainability of the reform efforts. The focus here is public education, information and communication, on the assumption that public awareness of the functions and achievements of the judiciary would encourage people to support the courts.

Over 100 projects have been launched by the Judiciary to implement these 6 components. Some of these projects included in the justice reports. I have some 70 copies I brought with me which will be distributed to those who are interested. It is a very informative report; and it will show the most notable of the projects that have been already undergoing implementation. These projects are designed to address all the possible concerns and problems of the Philippine judiciary which are: (1) case congestion and delay, 2) budget deficiency, 3) politicized system of judicial appointments, 4) lack of judicial autonomy, 5) human resource development, 6) defective administrative structure, 7) insufficient public information and collaboration with society, 8) perceived corruption in the judicial department, and 9) limited access to justice by the poor.

The above concerns boil down to three major problems that the APJR seeks to solve which are: corruption, incompetence and delay in the delivery of justice. Along with (Inadequate)

Access to Justice these constitute Chief Justice Panganiban's acronym ACID – i.e. (Inadequate) Access to Justice, Corruption, Incompetence and Delay, which the APJR seeks to eradicate.

The programs and projects engendered by the APJR cover all areas of concern in the delivery of justice, starting with the judges – their education, their aptitude for the minutiae of decision making, and their ethical character. These also include judicial tools, especially new computerized systems to speed up the delivery of quality justice, as well as the reform of the judicial disciplinary process. Finally, they extend to the improvement of judicial compensation, the construction of dignified court houses, the provision of adequate equipment, and the use of alternative dispute resolution mechanisms.

As I have mentioned, several international agencies have been assisting in the Philippines' judicial reform program. This has prompted Chief Justice Panganiban to state in his address to the Consular Corps of the Philippines in August 2005: "I do not know of any other country that has enjoyed a similar amount of global assistance for the modernization of its justice system."

Foremost of these development partners is the United Nations Development Programme (UNDP) of which UP-NCPAG is an implementing partner. UNDP funded the preparation of the "Blueprint of Action for the Judiciary," to which our present and more comprehensive APJR owes its origin. UNDP followed through with a package of studies and technical assistance aimed at strengthening not just the judiciary itself, , but also the other pillars of our criminal justice system like the Philippine National Police, and which are likewise geared to facilitating the poor's access to the justice system.

Dean Brillantes In his letter to Chief Justice Panganiban , , specified that this present Forum aims to "debate on the best ways to promote and institutionalize reforms in access to justice and participation of vulnerable sectors. "We therefore focus on APJR's 5TH component, which is Access to Justice by the Poor and Disadvantaged. The 5th Component aims to empower the poor and other disadvantaged sectors of society to have equal access to justice, and equal treatment under the law, by:

- (a) Improving information for, and education of, the poor and other disadvantaged sectors on the justice system and its services;
- (b) Improving the capacity of judges and law practitioners in handling cases involving the poor; and
- (c) Improving the physical access and affordability of judicial services by the poor and other marginalized sectors of society.

Included in the "Access to Justice" aspect under UNDP sponsorship are the following:

- (a) a diagnostic study of the capabilities and limitations of the Department of Justice;
- (b) a research on how penal institutions work; and
- (c) a participatory program to assess the strengths and weaknesses of our jails. To this should be added the jail decongestion project – undertaken by the private practitioners, the Integrated Bar of the Philippines (IBP) with UNDP funding – in the Manila, Pasay, Quezon City and Pasig City jails. Another UNDP concern is the elimination of gender bias and the equalization of political and civil opportunities for both men and women.

To facilitate access to the judicial system by the poor and the disadvantaged, the Supreme Court recently inaugurated its "Justice on Wheels" program with the assistance of the World

Bank.² The Justice on Wheels Project is akin to the Mobile Court Project in Guatemala, which is similarly funded by the World Bank. Already, the first mobile courts have made an impact on decongesting jails and speedily resolving family problems in Metro Manila. I wonder if you ever saw those buses with JUSTICE ON WHEELS. It has a judge, a clerk, and they hear cases. It speeds up resolution of family cases because this is family court.

