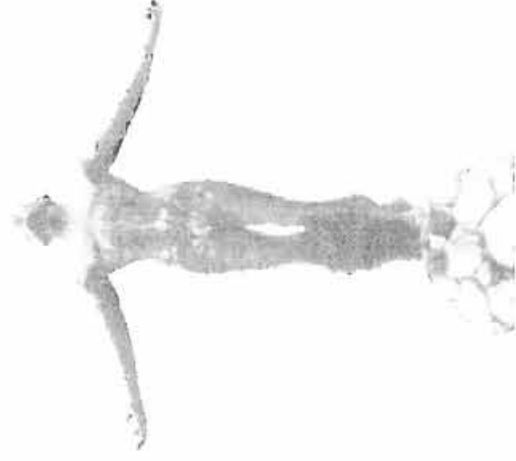


SHEPHERDING REFORMS
IN ACCESS TO JUSTICE
AND PARTICIPATION OF THE
DISADVANTAGED SECTORS

Diliman Governance Forum

Working Paper Series No. 9
2008



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


17th Diliman Governance Forum

"SHEPHERDING REFORMS in ACCESS TO JUSTICE and PARTICIPATION of the Disadvantaged SECTORS"

24 November 2006
12:30 pm - 5:00 pm

NCPAG Assembly Hall
University of the Philippines

Resource Speakers
Hon. Portia Hormachuelos
Justice, Court of Appeals
Atty. Marlon Manuel
Project Director, Alternative Law Group
Dr. Ledivina V. Cariño
University Professor, University of the Philippines



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

Working Paper Series No. 9

National College of Public Administration and Governance
University of the Philippines
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FOREWORD

The Diliman Governance Forum (DGF) is a continuing effort of the National College of Public Administration and Governance (NCPAG), University of the Philippines (UP) to initiate collective action for public administration reforms and better governance. Spinning off from the Policy Issues Forum conducted by the College in the past, the DGF has tackled various policy concerns, such as, reengineering government, fiscal crisis, geo-informatics, electoral reforms and youth leaders of the past and present. The 17th in a series was held on 24 November 2006 from 12:30 p.m. to 5 p.m. at the NCPAG Assembly Hall, Diliman, Quezon City. Its thematic focus is on "Shepherding Reforms in Access to Justice and Participation of the Disadvantaged Sectors."

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?

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 DGF 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 others 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.

MARIA FE V. MENDOZA
PGF Director

ALEX B. BRILLANTES, JR.
Dean, UP NCPAG

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WELCOME REMARKS

Dr. Sergio S. Cao

Chancellor

University of the Philippines-Diliman

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 Bining 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 (Catholic Ministry of Deaf People, 2005). 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.

OVERVIEW OF THE DILIMAN GOVERNANCE FORUM

Dr. Alex B. Brillantes, Jr.

Dean

UP National College of Public Administration and Governance

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 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.

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.

THE PROBLEMS AND CHALLENGES IN SHEPHERDING AND INSTITUTIONALIZING REFORMS IN THE JUSTICE SYSTEM

Justice Portia C. Aliño-Hormachuelos

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 of the recent International Global Forum on Liberty and 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 if you will 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 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 Millennium. 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 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 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 are 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 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. 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.

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 Through Reform on the 5 Pillars of the Criminal Justice System. Let me walk you briefly through 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 the 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.
2. 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, 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 do 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.
5. 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; and

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 speedy dispensation of justice that the public will see.

And here I 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."

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

Atty. Marlon J. 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 convener 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 such as those 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. I want to emphasize the word "alternative" in my presentation. 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, ₱15,000 if I am not mistaken so that's ₱1,000 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 wageworkers, 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 not 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 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; and 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 also 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 supply 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 governmental institutions will have limited effect if not complemented by similar efforts to strengthen the capacity of the constituents of these governmental institutions. Strengthening 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, details of which 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 as well as on the poor widows. Thank you very much.

**PARTICIPATION AND REPRESENTATION OF DISADVANTAGED GROUPS
IN PARLIAMENTARY PROCESSES IN THE PHILIPPINES**

Dr. Ledivina V. Cariño

Overview

The Constitution of 1987 encourages all organizations "to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means." This study presents how different disadvantaged groups got their policy advocacies considered in the Philippine Congress. A lot of information came from the disadvantaged groups themselves. We used five case studies written by the groups themselves, which we supplemented with interviews and a focus group discussion of heads of Congress technical secretariats. We also combed through original documents emanating from the groups and Congress. More discussions and interviews with the participants could not be made because the period of study was also the time when the country was under a state of national emergency.

The cases studied are the passage of the Comprehensive Agrarian Reform Law, the Urban Development and Housing Act, the Fisheries Code, the Indigenous Peoples Rights Act, the Anti-Child Labor Law, the Anti-Rape Law of 1997, and the Social Reform and Poverty Alleviation Act, and the defeat of anti-terrorism bills. The first seven affected landless tenants, the urban poor, fisher folks, indigenous communities, children, women, and all disadvantaged groups, respectively. These bills, all of which became law, were originated and pursued by the most affected sectors themselves. The anti-terrorism bills were initiated by government and opposed by human rights, labor, church, corporate, professional and people's organizations.

The cases represent most of the significant policy proposals affecting disadvantaged groups from 1987 to 2003. Two peaks in the number of social legislation may be noted: the Eighth Congress (1987-92), the period following the People Power Revolution which opened up democratic space after the ouster of the Marcos dictatorship, and the Tenth Congress (1995-98), which coincided with the Social Reform Agenda (SRA), a package of interventions to attack poverty and attain social justice, equity and peace. The study extracts lessons from these cases to help other disadvantaged groups, NGOs, legislators, and UNDP and other development partners improve human rights programming through getting legislation embodying their just demands.

Key Findings

The disadvantaged groups used various avenues of access and strategies for reaching parliamentarians. These are analyzed below.

Avenues of Access

The People Power Revolution made the legislature more permeable to outside political forces, including disadvantaged groups. The electoral process, and civil society's ability to put new issues into the public agenda complement access to the legislative mill itself.

Entry through the Electoral Process. Short of having their own members elected through the regular single-member district representation of Congress, disadvantaged and marginalized groups can use the party-list system, a constitutional innovation designed precisely for them. Representatives of labor, women, veterans, the disabled, and mass organizations have been elected through the party list. However, church-related, business and other groups not as disadvantaged have also been accredited and have won under that system.

Some benefits of the party-list system include the ability to put issues of the disadvantaged into the public agenda, the recruitment of non-traditional legislators, and voting that puts premium on causes rather than personalities and wealth. Women's elected party-list representatives, and their counterparts from other sectors (appointed rather than elected during the transition period), helped disadvantaged groups get their bills introduced and enacted.

However, the definition of "marginalized" is still unclear. That has put sectors that are not clearly marginalized represented in the party-list, and non-poor persons as their representatives. The acceptance of broad categories like "organizations" and "political parties" without reference to disadvantaged sectors opens the system to everyone. The general lack of information and knowledge of the populace about the party-list system suggests that causes they represent are also not known and appreciated by the voters.

Disadvantaged groups have also been able to get the support of regular legislators for their bills, especially if the latter joined the disadvantaged in their protests against the dictatorship.

Unfortunately, leaders of the disadvantaged rarely get elected through the regular system. Their lack of funding made them unable to muster the finances required by the very expensive electoral process. Thus many of those who ran joined any party that would accommodate them, costing them credibility from their natural constituencies.

Entrée through Setting the Public Agenda. The ideas of disadvantaged groups get considered in legislation through their ability to incorporate them into the public agenda, even before the bills themselves were filed. Their respective agenda were usually forged in consultations, many of them involving not only a

large number of people but also a wide spectrum of groups. Their views then became the point of departure in the deliberations. The indigenous communities put ancestral domain and indigenous peoples' rights into public consciousness. The way agrarian reform, child labor, and rape were discussed in Congress was based on how the disadvantaged groups wanted to define them. The discussions on fisheries development and urban housing started off from what they wanted the State to do. The disadvantaged groups, joined by middle-class allies, even forced the State to withdraw their draconian views on how to deal with terrorism.