Likewise, with a loan from the World Bank, the Supreme Court is building model electronic courts in selected areas as a preview of a future nationwide courtroom construction program. Just recently, the Bank has acceded to finance the rehabilitation of the old Government Service Insurance System (GSIS) building, located on Arroceros Street in Manila, for its eventual conversion into a modern Hall of Justice for Manila trial courts.³

Under the 5th Component, the Supreme Court has completed studies on how to strengthen access to justice by the disadvantaged sectors of society through the formulation of information, education, and communication plans and adequate legal assistance programs. In December 2004, the Supreme Court held a National Forum on Access to Justice Thru Reform in the 5 Pillars of the Criminal Justice System. Let me walk you briefly thru these pillars:

1. The Law Enforcement Pillar primarily refers to the investigation of crimes, collection of evidence, arrest of suspects, and referral of cases and suspects to the prosecution or lower courts either for preliminary investigation and/or filing of cases and adjudication. In the Philippines, law enforcement is the principal responsibility of the Philippine National Police (PNP), the civilian agency under the Department of Interior and Local Government; and the National Bureau of Investigation (NBI), which is under the Department of Justice. Strengthening access to justice in this pillar focuses on eliminating police practices that cause injustice or obstruct the poor and disadvantaged groups to access justice. It also involves the transformation to a democratic police service whereby all citizens are treated equal and provided equal protection of laws.
1. The Prosecution Pillar under the National Prosecution Service of the DOJ serves as the fulcrum of the criminal justice system since it is assigned with the delicate function of developing criminal actions and other proceedings for violation of laws with corresponding penal sanctions. Under the Constitutions, pillars are formerly called fiscals.
3. The Corrections Pillar is responsible for imprisonment and rehabilitation of those found guilty of crimes. In the Philippines, responsibility for corrections belongs to the Department of Interior and Local Government's Bureau of Jail Management and Penology (BJMP) and the Department of Justice's Bureau of Corrections and Board of Pardons and Parole. The Philippine National Police is responsible for the administration of detention cells in their respective precincts for those arrested. And I am sure we will have a lively discussion on detention cells later in the forum. The Department of Social Welfare and Development (DSWD) and civil society organizations care for particularly vulnerable inmates, such as minors, women, and the mentally ill. The importance of securing prisoners' access to justice are especially underscored because they most often come from indigent, uneducated, poor, and politically powerless sections of society who, due to their imprisonment,

2 The first mobile court under the Justice on Wheels initiative was launched on December 21, 2004.

3 Through a property-for-building swap, the Philippine SC was able to acquire the GSIS building in exchange for a vacant lot it owns along Taft Avenue. This scheme was inspired by the example of the Supreme Court of Venezuela, which had successfully converted an unused or abandoned modern building (the former head office of a failed bank) to house its courts.

are doubly marginalized. The capacity of penal systems to ensure prisoner's human rights is especially critical in countries such as ours where resources are scarce and where prisons are often closed and neglected. In such cases, prison reform is vital to ensure an effective criminal justice system and access to justice for prisoners.

4. The Community Pillar of the justice system refers to the barangay, or the smallest political unit, as well as society as a whole. It includes government, educational institutions, and religious and civil society organizations. It includes all which does not belong to the pillars earlier discussed. Strengthening access to justice in this pillar focuses on strengthening the capacity of ordinary people to seek justice remedies. When people have adequate capacities to seek justice, they are better able to hold government officials accountable for the implementation of the law, and to participate in governance processes.

Going now to the Court Pillar, a central assumption for its efficacy is judicial independence. Judicial Independence is a fundamental principle of the rule of law, and crucial in ensuring equal access to justice and the protection of human rights. Only an independent judiciary is able to render decisions impartially and without interference on the basis of facts and in accordance with the law, thereby protecting fundamental rights and freedoms of individuals. An independent judiciary is a check against corruption and abuse of power. It also contributes to fostering equality, fairness, predictability, transparency, accountability, public trust, and confidence in society. Stability in the rule of law and predictability in the rendition of decisions are indispensable to investor confidence, economic development and ultimately to good governance.

What are the abiding problems and challenges in shepherding and institutionalizing reforms under the 5th component of the APJR? Some of the problems have been discussed earlier, and some of those that have been manifested in dialogues with the various stakeholders are the following:

1. Need for a strong and supportive leadership oriented towards access to justice by the poor and disadvantaged, particularly since it will entail increased spending and mobilization of resources for particular this sector.
2. Need for supportive legislation towards this end;
3. Need for greater consistency, cooperation, consultation and continuity among the pillars of the justice system which are perceived to be of competing interests and excessive regard for "turf" and power;
4. Need for prioritizing speedy dispensation of justice.

The speedy dispensation of justice is what I have been advocating, even before, when I was a prosecutor, when I was in corrections as a probation officer, and when I was a Child Court judge. I have always stressed the the speed dispensation of justice that the public will see.

And herel would like to quote Professor Arnab Kumor Hazra of India, which dovetails with my own thinking:

"An inefficient legal system – one that is characterized by a huge backlog of cases- undermines the effectiveness of legal reforms. Inefficiency in the justice system leads to an increase in litigation, as people who are aware of the slow pace of justice within the court system begin to file cases primarily to harass the other party. Such cases crowd out genuine litigants who are forced to seek solutions elsewhere.

Another challenge is inertia of institutional culture in these pillars of the justice system.

APJR seeks to address these problems and challenges. However, the ultimate challenge is for us as a people to work together to achieve a just and transformed society. In the words of Chief Justice Davide: "Civilization has secured the blessings of the judicial system as the best alternative to fraud and violence among men. Verily, good government depends on a good judiciary. Justice is the strong foundation for national, regional and even global progress, prosperity and stability."

Thank you for your attention.

[Back to Table of Contents](#)

THE ALTERNATIVE REFORMS IN ENHANCING ACCESS TO JUSTICE OF THE BASIC SECTORS

Atty. Marlon Manuel

Before I start, let me introduce the two organizations I represent in this forum. Not that the lawyer has to qualify the witness but that I want to show my bias in the succeeding presentation.

I am from Sentro ng Alternatibong Lingap Panglegal, it is a legal resource non-government organization. It works with the basic and marginalized sectors in the Philippines. SALIGAN works with farmers, workers, the urban poor, women, and local communities. The office operates in different areas throughout the Philippines. The Main office is here in the National Capital Region. We have two branches, one branch is based in Naga City and operates in the Bicol Region; and another branch operates in Mindanao and is based in Davao City. We plan to establish a third branch in the Visayas in the next few years. The mission of the organization is to effect societal change, by working towards the empowerment of women, the basic sectors, and local communities, through the creative use of the law and legal resources. We have adopted a two-pronged approach of working with the grassroots and communities, women, labor, peasant, and the urban poor communities, and at the same time at the policy level with legislators and executive officials.

Our work can be divided into four categories: education, including paralegal formation, litigation, case handling of strategic cases, policy work, research and publication. We also have a program for lawyers and law students. We also have an internship program. Now we are hosting some 10 students from the University of the Philippines College of Law for a year-long internship program. SALIGAN is one of the oldest and biggest members of the Alternative Law Groups, Inc. (ALG) and just yesterday we ended the general assembly of the Alternative Law Groups. And SALIGAN has just been elected as the convenor of the ALG for the next two years. The ALG is a coalition of 18 legal resource NGOs engaged in alternative and developmental legal practice and working for the empowerment of the poor and marginalized sectors in the society. We cover a wide area of concern even geographic area, working on different justice issues of the marginalized sectors of the Philippines: issues on women, labor, peasants, fisher folks, children, urban poor, indigenous people, local governance, environment, and other issues.

Let us now go to the presentation. I was asked to do a presentation on alternative reform propositions in enhancing access to justice of the basic sectors. (There is a slight typo error in the program. It should read, alternative reform propositions.) There is a reason for the quotations (see PowerPoint presentation) because I want to emphasize the word “alternative” because what we will discuss this afternoon are not really alternative propositions but propositions that are indispensable and complementary propositions to the reform efforts being conducted by the Supreme Court and other government agencies.