Access to the Legislative Mill. Table 1 presents the possible access routes and intervention activities of groups at each step of the legislative process. In capital letters in the first column are the formal parts of the legislative process. The second column lists what are the formally accepted ways outsiders may intervene in that process. The third column shows how the groups have been allowed to intervene in the cases we have discussed, suggesting many more acceptable means of access. Please note that the activities listed are only those in the legislative track. Mass actions are not shown and may take place simultaneous with any step in the process.

In addition to just being aware of possible acceptable activities, we have learned from the cases the need to emphasize

- The importance of strategic thinking and action,
- The confrontation with negotiation and compromise,
- The parallel informal interventions,
- The importance of access to the second House,
- The importance of access to the conference committee, and
- The recognition of the role of the executive in the legislative process.

1. The Importance of Strategic Thinking and Action

Other things being equal, the groups that thought out their moves ahead, especially those that integrated them into an overall strategy, would come out ahead. For example, indigenous peoples and fisherfolks failed to get their proposals enacted in the Eighth Congress, but were both successful in the Tenth. It was easier for IPs to work in the later period because by then they had a coalition and a leadership that called the impressive two-stage (regional and national) consultations and adoption into the Social Reform Agenda. The National Coalition of Fisherfolks for Aquatic Reform (NACFAR) was more mature and had more resources the second time around. In addition, its strategy included choosing the main sponsors and triangulating the Congress with two "Unity" bills, as well as getting into SRA and orchestrating media coverage and mass action at strategic time periods. The government-NGO strategy coupled with perceptible pressure from ILO and UN was the secret behind the Anti-Child Labor Law's smooth sailing through the legislative process.

Table 1. Formal and Informal Access Routes and Activities of Disadvantaged Groups to Congress

LEGISLATIVE PROCESS	FORMAL ACCESS/ROUTES/ACTIVITIES	INFORMAL ACCESS/ROUTES/ACTIVITIES
Putting issue into public agenda		Undertake consultations with constituencies, convince legislators of need for bill.
Drafting of bill	Write position papers; present ideas for bill	Draft bill; choose sponsor. Prepare sponsorship speech.
FIRST READING	Attend in gallery.	Prepare strategy with sponsor. Get President to certify bill.
Assignment to and study by Committee in charge	Discuss bill with chair, members and sponsors.	Suggest issues to be tackled, people to be invited to hearing, calendar convenient for constituency. Learn committee priorities; befriend committee secretariat and technical people in respective House. Get chair to invite group's representatives into technical working group.
Committee on Rules for calendaring		Suggest calendar convenient for constituency.
SECOND READING	Attend in gallery.	Lobby for non-negotiables with sponsor or committee in charge. In floor deliberations, slip questions to interpellations to legislator, as needed.
New Committee draft with amendments as proposed in plenary or by committee		Suggest wording of amendments and form of revised bill.
THIRD READING	Attend in gallery.	If vote is to be explained, prepare legislator's statement.
LEGISLATIVE PROCESS IN THE SECOND HOUSE		Same close guarding as in first House.
Deliberations of Conference Committee on reconciled version of Senate/House bills	May be permitted as part of technical working group or as observer, depending on specific bicam agreements	If not allowed in, may be resource person or in technical working group to work out provisions to get committee out of impasse (during breaks or between committee meetings)
Approval of reconciled version	Attend in gallery.	Help committee draft final version; make sure sponsors and allies present to vote.
APPROVAL BY THE PRESIDENT		Lobby with President to sign bill.

2. The Role of Negotiation and Compromise

In facing off with strong opponents, the groups armed with negotiation skills and their list of priorities had greater chances of winning a bill they could live with. A no-compromise stand only solidifies the opposition, especially from congresspersons known to be representatives of the advantaged.

3. The Parallel Informal Interventions

Informal interventions have two tracks: the legislative route, and the mass action route. In the legislative track, informal interventions can take place at all stages of the legislative process. From our cases, we saw that these could include inclusion of representatives of disadvantaged groups in the work of the technical committees, meetings with individual legislators and the intervention of prominent civil society leaders.

The mass action track includes the marches and demonstrations that are the staple modes of civil society activities. These keep the issues in the streets and on the media while congressional deliberations are going on and add to their salience and urgency. The groups have also added the use of tent cities complete with exhibits and workshops to attract the attention of legislators and their staffs who got "educated" on the demands of the groups on the spot. Another innovation is the "express" rallies, with demonstrators starting from different points in the countryside and converging in the House or the Senate. Meanwhile, to fight the anti-terrorism bills, the groups packaged terrorism with other issues easier for the masses to grasp, and showed power through paralyzing transport strikes and large demonstrations.

4. Access to the Second House

The Philippine Congress is a bicameral one. Although some groups strategically choose which House to penetrate, they learn in due time that they need to show their interest in both Houses and, if time and resources permit, lobby in both simultaneously. A method that has worked well is maintaining friendly relations with committee secretariats since they could alert the lobby groups about breaking developments.

5. The Role of the Bicameral Conference Committee

The conference committee (usually called "bicam") is supposed to reconcile the bills that are passed in the two Houses. Where the bills have markedly different provisions, however, the committee members, as agents of their respective chambers, hammer out compromise provisions thought to

be acceptable to their principals. In several cases, this process spelled the victory or doom of a measure.

This study found that the bicam, formally regarded as a closed-door session, can be penetrated by non-legislators. Involvement in the bicameral committee shows the close guarding that disadvantaged groups have to do to get their bills through the mill.

6. The Role of the Executive in the Legislative Process

Under the Philippine Constitution, the Executive has formal roles in the legislative process: to certify certain bills as urgent, and to approve or veto a bill approved by both Houses, in whole or in part. The Executive may also draft "administration bills," that is, a bill emanating from a government agency (not just the Office of the President) and sponsored by a friendly legislator. These bills, like the certified ones, have the force of the presidency behind them. In addition, Executive agencies may participate in public hearings, respond to the question hour and be called upon to testify in investigations undertaken by Congress in aid of legislation.

Certifying a bill as urgent means that the bill has priority in the calendar. It also implies that the President would be likely to approve it, making its journey through the legislative mill rougher or smoother depending on whether it is an opposition congress or not. Presidential approval is an important step in the process, since other forces can intervene after Congress has spoken.

Qualities for Successful Policy Advocacy

Success in legislative intervention consists of the qualities the active forces bring to the endeavor. These include, from the side of disadvantaged groups as well as their protagonists, their internal capacity and external linkages.

Internal Capacity. The first quality of disadvantaged groups is commitment to their cause. These are evident in their level of knowledge about the issue, in their pre-legislation experience and history, and in their willingness to devote time and resources to basically unpaid work, even staying in the heat of streets to proclaim their allegiances. Part of the passion comes from the fact that the groups were immersed in the social realities of the constituencies they were representing, or were in fact, members of those constituencies. Most had been in some kind of community organizing or conscientizing that focused their hearts and minds on the advocacy they had embraced. They have also been veterans of mass action that made them both internalize the issues and bond them to the larger affected community. That bonding was also shown by the

beneficiaries who showed up in the consultative meetings, mass actions, and the formal public hearings.

But passion has to be channeled, and the groups did this through strategic visioning and planning (already discussed above), organization and institutionalization, capacity building, and other management processes. All the groups involved in our cases worked in coalitions or were part of a team. Most had secretariats for the time of the campaign, including some borrowed from the parent-organizations. Some had funds from an external organization, usually international.

However, some organizations faced the common problems of coalitions, such as twin loyalties to the coalition and to their parent-organizations, giving rise to suspicion and breaks of unity. Not being a separate organization, it becomes a project disbanded after passage of the law. On the other hand, separate organizations do continue to represent the sector for its other concerns.

The roles of each of the organizations put together for lobbying purposes must be delineated for smoother relations and flow of work.

External Linkages. Four potential partners regularly made their appearance in our cases: the Church, international organizations, government, and the citizens at large. These add to the strength of a disadvantaged group, but may also bring in some problems.

The prominence of the Roman Catholic Church in these bills underscored its pronouncement of a preferential option for the poor and was welcomed by the disadvantaged groups. However, it has not lent its voice to progressive views on women's issues.

Also, an international push is not an unmixed blessing. It may facilitate the passage of a bill, but it might also cause resentment, as when some legislators see their presence as country's "blind obedience" to international standards instead of answering our own peculiar needs.

Another role played by international organizations is the resources they give for nationwide consultations, advocacy, and training in lobbying and other capacities. This involvement by "outsiders" needs to be better understood and investigated.

Collaboration with government would normally strengthen a measure since the Executive is an active constituency in legislation. Ramos' Social Reform Agenda made the failed bills of the Eighth Congress come alive in the Tenth. Even here, however, there were problems in the details, since so many claimed the SRA banner but were conflicting in their provisions.

Last but not least is the linkage of the groups to the people at large. This may be carried out through mass action and the media. There is a perceptible decrease of reliance on the mass action track after the Eighth Congress. Perhaps this is due to the growth of knowledge about how the legislative process works and the organizations' subsequent attempts to professionalize their approach. However, as the mobilization against the anti-terrorism bills showed, it can still be impressive and effective when used.

Mass action is usually thought of as a way to unite a group's constituency and show Congress the strength of its forces. It can also be used to connect with the people at large, and to convince them that their agenda is the public's interest and not only their own. As in the EDSA revolutions, their mass actions would have remained simple demonstrations if the people outside their membership did not join in. This is also why having favorable media coverage and understanding by the people at large have strengthened the forces of the disadvantaged.

The Opposing Forces. While the passion of the opposing forces for their cause cannot be gainsaid, they in fact used few public venues. They did not have to do much more. More than the disadvantaged groups, the opposing forces had natural allies, if not actual members, in both Houses. They could be counted on to vote against a bill or to water down a proposal considerably.

Conclusions: Disadvantaged Groups and the State

Dominance of the elite in Congress is still marked, not only in their numbers, but also in their positions. The compromises the disadvantaged made ate into their non-negotiables. They had to accept backing so far down to grasp at that first start at reform.

Was social legislation, then, simply a show-window exercise? We cannot assume insincerity among the officials of the State, just because they did not accept the poor's demands. However, there were instances when even those who seemed to have lined up with the disadvantaged virtually abandoned them in the difficult stages. To support a disadvantaged group's demands plays well in the media and the masses; that could translate to votes. But in the less public arena of the legislative process, the poorer groups not having legislators who are one of them can still be left in the lurch.

So how were these bills passed at all? Aside from the determination of disadvantaged groups, credit must go to the political environment and officials of the State who risked political capital to support their demands. The Eighth Congress began with the glow of the EDSA Revolution, when the Philippines basked in the international limelight as the leader in concretizing the power of the people. The poor had clearly voted on the side of parliamentary processes

rather than armed struggle and had acted on their belief that a democratic space had been opened. The Commission that drafted the Constitution of 1987 also acted on that premise and put provisions supporting the disadvantaged groups and civil society into it. The expectations translated into a political opportunity that could be harnessed and matched by efforts of those that seek new benefits. Many congressional leaders regarded as "progressives" kept their alliance with the people who suffered during the dictatorship.

However, disappointments came early. President Aquino did not dissociate herself from her class and hardly lifted a finger to bolster the agrarian reform the Coalition for a People's Agrarian Reform wanted. Later, her recognition of the staunch support of civil society in the face of *coups* against her brought her back to their side, with an urban housing act that however, was watered down from a proposal for urban land reform. The government bureaucracy did not help much either. Instead of support, the bureaucracy tended to insist on provisions that strengthened the hand of the richer constituents vis-à-vis the disadvantaged.

With the Ninth Congress, it seemed the euphoria of EDSA would completely dissipate. However, President Ramos had campaigned on a platform of "people empowerment" and inaugurated in the second half of his term the Social Reform Agenda. A strategy to fight poverty put new impetus to the struggle of difficult bills of disadvantaged groups. Certification by the President put urgency on them and got even the congressional leadership to support them. However, the devil remained in the details – What benefits are to be dispensed? Who are going to be affected? Who may participate in the control? – That no group got their demands outright. Also, the SRA was a policy forged in the context of the embrace of globalization and economic liberalization. So instead of leading the charge in transforming the nation, the bills of the disadvantaged became the equivalent of safety nets, given because the other policies were surely going to hurt them. With rising criminality and a resurgence of communist violence, the enactment of these bills could come close to placating the poor. Not quite, because there were genuine advances won by fishers, indigenous peoples, suffering women. Besides, the government did back down from its anti-terrorism bills. But questions can also be raised as to why commercial fishers got what they wanted from the bicameral, or why mining won their bids immediately after by the passage of the Indigenous People's Rights Act, which had stringent requirements.

Still, a lesson to be learned from the cases is that the State is not a monolith that is programmed only for certain kinds of decisions. If nothing else, the cases show that the State is now an active participant in the struggle, and that there are officials with similar vision and values as the disadvantaged. Perhaps more than that, there are leaders who listen to technical arguments and are willing to act on new ideas.

It is incontrovertible that laws favored by disadvantaged groups have been enacted. While these may leave much to be desired, their passage alone shows that the opposing forces are not omnipotent and can be challenged. The disadvantaged have numbers and passion on their side, enhanced by capacity, strategic thinking and alliances. Also, glimpses of problems in implementation suggest the necessity for keeping one's interest on the measure constant and untiring.

Recommendations

In light of the foregoing, several recommendations for action and research may be advanced.

Recommendations for Disadvantaged Groups

1. Prepare your policy agenda to promote the causes you stand for and your rights. Continuously study how your causes have been or can be translated to policy. In this and most of the measures enumerated below, undertake deliberative consultations with as many of your members as possible. The democracy you practice in your organization strengthens your advocacies.
2. Arm yourselves with the knowledge of legislative processes and the points of access and activities other disadvantaged groups have already used. This can be provided by the more experienced among you, by support groups, and by research institutions. We hope this work can provide assistance for organizations starting out on their own advocacy paths.
3. Prepare a strategy for legislative engagement, taking into account your goals for the sector, your non-negotiables, your capacities and the opponents you will face.
4. Couple your passion and commitment to a cause with deeper knowledge about its ramifications. This can help you in understanding opposition to your stance, with the possibility of winning over some antagonists by identifying how their problems with your proposal can be met.
5. Take advantage of your nature as an organization in civil society by using a complementary set of legislative and mass action tracks in advocacy campaigns.
6. Learn the art of compromise as well as its moral hazards. Treat your antagonists with respect and assume they have the same commitment to the public interest as you. When in negotiations, recognize that you are fighting for your welfare and that of your constituents, as their opponents are

fighting for theirs. Therefore, conduct negotiations with due respect for the humanity of the other. This should hold true whether the negotiations are with other civil society groups, with opposing forces or with the State.

7. Improve your internal capacity for advocacy through:
 - a. Enhanced management of coalitions
 - b. Focused professional staff. They may be volunteers who are willing to be identified only with the coalition or organization pushing for a bill for the duration of that struggle. This would minimize questions of loyalty and conflict of interest in the period of the campaign.
 - c. Specialization and division of labor, whenever appropriate. This will minimize duplications and inefficiencies, and increase the overall effectiveness of the team.
 - d. Conduct of research on the issue itself, your group's possible allies and adherents, and ways to convince or neutralize known opponents
 - e. Development of a stronger resource base, including funding. Diversified sources of funding would be preferred, since reliance on only one may lead to the possibility of being driven by the fund and the agenda of the donor, rather than by the agenda of your own disadvantaged sector.
8. In dealing with Congress, recognize the value not just of the elected officials but also of technical secretariats that can assist you through the legislative maze.
9. Strengthen links with external forces, such as the church, international organizations and the people but be aware of the dangers of exclusive reliance on one external partner. Learn from your external allies, develop your own platform, and eschew "blind obedience" to any one particular force.
10. Find out how the State can be an ally or partner. Many parts of the government apparatus have policies and personnel sympathetic to causes of the disadvantaged. They should be befriended rather than alienated, and shown insights into the groups' experiences rather than ignored and left to the ministrations of opposing forces.
11. Broaden the base of your organization by recruitment of more sector members and alliances with like-minded NGOs, both local and international. Never neglect the support of the people and the media in undertaking your activities.