The general proposition is, the problem of limited access to justice is a relationship problem, i.e., how the administrator of justice relates to the end-user of the system, and, conversely, how the end-user relates to the administrator. Just to relate the discussion to what Justice Hormachuelos discussed earlier, the APJR identified the following major factors that hinder access to quality judicial services by the basic sectors: Delays in judicial proceedings, erroneous decisions rendered by lower courts, prohibitive costs of litigation, inadequacy or lack of information about the judicial system. The explanatory notes on the major factors are very interesting and reveal the real situation of the poor. According to the APJR, delays can also occur because the poor do not have adequate resources to hire lawyers. This condition protracts the litigation process and we have some government defenders with limited resources, both financial and human resources, and so, the poor litigants, who cannot afford the services of litigants, and who do not have ready access to government defenders, will in effect delay the litigation of their cases. Decisions rendered by the lower courts are not always accurate, and, therefore, not always just and fair. Upon review the errors may be corrected, but upon that time a poor party may have already suffered from the penalties imposed by the lower courts. So after 15 years of wrongful imprisonment, then you will be released after the Supreme Court has declared the decision to be erroneous, our government has a way of compensating you. For the 15 years, P15,000 if I am not mistaken so that's P1,000 a year.

The costs of litigation to the poor are many. It is not just the professional fees of the lawyers. Litigation involves the hiring of a competent lawyer, but the mere attendance to the hearings, the transportation costs, will also add to the professional fees. Everyday of attendance in a hearing will deprive the person of employment. Like for daily wagedworkers, you attend five hearing days and you lose five days of salary.

The Court said, "The state of the basic sectors is aggravated by their ignorance of the law. This ignorance is that the fault of the poor. The court said that this might be considered as a mixed result of two major factors. First, their deficient appreciation of the law, their educational status which is oftentimes deplorable, and the inability of the judicial system, agencies of the government and even non-governmental organizations to provide information and improve the basic sectors' levels of understanding."

The APJR assessment is similar to the assessment in the June 2003 report, Strengthening the Other Pillars of Justice through Reforms in the Department of Justice, two major constraints to citizens' access to justice were identified: the high costs of litigation and legal services, and the lack of adequate knowledge about the law and institutions of the justice system.

The Public Assistance Office seeks to enhance access to legal services; it is called the front liner of the DOJ in terms of providing legal services to the poor. The PAO has a clientele base equivalent (as of 2003) to 34.9% of the country's population, consisting of those who are considered living below the poverty threshold. However, many qualified indigents do not avail of PAO services because they do not know that the PAO exists. So there is a disconnection between the service and the demand for the service. Other clients who hear of PAO programs for indigents are not, however, aware of the means through which the agency services could be provided. Some clients seek PAO's assistance already at a late stage. In fact in that study, majority of the clients

said that they got information about the PAO from their fellow detainees.

Now let us go to the other propositions. Again I am proposing these not as alternatives but as indispensable, parallel efforts. First, focusing the reform program at judicial and other governmental institutions is important. But the tendency to over-concentrate on governmental or state institutions must be avoided. And this is a call not only to the government but also to donor agencies, the civil society organizations, including the academe.

Let's go back to the APJR. In addressing the issue of Access to Justice, the APJR focuses, and understandably so because this is a program of the Supreme Court, it focuses on the judiciary. The Supplement to the APJR identifies the following major policies and strategies: Improvement in the overall institutional capacity of the Judiciary for improved efficiency; reforms in judicial systems and procedures; improving public information for the poor; initiatives that encourage reforms in judicial systems components outside of the Judiciary; legal and judicial education; assessment of the impact of judicial reform program on access to justice by the poor. As we have seen in the preliminary explanations, however, many of the problems are not only one sided. Many problems in delays are not systemic problems and conditions of our governmental institutions. A big part of the problem is the side of the poor: the side of the lack of information, the side of the lack of legal services, the absence of the capacity to access government institutions.

Strengthening the capacity of state institutions is certainly indispensable. But it is important that the efforts to enhance the capacity of state institutions, courts and non-courts, should be complemented by parallel efforts to build "civilian" (as opposed to governmental) capacities. Building the capacity of the people to access the justice system and to seek remedy for violation of rights should be a necessary component of any justice reform program, such as this part of the APJR. Strengthening the end-user sector (or the demand side) of the justice system will complement efforts at the demand side. The end-user should be considered as constituency in the reform efforts happening within the state institutions, within the government entities. Strengthening the outside will help reform the inside.