Recommendations for NGOs and other Support Groups of the Disadvantaged

1. Assist in building capacity of the disadvantaged groups for advocacy, research, negotiations, strategic planning, and coalition management.
2. Provide links to national and international organizations that can provide disadvantaged groups with resources for capacity building, strategic planning and management development.
3. Help to strengthen the party-list system. Disseminate information about how it works and how disadvantaged groups may participate in them. However, do not dilute its purpose by becoming a party-list organization yourself, since participation of intermediary organizations of the middle class or elite would take away votes for genuine and direct representatives of the marginalized.
4. Support politicians who stand by the causes of disadvantaged groups. Engage in voter education so that more citizens will learn to connect their votes with the accountability of the elected officials to them.

Recommendations for the State

1. Recognize that social legislation is vital to the economy and the nation, and is not charity to the poor.
2. Strengthen the party-list system by reinforcing its original concept as an avenue for disadvantaged groups, and ensuring that it is not a backdoor for elite interests. Study how it can continue to function within the proposal of a constitutional change towards a parliamentary system.
3. Make the legislative process more accessible and transparent to all groups, not only to the elite, or those who are experienced in advocacy campaigns.

Recommendations for UNDP and Other Development Partners

1. Disseminate findings of this and similar studies to disadvantaged groups who need to advocate for legislation to protect their rights and improve their social situation.
2. Support disadvantaged groups through the legislative mill through capacity building in the areas discussed above.
3. Encourage parliamentary bodies to learn more about the policy advocacy of disadvantaged groups and the demands of inclusive governance. This

would include but not be limited to sponsorship of appreciation seminars on those topics, consultative dialogues between parliamentarians and disadvantaged groups, probably by sectoral themes, capacity building for technical secretariats on understanding and promoting the policy agenda of these groups, etc.

4. Support research on the areas listed in the next section.
5. Continue to promote inclusive governance through promotion of the rights-based approach to all sectors.

Recommendations for Research

1. Continue to study management issues of advocacy groups. This would include coalition building, recruitment of leaders and members, resource generation, and capacity building.
2. Deepen this study by investigating how pro-poor laws have been implemented, and how they have improved the lot of the disadvantaged. This could be fed back into the State to reinforce the national significance of the social legislation the disadvantaged groups had already won.
3. Study how progressive legislators have managed (not) to be eaten up by the system. This would be instructive in developing political leadership for the next generation for this country.

OPEN FORUM

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

Mr. Pabilla: 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 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 the 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 , particularly on the service delivery side, specifically on 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 in 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 building 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 with 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: I admit that I am ignorant on the latest developments regarding involvements to ensure access to justice. But yes it is good to rethink access to justice in the way Dr. Cariño presented it. I do not actually (see) disadvantaged groups in the forefront of justice reform issues, (but them being) in other issues.

Cheska Montes, Philippine Collegian, to Atty. Manuel:

Cheska Montes: 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 which 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 procedura/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, Barangay Council, D1, QC to Atty. Manuel:

Kgd. Ed Lapira: 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 for small group of constituents to explain what terrorism is. 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) Barangay 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 can we contact this office?

Atty. Manuel: We are into education (Programa para sa Komunidad), case handling (but not as a legal aide office). *Limitado ang paghawak 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, DILG, to Justice Hormachuelos:

Sylvia Carvajal: It has been observed that the prisoners are one of the most disadvantaged. What have the courts done in cooperation with the BJMP especially for those prisoners who are detained and whose case have suffered for years, longer than the would-be number of years to serve the sentence if court hearings have been conducted? Also, at 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: Prisoners 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 DOJ. DOJ already has action centers for marginalized.

Comment: Sergis Nitapan, Office of Senator 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 to opposing senators to pacify political comments and possible oppositions.

Dr. Cariño: That is a very good suggestion. The sponsor (of a bill) should know the possible opposition to 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 his/her case. If you have been detained longer than your penalty had you been 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 inventory to be done by judges can be done already by the BJMP.

Dr. Cariño: 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.

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.

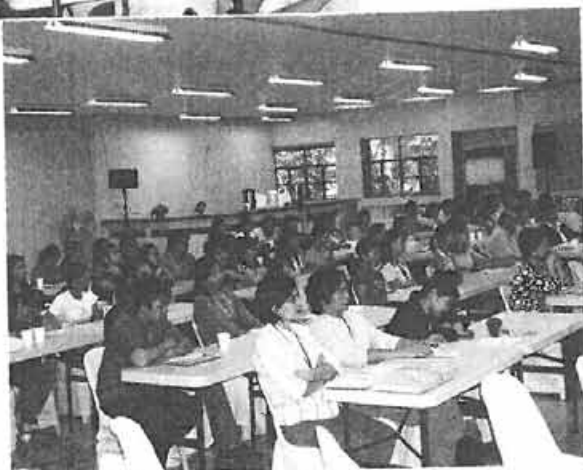
PHOTO DOCUMENTATION



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



The resource speakers, Atty. Marlon Manuel, Justice Portia Hormachuelos and Dr. Ledivina V. Cariño with the Project Director Prof. Maria Fe Mendoza (standing) .



More than 150 participants from different sectors took part in the half-day affair.



The Open Forum facilitated for a healthy exchange of ideas and possible policy alternatives and reforms on how to improve access to justice and participation of the disadvantaged sectors of the society.



The organizers of the forum and the resource persons.
L-R: Dr. Ebenezer Florano, Dr. Maria Fe Mendoza, Justice Portia Hormachuelos, Dr. Ledivina Cariño, Atty. Marlon Manuel, Dean Alex Brillantes, and former Department of Education Undersecretary Chito Gascon.



PRIMER

17th Diliman Governance Forum

Introduction

The line "justice delayed is justice denied" may sound like a cliché; however this statement holds great truth in it. A corollary to it is the statement "inaccessibility of justice is no justice at all." These two statements may have a harsh tone to it but this is a common reality in the Philippine case.

There may be reforms initiated by the different Supreme Court Chief Justices. However, it is perceived that these reforms are not enough to ensure that justice in the Philippines becomes accessible. Reforms are not instituted in the judicial system alone. The different agencies of the executive branch have also instituted a number of reforms to answer the problem of accessibility to justice. Even the legislature, through the creation of new laws to make justice more accessible, has helped improve the delivery of justice to all.

These efforts are not enough, however. It can still be observed that the judiciary has a large number of cases unsettled. There are still minors in conflict with the law which can be found in jails in close contact with hardened criminals. Women are still maltreated and they still have limited options on what to do in cases of prostitution, trafficking, abuse and rape.

This policy brief will discuss the different dimensions of the problems in the access to justice. It will tackle the different constraints or impediments to access to justice and find alternatives or solutions to solve the problem. Proposals coming from the judiciary, government agencies, academe and even the best practices of other countries will be examined in the hope of finding ways to improve access to justice in the Philippines.

Definition of Access to Justice

Access to justice may be characterized as an elusive terminology in the sense that it does not have a direct formal definition. Rather, the definition of access to justice largely depends on the context to which it is being attributed. It is a process that has to be adapted to particular contexts and situations.

However, even if this is the case, the United Nations Development Programme (UNDP) gives a working definition of access to justice. UNDP defines access to justice as the "ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards."¹

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


17th Diliman Governance Forum

**"SHEPHERDING REFORMS in
ACCESS TO JUSTICE and
PARTICIPATION of the
Disadvantaged SECTORS"**

24 November 2006
12:30 pm - 5:00 pm

NCPAG Assembly Hall
University of the Philippines

Resource Speakers
Hon. Portia Hormachuelos
Justice, Court of Appeals
Atty. Marlon Manuel
Project Director, Alternative Law Group
Dr. Ledivina V. Cariño
University Professor, University of the Philippines



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

Working Paper Series No. 9

National College of Public Administration and Governance
University of the Philippines
March 2008

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FOREWORD

The Diliman Governance Forum (DGF) is a continuing effort of the National College of Public Administration and Governance (NCPAG), University of the Philippines (UP) to initiate collective action for public administration reforms and better governance. Spinning off from the Policy Issues Forum conducted by the College in the past, the DGF has tackled various policy concerns, such as, reengineering government, fiscal crisis, geo-informatics, electoral reforms and youth leaders of the past and present. The 17th in a series was held on 24 November 2006 from 12:30 p.m. to 5 p.m. at the NCPAG Assembly Hall, Diliman, Quezon City. Its thematic focus is on "Shepherding Reforms in Access to Justice and Participation of the Disadvantaged Sectors."

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?

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 DGF 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 others 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.

MARIA FE V. MENDOZA
PGF Director

ALEX B. BRILLANTES, JR.
Dean, UP NCPAG

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WELCOME REMARKS

Dr. Sergio S. Cao

Chancellor

University of the Philippines-Diliman

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 Bining 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 (Catholic Ministry of Deaf People, 2005). 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.

OVERVIEW OF THE DILIMAN GOVERNANCE FORUM

Dr. Alex B. Brillantes, Jr.

Dean

UP National College of Public Administration and Governance

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 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 convener 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.

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*.

THE PROBLEMS AND CHALLENGES IN SHEPHERDING AND INSTITUTIONALIZING REFORMS IN THE JUSTICE SYSTEM

Justice Portia C. Aliño-Hormachuelos

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 of the recent International Global Forum on Liberty and 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 if you will 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 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 Millennium. 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 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 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 are 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 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. 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.

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 Through Reform on the 5 Pillars of the Criminal Justice System. Let me walk you briefly through 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 the 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.
2. 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, 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 do 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.
5. 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; and

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 speedy dispensation of justice that the public will see.

And here I 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."

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

Atty. Marlon J. 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 such as those 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. I want to emphasize the word "alternative" in my presentation. 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, ₱15,000 if I am not mistaken so that's ₱1,000 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 wageworkers, 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 not 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 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; and 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 also 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 supply 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 governmental institutions will have limited effect if not complemented by similar efforts to strengthen the capacity of the constituents of these governmental institutions. Strengthening 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 overcapacitate 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, details of which 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 as well as on the poor widows. Thank you very much.

**PARTICIPATION AND REPRESENTATION OF DISADVANTAGED GROUPS
IN PARLIAMENTARY PROCESSES IN THE PHILIPPINES**

Dr. Ledivina V. Cariño

Overview

The Constitution of 1987 encourages all organizations "to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means." This study presents how different disadvantaged groups got their policy advocacies considered in the Philippine Congress. A lot of information came from the disadvantaged groups themselves. We used five case studies written by the groups themselves, which we supplemented with interviews and a focus group discussion of heads of Congress technical secretariats. We also combed through original documents emanating from the groups and Congress. More discussions and interviews with the participants could not be made because the period of study was also the time when the country was under a state of national emergency.

The cases studied are the passage of the Comprehensive Agrarian Reform Law, the Urban Development and Housing Act, the Fisheries Code, the Indigenous Peoples Rights Act, the Anti-Child Labor Law, the Anti-Rape Law of 1997, and the Social Reform and Poverty Alleviation Act, and the defeat of anti-terrorism bills. The first seven affected landless tenants, the urban poor, fisher folks, indigenous communities, children, women, and all disadvantaged groups, respectively. These bills, all of which became law, were originated and pursued by the most affected sectors themselves. The anti-terrorism bills were initiated by government and opposed by human rights, labor, church, corporate, professional and people's organizations.

The cases represent most of the significant policy proposals affecting disadvantaged groups from 1987 to 2003. Two peaks in the number of social legislation may be noted: the Eighth Congress (1987-92), the period following the People Power Revolution which opened up democratic space after the ouster of the Marcos dictatorship, and the Tenth Congress (1995-98), which coincided with the Social Reform Agenda (SRA), a package of interventions to attack poverty and attain social justice, equity and peace. The study extracts lessons from these cases to help other disadvantaged groups, NGOs, legislators, and UNDP and other development partners improve human rights programming through getting legislation embodying their just demands.

Key Findings

The disadvantaged groups used various avenues of access and strategies for reaching parliamentarians. These are analyzed below.

Avenues of Access

The People Power Revolution made the legislature more permeable to outside political forces, including disadvantaged groups. The electoral process, and civil society's ability to put new issues into the public agenda complement access to the legislative mill itself.

Entry through the Electoral Process. Short of having their own members elected through the regular single-member district representation of Congress, disadvantaged and marginalized groups can use the party-list system, a constitutional innovation designed precisely for them. Representatives of labor, women, veterans, the disabled, and mass organizations have been elected through the party list. However, church-related, business and other groups not as disadvantaged have also been accredited and have won under that system.

Some benefits of the party-list system include the ability to put issues of the disadvantaged into the public agenda, the recruitment of non-traditional legislators, and voting that puts premium on causes rather than personalities and wealth. Women's elected party-list representatives, and their counterparts from other sectors (appointed rather than elected during the transition period), helped disadvantaged groups get their bills introduced and enacted.

However, the definition of "marginalized" is still unclear. That has put sectors that are not clearly marginalized represented in the party-list, and non-poor persons as their representatives. The acceptance of broad categories like "organizations" and "political parties" without reference to disadvantaged sectors opens the system to everyone. The general lack of information and knowledge of the populace about the party-list system suggests that causes they represent are also not known and appreciated by the voters.

Disadvantaged groups have also been able to get the support of regular legislators for their bills, especially if the latter joined the disadvantaged in their protests against the dictatorship.

Unfortunately, leaders of the disadvantaged rarely get elected through the regular system. Their lack of funding made them unable to muster the finances required by the very expensive electoral process. Thus many of those who ran joined any party that would accommodate them, costing them credibility from their natural constituencies.

Entrée through Setting the Public Agenda. The ideas of disadvantaged groups get considered in legislation through their ability to incorporate them into the public agenda, even before the bills themselves were filed. Their respective agenda were usually forged in consultations, many of them involving not only a

large number of people but also a wide spectrum of groups. Their views then became the point of departure in the deliberations. The indigenous communities put ancestral domain and indigenous peoples' rights into public consciousness. The way agrarian reform, child labor, and rape were discussed in Congress was based on how the disadvantaged groups wanted to define them. The discussions on fisheries development and urban housing started off from what they wanted the State to do. The disadvantaged groups, joined by middle-class allies, even forced the State to withdraw their draconian views on how to deal with terrorism.

Access to the Legislative Mill. Table 1 presents the possible access routes and intervention activities of groups at each step of the legislative process. In capital letters in the first column are the formal parts of the legislative process. The second column lists what are the formally accepted ways outsiders may intervene in that process. The third column shows how the groups have been allowed to intervene in the cases we have discussed, suggesting many more acceptable means of access. Please note that the activities listed are only those in the legislative track. Mass actions are not shown and may take place simultaneous with any step in the process.

In addition to just being aware of possible acceptable activities, we have learned from the cases the need to emphasize

- The importance of strategic thinking and action,
- The confrontation with negotiation and compromise,
- The parallel informal interventions,
- The importance of access to the second House,
- The importance of access to the conference committee, and
- The recognition of the role of the executive in the legislative process.

1. The Importance of Strategic Thinking and Action

Other things being equal, the groups that thought out their moves ahead, especially those that integrated them into an overall strategy, would come out ahead. For example, indigenous peoples and fisherfolks failed to get their proposals enacted in the Eighth Congress, but were both successful in the Tenth. It was easier for IPs to work in the later period because by then they had a coalition and a leadership that called the impressive two-stage (regional and national) consultations and adoption into the Social Reform Agenda. The National Coalition of Fisherfolks for Aquatic Reform (NACFAR) was more mature and had more resources the second time around. In addition, its strategy included choosing the main sponsors and triangulating the Congress with two "Unity" bills, as well as getting into SRA and orchestrating media coverage and mass action at strategic time periods. The government-NGO strategy coupled with perceptible pressure from ILO and UN was the secret behind the Anti-Child Labor Law's smooth sailing through the legislative process.