Access to justice is an issue of relationship, and we have to enhance the capacity of both parties to efficiently and effectively relate to each other. The issue of capacity (especially if seen only from the perspective of the justice administrator) cannot be isolated from the issue of linkage. In fact, the capacity of one party must be seen as an indispensable component of the linkage between the parties. Any attempt to enhance the capacity of the governmental institutions will have limited effect if not complemented by similar efforts to strengthen the capacity of the constituents of these governmental institutions. Strengthening the institutions or parties individually must be a necessary component of any reform program. However, institutional strengthening should include, as an indispensable component, linking the different institutions and stakeholders. You cannot over capacitate one and leave the other behind. You will not create a balanced relationship. No matter how we improve the courts and the governmental bodies, if we do not improve the capacity of the poor to accessing the courts and governmental bodies, the linkage will be an imbalanced relationship and it will not work for both.

Any justice reform program must be holistic in approach, not unidirectional, not single-party focused, meaning, it must not be limited in its reform objectives to a specific sector, supply side for example, but also should reach out to the other side which is a necessary part of a running system. This is especially necessary in the area of improving access to justice, and we go back to the original proposition that the problem on the access to justice is a problem or relationship between the administrators and the end-users.

What are the recommendations, which details can be discussed in the open forum? Reform efforts must focus on the following: First, enhancing the capacity of the administrators of justice, the service-providers. By all means, we have to improve the salaries of the judges, the prosecutors, the defenders, the government agencies involved. We have to improve our court buildings, our court systems and procedures but (second) we also have to enhance the capacity of the end-users, the constituents of the administrators. We have to inform the public about their rights, about their means to access the courts and the governmental bodies. And most importantly, to combine the two: we have to strengthen the linkage between the administrators and the end-users. This recommendation however is a necessary result of the first two. If we strengthen the capacity of the administrators and the end-users, we can expect hopefully a working relationship between the two parties and an improved justice system.

Let me end by citing a biblical story about the corrupt judge who according to the narration has no fear of man nor God. And there is a poor widow who has a case before the judge. The poor widow kept coming to the judge, repeatedly telling the judge, 'Give me my rights against my opponent.' And the judge eventually ruled in favor of the poor widow. Out of fear the judge said, 'this widow might do some violence if I do not decide on her favor' so the judge who has no fear of man nor God made a ruling based on the rights of the poor widow. The story gives us a very important lesson: in improving our justice system we should focus on the judges and we should also focus on the poor widows. Thank you very much.

[Back to Table of Contents](#)

Open Forum

Comment (name omitted): We would just want to inform this group that corrections as one pillar of the criminal justice systems is grouped into a) institutionalized (prisons/jails), and b) community-based correction to name the Parole and Probation Administration.

Question from Mr. Bing Pabilla, ASPAP PMO and Philippine Mediation Foundation Inc., addressed to Atty Manuel

Atty. Manuel: The nature and quality of legal education plays an important role in the process of reforming the bureaucracy. Access to justice by the poor is also a problem of prospector lawyers who are the sources of both the supply side and demand side. Where do you locate the lawyers in process of reforming the judiciary? Are they the end-users or middleman who usually are ones profiting from prolonged litigation?

Atty. Manuel: They are on both sides, because they are part of the litigations and also litigants.

Mr. Pabilla: Many perceive that since lawyers are in the middle, because they both belong to the supply and demand side. When we talk about the cost to litigation, lawyers account for most of the cost, and poor cannot pay the lawyers.

Atty. Manuel: I always relate the professional fees of lawyers to other professionals, only that lawyers ask for a fee for just accepting your case, compared to a doctor whom you pay after the consultation or treatment. Other lawyers address their issue on lack of representation for the poor. Many members of the coalition are involved in training paralegal to address legal representation. Yes, many lawyers contribute to the problems of the legal system. But also many do their work in helping poor litigants. But I admit that the lawyers sometimes form part of the problem.

Commissioner Chito Gascon to Atty. Manuel:

Atty. Chito Gascon: Atty Manuel mentioned about the role of lawyers. I am interested on more specific recommendations on where do we go from where we are now after 5 years of the APJR (Action Program for Judicial Reform), particularly on the service delivery side, specifically on the improving the capacity of the clients, and how do we do that?