Table 1. Formal and Informal Access Routes and Activities of Disadvantaged Groups to Congress

LEGISLATIVE PROCESS	FORMAL ACCESS/ROUTES/ACTIVITIES	INFORMAL ACCESS/ROUTES/ACTIVITIES
Putting issue into public agenda		Undertake consultations with constituencies, convince legislators of need for bill.
Drafting of bill	Write position papers; present ideas for bill	Draft bill; choose sponsor. Prepare sponsorship speech.
FIRST READING	Attend in gallery.	Prepare strategy with sponsor. Get President to certify bill.
Assignment to and study by Committee in charge	Discuss bill with chair, members and sponsors.	Suggest issues to be tackled, people to be invited to hearing, calendar convenient for constituency. Learn committee priorities; befriend committee secretariat and technical people in respective House. Get chair to invite group's representatives into technical working group.
Committee on Rules for calendaring		Suggest calendar convenient for constituency.
SECOND READING	Attend in gallery.	Lobby for non-negotiables with sponsor or committee in charge. In floor deliberations, slip questions to interpellations to legislator, as needed.
New Committee draft with amendments as proposed in plenary or by committee		Suggest wording of amendments and form of revised bill.
THIRD READING	Attend in gallery.	If vote is to be explained, prepare legislator's statement.
LEGISLATIVE PROCESS IN THE SECOND HOUSE		Same close guarding as in first House.
Deliberations of Conference Committee on reconciled version of Senate/House bills	May be permitted as part of technical working group or as observer, depending on specific bicam agreements	If not allowed in, may be resource person or in technical working group to work out provisions to get committee out of impasse (during breaks or between committee meetings)
Approval of reconciled version	Attend in gallery.	Help committee draft final version; make sure sponsors and allies present to vote.
APPROVAL BY THE PRESIDENT		Lobby with President to sign bill.

2. The Role of Negotiation and Compromise

In facing off with strong opponents, the groups armed with negotiation skills and their list of priorities had greater chances of winning a bill they could live with. A no-compromise stand only solidifies the opposition, especially from congresspersons known to be representatives of the advantaged.

3. The Parallel Informal Interventions

Informal interventions have two tracks: the legislative route, and the mass action route. In the legislative track, informal interventions can take place at all stages of the legislative process. From our cases, we saw that these could include inclusion of representatives of disadvantaged groups in the work of the technical committees, meetings with individual legislators and the intervention of prominent civil society leaders.

The mass action track includes the marches and demonstrations that are the staple modes of civil society activities. These keep the issues in the streets and on the media while congressional deliberations are going on and add to their salience and urgency. The groups have also added the use of tent cities complete with exhibits and workshops to attract the attention of legislators and their staffs who got "educated" on the demands of the groups on the spot. Another innovation is the "express" rallies, with demonstrators starting from different points in the countryside and converging in the House or the Senate. Meanwhile, to fight the anti-terrorism bills, the groups packaged terrorism with other issues easier for the masses to grasp, and showed power through paralyzing transport strikes and large demonstrations.

4. Access to the Second House

The Philippine Congress is a bicameral one. Although some groups strategically choose which House to penetrate, they learn in due time that they need to show their interest in both Houses and, if time and resources permit, lobby in both simultaneously. A method that has worked well is maintaining friendly relations with committee secretariats since they could alert the lobby groups about breaking developments.

5. The Role of the Bicameral Conference Committee

The conference committee (usually called "bicam") is supposed to reconcile the bills that are passed in the two Houses. Where the bills have markedly different provisions, however, the committee members, as agents of their respective chambers, hammer out compromise provisions thought to

be acceptable to their principals. In several cases, this process spelled the victory or doom of a measure.

This study found that the bicam, formally regarded as a closed-door session, can be penetrated by non-legislators. Involvement in the bicameral committee shows the close guarding that disadvantaged groups have to do to get their bills through the mill.

6. The Role of the Executive in the Legislative Process

Under the Philippine Constitution, the Executive has formal roles in the legislative process: to certify certain bills as urgent, and to approve or veto a bill approved by both Houses, in whole or in part. The Executive may also draft "administration bills," that is, a bill emanating from a government agency (not just the Office of the President) and sponsored by a friendly legislator. These bills, like the certified ones, have the force of the presidency behind them. In addition, Executive agencies may participate in public hearings, respond to the question hour and be called upon to testify in investigations undertaken by Congress in aid of legislation.

Certifying a bill as urgent means that the bill has priority in the calendar. It also implies that the President would be likely to approve it, making its journey through the legislative mill rougher or smoother depending on whether it is an opposition congress or not. Presidential approval is an important step in the process, since other forces can intervene after Congress has spoken.

Qualities for Successful Policy Advocacy

Success in legislative intervention consists of the qualities the active forces bring to the endeavor. These include, from the side of disadvantaged groups as well as their protagonists, their internal capacity and external linkages.

Internal Capacity. The first quality of disadvantaged groups is commitment to their cause. These are evident in their level of knowledge about the issue, in their pre-legislation experience and history, and in their willingness to devote time and resources to basically unpaid work, even staying in the heat of streets to proclaim their allegiances. Part of the passion comes from the fact that the groups were immersed in the social realities of the constituencies they were representing, or were in fact, members of those constituencies. Most had been in some kind of community organizing or conscientizing that focused their hearts and minds on the advocacy they had embraced. They have also been veterans of mass action that made them both internalize the issues and bond them to the larger affected community. That bonding was also shown by the

beneficiaries who showed up in the consultative meetings, mass actions, and the formal public hearings.

But passion has to be channeled, and the groups did this through strategic visioning and planning (already discussed above), organization and institutionalization, capacity building, and other management processes. All the groups involved in our cases worked in coalitions or were part of a team. Most had secretariats for the time of the campaign, including some borrowed from the parent-organizations. Some had funds from an external organization, usually international.

However, some organizations faced the common problems of coalitions, such as twin loyalties to the coalition and to their parent-organizations, giving rise to suspicion and breaks of unity. Not being a separate organization, it becomes a project disbanded after passage of the law. On the other hand, separate organizations do continue to represent the sector for its other concerns.

The roles of each of the organizations put together for lobbying purposes must be delineated for smoother relations and flow of work.

External Linkages. Four potential partners regularly made their appearance in our cases: the Church, international organizations, government, and the citizens at large. These add to the strength of a disadvantaged group, but may also bring in some problems.

The prominence of the Roman Catholic Church in these bills underscored its pronouncement of a preferential option for the poor and was welcomed by the disadvantaged groups. However, it has not lent its voice to progressive views on women's issues.

Also, an international push is not an unmixed blessing. It may facilitate the passage of a bill, but it might also cause resentment, as when some legislators see their presence as country's "blind obedience" to international standards instead of answering our own peculiar needs.

Another role played by international organizations is the resources they give for nationwide consultations, advocacy, and training in lobbying and other capacities. This involvement by "outsiders" needs to be better understood and investigated.

Collaboration with government would normally strengthen a measure since the Executive is an active constituency in legislation. Ramos' Social Reform Agenda made the failed bills of the Eighth Congress come alive in the Tenth. Even here, however, there were problems in the details, since so many claimed the SRA banner but were conflicting in their provisions.

Last but not least is the linkage of the groups to the people at large. This may be carried out through mass action and the media. There is a perceptible decrease of reliance on the mass action track after the Eighth Congress. Perhaps this is due to the growth of knowledge about how the legislative process works and the organizations' subsequent attempts to professionalize their approach. However, as the mobilization against the anti-terrorism bills showed, it can still be impressive and effective when used.

Mass action is usually thought of as a way to unite a group's constituency and show Congress the strength of its forces. It can also be used to connect with the people at large, and to convince them that their agenda is the public's interest and not only their own. As in the EDSA revolutions, their mass actions would have remained simple demonstrations if the people outside their membership did not join in. This is also why having favorable media coverage and understanding by the people at large have strengthened the forces of the disadvantaged.

The Opposing Forces. While the passion of the opposing forces for their cause cannot be gainsaid, they in fact used few public venues. They did not have to do much more. More than the disadvantaged groups, the opposing forces had natural allies, if not actual members, in both Houses. They could be counted on to vote against a bill or to water down a proposal considerably.

Conclusions: Disadvantaged Groups and the State

Dominance of the elite in Congress is still marked, not only in their numbers, but also in their positions. The compromises the disadvantaged made ate into their non-negotiables. They had to accept backing so far down to grasp at that first start at reform.

Was social legislation, then, simply a show-window exercise? We cannot assume insincerity among the officials of the State, just because they did not accept the poor's demands. However, there were instances when even those who seemed to have lined up with the disadvantaged virtually abandoned them in the difficult stages. To support a disadvantaged group's demands plays well in the media and the masses; that could translate to votes. But in the less public arena of the legislative process, the poorer groups not having legislators who are one of them can still be left in the lurch.

So how were these bills passed at all? Aside from the determination of disadvantaged groups, credit must go to the political environment and officials of the State who risked political capital to support their demands. The Eighth Congress began with the glow of the EDSA Revolution, when the Philippines basked in the international limelight as the leader in concretizing the power of the people. The poor had clearly voted on the side of parliamentary processes

rather than armed struggle and had acted on their belief that a democratic space had been opened. The Commission that drafted the Constitution of 1987 also acted on that premise and put provisions supporting the disadvantaged groups and civil society into it. The expectations translated into a political opportunity that could be harnessed and matched by efforts of those that seek new benefits. Many congressional leaders regarded as "progressives" kept their alliance with the people who suffered during the dictatorship.

However, disappointments came early. President Aquino did not dissociate herself from her class and hardly lifted a finger to bolster the agrarian reform the Coalition for a People's Agrarian Reform wanted. Later, her recognition of the staunch support of civil society in the face of *coups* against her brought her back to their side, with an urban housing act that however, was watered down from a proposal for urban land reform. The government bureaucracy did not help much either. Instead of support, the bureaucracy tended to insist on provisions that strengthened the hand of the richer constituents vis-à-vis the disadvantaged.

With the Ninth Congress, it seemed the euphoria of EDSA would completely dissipate. However, President Ramos had campaigned on a platform of "people empowerment" and inaugurated in the second half of his term the Social Reform Agenda. A strategy to fight poverty put new impetus to the struggle of difficult bills of disadvantaged groups. Certification by the President put urgency on them and got even the congressional leadership to support them. However, the devil remained in the details – What benefits are to be dispensed? Who are going to be affected? Who may participate in the control? – That no group got their demands outright. Also, the SRA was a policy forged in the context of the embrace of globalization and economic liberalization. So instead of leading the charge in transforming the nation, the bills of the disadvantaged became the equivalent of safety nets, given because the other policies were surely going to hurt them. With rising criminality and a resurgence of communist violence, the enactment of these bills could come close to placating the poor. Not quite, because there were genuine advances won by fishers, indigenous peoples, suffering women. Besides, the government did back down from its anti-terrorism bills. But questions can also be raised as to why commercial fishers got what they wanted from the bicameral, or why mining won their bids immediately after by the passage of the Indigenous People's Rights Act, which had stringent requirements.

Still, a lesson to be learned from the cases is that the State is not a monolith that is programmed only for certain kinds of decisions. If nothing else, the cases show that the State is now an active participant in the struggle, and that there are officials with similar vision and values as the disadvantaged. Perhaps more than that, there are leaders who listen to technical arguments and are willing to act on new ideas.

It is incontrovertible that laws favored by disadvantaged groups have been enacted. While these may leave much to be desired, their passage alone shows that the opposing forces are not omnipotent and can be challenged. The disadvantaged have numbers and passion on their side, enhanced by capacity, strategic thinking and alliances. Also, glimpses of problems in implementation suggest the necessity for keeping one's interest on the measure constant and untiring.

Recommendations

In light of the foregoing, several recommendations for action and research may be advanced.

Recommendations for Disadvantaged Groups

1. Prepare your policy agenda to promote the causes you stand for and your rights. Continuously study how your causes have been or can be translated to policy. In this and most of the measures enumerated below, undertake deliberative consultations with as many of your members as possible. The democracy you practice in your organization strengthens your advocacies.
2. Arm yourselves with the knowledge of legislative processes and the points of access and activities other disadvantaged groups have already used. This can be provided by the more experienced among you, by support groups, and by research institutions. We hope this work can provide assistance for organizations starting out on their own advocacy paths.
3. Prepare a strategy for legislative engagement, taking into account your goals for the sector, your non-negotiables, your capacities and the opponents you will face.
4. Couple your passion and commitment to a cause with deeper knowledge about its ramifications. This can help you in understanding opposition to your stance, with the possibility of winning over some antagonists by identifying how their problems with your proposal can be met.
5. Take advantage of your nature as an organization in civil society by using a complementary set of legislative and mass action tracks in advocacy campaigns.
6. Learn the art of compromise as well as its moral hazards. Treat your antagonists with respect and assume they have the same commitment to the public interest as you. When in negotiations, recognize that you are fighting for your welfare and that of your constituents, as their opponents are

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- fighting for theirs. Therefore, conduct negotiations with due respect for the humanity of the other. This should hold true whether the negotiations are with other civil society groups, with opposing forces or with the State.
7. Improve your internal capacity for advocacy through:
 - a. Enhanced management of coalitions
 - b. Focused professional staff. They may be volunteers who are willing to be identified only with the coalition or organization pushing for a bill for the duration of that struggle. This would minimize questions of loyalty and conflict of interest in the period of the campaign.
 - c. Specialization and division of labor, whenever appropriate. This will minimize duplications and inefficiencies, and increase the overall effectiveness of the team.
 - d. Conduct of research on the issue itself, your group's possible allies and adherents, and ways to convince or neutralize known opponents
 - e. Development of a stronger resource base, including funding. Diversified sources of funding would be preferred, since reliance on only one may lead to the possibility of being driven by the fund and the agenda of the donor, rather than by the agenda of your own disadvantaged sector.
 8. In dealing with Congress, recognize the value not just of the elected officials but also of technical secretariats that can assist you through the legislative maze.
 9. Strengthen links with external forces, such as the church, international organizations and the people but be aware of the dangers of exclusive reliance on one external partner. Learn from your external allies, develop your own platform, and eschew "blind obedience" to any one particular force.
 10. Find out how the State can be an ally or partner. Many parts of the government apparatus have policies and personnel sympathetic to causes of the disadvantaged. They should be befriended rather than alienated, and shown insights into the groups' experiences rather than ignored and left to the ministrations of opposing forces.
 11. Broaden the base of your organization by recruitment of more sector members and alliances with like-minded NGOs, both local and international. Never neglect the support of the people and the media in undertaking your activities.

Recommendations for NGOs and other Support Groups of the Disadvantaged

1. Assist in building capacity of the disadvantaged groups for advocacy, research, negotiations, strategic planning, and coalition management.
2. Provide links to national and international organizations that can provide disadvantaged groups with resources for capacity building, strategic planning and management development.
3. Help to strengthen the party-list system. Disseminate information about how it works and how disadvantaged groups may participate in them. However, do not dilute its purpose by becoming a party-list organization yourself, since participation of intermediary organizations of the middle class or elite would take away votes for genuine and direct representatives of the marginalized.
4. Support politicians who stand by the causes of disadvantaged groups. Engage in voter education so that more citizens will learn to connect their votes with the accountability of the elected officials to them.

Recommendations for the State

1. Recognize that social legislation is vital to the economy and the nation, and is not charity to the poor.
2. Strengthen the party-list system by reinforcing its original concept as an avenue for disadvantaged groups, and ensuring that it is not a backdoor for elite interests. Study how it can continue to function within the proposal of a constitutional change towards a parliamentary system.
3. Make the legislative process more accessible and transparent to all groups, not only to the elite, or those who are experienced in advocacy campaigns.

Recommendations for UNDP and Other Development Partners

1. Disseminate findings of this and similar studies to disadvantaged groups who need to advocate for legislation to protect their rights and improve their social situation.
2. Support disadvantaged groups through the legislative mill through capacity building in the areas discussed above.
3. Encourage parliamentary bodies to learn more about the policy advocacy of disadvantaged groups and the demands of inclusive governance. This

would include but not be limited to sponsorship of appreciation seminars on those topics, consultative dialogues between parliamentarians and disadvantaged groups, probably by sectoral themes, capacity building for technical secretariats on understanding and promoting the policy agenda of these groups, etc.