Atty Manuel: Education is a key aspect, we talk about basic education for our citizens from elementary to high school, and legal/judicial education (at tertiary level). The problem on access to justice is caused largely by poor access to information. We need to break the barrier. It should not be limited to information on law but access to

knowledge on redress. Our options include integration of human rights subjects on high school education, to inform Filipinos how the system can work for them. There are also collective actions which communities can do, addressing the need for capacity bldg in terms of skills, such as conducting paralegal activities for farmers and workers to help them handle the cases themselves, such as before the DARAB, PARAB.

One suggestion in UNDP is to strengthen the public attorney's office providing legal assistance. And for Private legal practitioners (to be required to become) compulsory legal aides and to serve pro bono for poor litigants. There is also a need to (improve the quality of) education of lawyers (for law students) to make curriculum more responsive.

Justice Hormachuelos to Comm. Gascon:

Justice Hormachuelos: I am struck on the observance of Atty Gascon on the judiciary as one pillar, the other is community pillar. I am on the advocacy on speedy dispensation of cases and the protection of the environment. Like during the floods in Quezon, I advocated that the IBP (Integrated Bar of the Philippines) do something. I would like to know the involvement of Atty. Gascon during the floods in Quezon province.

Atty. Gascon: admit that I am ignorant on the latest developments on involvements on ensuring access to justice. But yes it is good to rethink access to justice in the way Dr. Carino presented it. I do not actually (see) disadvantaged groups in the forefront of justice reform issues, (but them being) in other issues.

Cheska Montes to Atty. Manuel:

Cheska Montes, Philippine Collegian – UP GK, UP PA student – What are the mechanisms or already “holistic” programs with other groups in order to increase awareness of the disadvantaged with regard to their access to justice and the judicial sector's efforts to justice reforms?

Atty. Manuel: (This is done) through public programs, education activities (that address) issues in reforms, included the ones in the grassroots, in policy development at national and local levels. Also involved are partner communities in the reform of judicial system – e.g., the DAR, DOLE, labor unions. We are also currently working on expediting labor cases, the biggest chunk of cases are union related and illegal dismissals. We are working towards increasing efficiency of the system – a one-step agency (through which cases go through) before directed to the decision making bodies to improve the procedural / remedial side of the law. We are involving the partners not only on the user side but also in policy formulation and reforming the

system of administration of justice. But again we can only cover so much municipalities even if you are working full time with many paralegals, we have to do more.

Kgd. Ed Lapira to Atty. Manuel:

Kgd. Ed Lapira, Barangay Council, D1 QC: On education, as member of the BC, let's have a planning on how to implement education at the level of the barangay. Like on terrorism, the PNP has seminars from small group of constituents to explain what is terrorism. PNP also included in the program that UP is a breeding ground for future terrorists. Is there an organization extending programs to barangays?

Atty. Manuel: There is of course a law against the abuse of women and children. (Under this) Brgy Protection Order (for abused women and children), barangays have the power to hear before moving to the trial courts.

Kgd. Ed Lapira: Are there public services offered by SALIGAN? Where is the Manila Office and how to contact this office?

Atty. Manuel: We are into education (programa para sa komonidad), case handling (but not as a legal aide office). Limitado ang pag hawak ng kaso like eviction of poor families, not domestic cases, only sectoral and strategic cases. (We can also help on policy development at the local level (local policy development towards ordinances).

Sylvia Carvajal to Justice Hormachuelos:

Sylvia Carvajal, DILG: It has been observed that the prisoners are one of the most advantaged. What has the courts done in cooperation with the BJMP especially for those prisoners who are detained and whose case have been suffered for years, longer than the would-be number of years to serve the sentence if court hearings have been conducted? Also, at the present, the DILG is training on Katarungang Pambarangay. What does the court do (in these training)? (Justice Hormachuelos asked the representatives from DOJ to answer)

Atty Toledo, DOJ: Prisons those who are under the BJMP are those who have pending cases. Those who are under the Bureau of Prisons are those already accused. On the education of local government, you can request to DOJ. DOJ already has action centers for marginalized.

Comment: Sergis Nitapan, office of Manny Villar: There is lack of identification of senators who will oppose the measure (on bills increasing access to justice). We need to present arguments on opposing senators, to pacify political comments and possible oppositions.

Dr. Carino: That is a very good suggestion. The sponsor (of a bill) should know the possible opposition for the bill. In the study, the opponents are sometimes supporting a similar measure.

Dean Alex: On the number of wrongly imprisoned, do we have statistics on these?

Atty. Manuel: The DOJ should have data.

Dean Alex: How prevalent?

Atty. Manuel: The statistics should reveal the capacity of the detainee to access lawyer to review. If you have been detained longer than your penalty if you were convicted, then you can already be freed. The judges are supposed to be conducting regular jail visits, but because of the congestion, it is not regular anymore. Also, data may inventory to be done by judges but it can be done already by the BJMP.

Dr. Carino: We used to do that with Pahinungod and the students were able to let free several inmates. But the problem sometimes is on asking the inmates who themselves do not know what they are charged with.

[Back to Table of Contents](#)

Lessons Learned

- ❖ Disadvantaged sectors could transcend their state of “helplessness”, “powerlessness” and “inadequateness” if they band together and unite for a common cause.
- ❖ Disadvantaged sectors could be a force to reckon with in policy making and reform as evidenced by some of the cases in “Access to Participation” study.
- ❖ Reforms in the justice system, particularly access to justice of the poor, could be shepherded and advocated if local institutions and other partners are harnessed.
- ❖ Ability of citizens to turn impartial arbiters to resolve disputes and seek remedies in legal and non-legal, informal or customary institutions of justice could be enhanced by proper education and information dissemination and respect for human rights and dignity.

[Back to Table of Contents](#)

ANNEX A

POWERPOINT PRESENTATION OF DR. LEDIVINA CARIÑO

Disadvantaged Groups and Parliamentary Processes

Ledivina V. Cariño
Diliman Governance Forum
November 24, 2006

Theoretical Perspective

- State as arena of struggle, positioned between the power of power and the power of ideals and system preservation
- Could be more responsive to disadvantaged due to
 - Democratic space
 - State move for self-preservation and stability
 - Groups bearing interest believed to be public, not narrow self-interest
 - Group capacity for policy intervention

Case Studies

- Comprehensive Agrarian Reform Law
- Urban Development and Housing Act
- Fisheries Code
- Indigenous Peoples Rights Act
- Social Reform and Poverty Alleviation Act
- Anti-Rape Law of 1997
- Anti-Child Labor Law
- Anti-Terrorism Bills

Avenues of Access

- The electoral process (party-list, regular)
- Setting the public agenda
- Access to the legislative mill

Strategies

- Importance of strategic thinking and action
- Role of negotiation and compromise
- Parallel informal interventions through legislative track and mass action
- No neglect of second house
- Penetration of bicameral conf committee
- Role of executive in legislative process

Qualities for Successful Policy Advocacy

- Internal capacity
- External linkages

Qualities for Successful Policy Advocacy: Internal Capacity

- Organization (coalition, secretariat, professional staff)
- Management (quick decision making, effectiveness grassroots education, knowledge of advocacy processes)
- Vision and strategy
- Knowledge of policy process
- Willingness to compromise, unity and credibility

Qualities for Successful Policy Advocacy: External Linkages

- Finding strategic partners
- Mustering resources
- Collaboration with government
- Linkage with the people
 - Consultations and organizing
 - Mass action to unite a group's constituency and to show strength
- But: Strength of opposing forces

Conclusions

- Marked dominance of the elite, with compromises eating into the poor's non-negotiables
- Even sponsors can leave disadvantaged when outside public glare
- Perceptions of democratic space can change conditions, if people acted on them
- Some advances only to placate poor
- Opposing forces not omnipotent
- Implementation still a key arena



The resource speakers: Atty. Marlon Manuel, Justice Portia Hormachuelos and Dr. Ledivina V. Cariño.



The organizers, Dr. Ebinezor Florano, Dr. Ma. Fe V. Mendoza, the resource speakers, Dean Alex Brillantes Jr. Included in the picture is Atty. Chito Gascon, Executive Director of Libertas.



Dr. Sergio Cao, Chancellor of the Diliman Campus of UP in his Opening Remarks.



Registration



Some 150+ participants from different sectors took part in the half-day affair.



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