4. Support research on the areas listed in the next section.
5. Continue to promote inclusive governance through promotion of the rights-based approach to all sectors.

Recommendations for Research

1. Continue to study management issues of advocacy groups. This would include coalition building, recruitment of leaders and members, resource generation, and capacity building.
2. Deepen this study by investigating how pro-poor laws have been implemented, and how they have improved the lot of the disadvantaged. This could be fed back into the State to reinforce the national significance of the social legislation the disadvantaged groups had already won.
3. Study how progressive legislators have managed (not) to be eaten up by the system. This would be instructive in developing political leadership for the next generation for this country.

OPEN FORUM

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

Mr. Pabilla: 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 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 the 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 , particularly on the service delivery side, specifically on 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 in 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 building 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 with 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: I admit that I am ignorant on the latest developments regarding involvements to ensure access to justice. But yes it is good to rethink access to justice in the way Dr. Cariño presented it. I do not actually (see) disadvantaged groups in the forefront of justice reform issues, (but them being) in other issues.

Cheska Montes, Philippine Collegian, to Atty. Manuel:

Cheska Montes: 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 which 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 procedura/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, Barangay Council, D1, QC to Atty. Manuel:

Kgd. Ed Lapira: 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 for small group of constituents to explain what terrorism is. 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) Barangay 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 can we contact this office?

Atty. Manuel: We are into education (Programa para sa Komunidad), case handling (but not as a legal aide office). *Limitado ang paghawak 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, DILG, to Justice Hormachuelos:

Sylvia Carvajal: It has been observed that the prisoners are one of the most disadvantaged. What have the courts done in cooperation with the BJMP especially for those prisoners who are detained and whose case have suffered for years, longer than the would-be number of years to serve the sentence if court hearings have been conducted? Also, at 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: Prisoners 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 DOJ. DOJ already has action centers for marginalized.

Comment: Sergis Nitapan, Office of Senator 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 to opposing senators to pacify political comments and possible oppositions.

Dr. Cariño: That is a very good suggestion. The sponsor (of a bill) should know the possible opposition to 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?

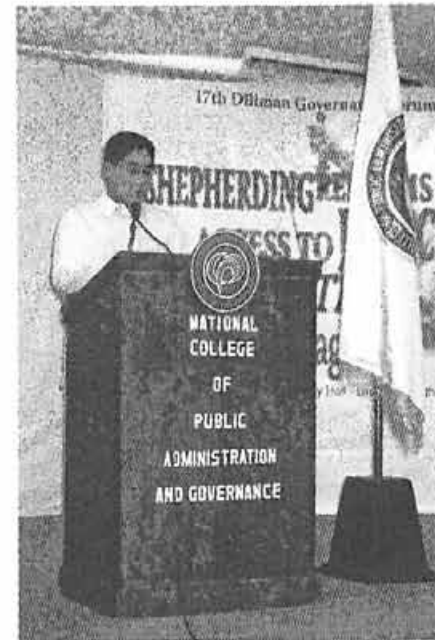
Atty. Manuel: The statistics should reveal the capacity of the detainee to access lawyer to review his/her case. If you have been detained longer than your penalty had you been convicted, then you can already be freed. The judges are supposed to be conducting regular jail visits, but because of the congestion,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

Dr. Cariño: 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.

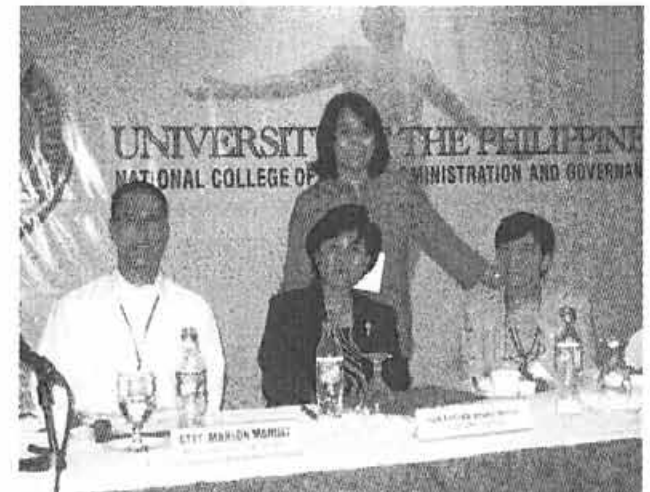
LESSONS LEARNED

- ❖ 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.

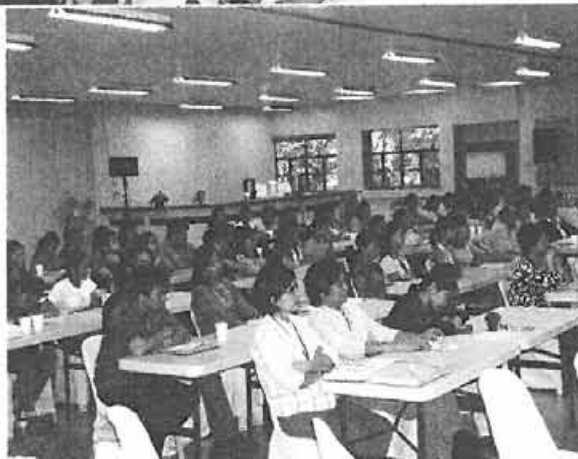
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Dr. Sergio Cao, Chancellor of UP Diliman, in his Opening Remarks.



The resource speakers, Atty. Marlon Manuel, Justice Portia Hormachuelos and Dr. Ledivina V. Cariño with the Project Director Prof. Maria Fe Mendoza (standing) .



More than 150 participants from different sectors took part in the half-day affair.



The Open Forum facilitated for a healthy exchange of ideas and possible policy alternatives and reforms on how to improve access to justice and participation of the disadvantaged sectors of the society.



The organizers of the forum and the resource persons.
L-R: Dr. Ebenezer Florano, Dr. Maria Fe Mendoza, Justice Portia Hormachuelos, Dr. Ledivina Cariño, Atty. Marlon Manuel, Dean Alex Brillantes, and former Department of Education Undersecretary Chito Gascon.



PRIMER

17th Diliman Governance Forum

Introduction

The line "justice delayed is justice denied" may sound like a cliché; however this statement holds great truth in it. A corollary to it is the statement "inaccessibility of justice is no justice at all." These two statements may have a harsh tone to it but this is a common reality in the Philippine case.

There may be reforms initiated by the different Supreme Court Chief Justices. However, it is perceived that these reforms are not enough to ensure that justice in the Philippines becomes accessible. Reforms are not instituted in the judicial system alone. The different agencies of the executive branch have also instituted a number of reforms to answer the problem of accessibility to justice. Even the legislature, through the creation of new laws to make justice more accessible, has helped improve the delivery of justice to all.

These efforts are not enough, however. It can still be observed that the judiciary has a large number of cases unsettled. There are still minors in conflict with the law which can be found in jails in close contact with hardened criminals. Women are still maltreated and they still have limited options on what to do in cases of prostitution, trafficking, abuse and rape.

This policy brief will discuss the different dimensions of the problems in the access to justice. It will tackle the different constraints or impediments to access to justice and find alternatives or solutions to solve the problem. Proposals coming from the judiciary, government agencies, academe and even the best practices of other countries will be examined in the hope of finding ways to improve access to justice in the Philippines.

Definition of Access to Justice

Access to justice may be characterized as an elusive terminology in the sense that it does not have a direct formal definition. Rather, the definition of access to justice largely depends on the context to which it is being attributed. It is a process that has to be adapted to particular contexts and situations.

However, even if this is the case, the United Nations Development Programme (UNDP) gives a working definition of access to justice. UNDP defines access to justice as the "ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards."¹

Furthermore, access to justice does not stand alone or go by itself. It is anchored on different formal and informal institutions in the justice system as well as on the other government agencies and the civil society. This implies that in order to have a truly functioning justice system, these aforementioned institutions must have an environment wherein access to justice may be made to work better for the poor and the disadvantaged sectors.

The justice system may be divided into two categories, the formal and the informal. The formal justice system includes the courts, the police, corrections/prison officials, and others. The informal side of the justice system on the other hand involves the councils of elders, indigenous justice dispensation practices, and other local arbitration mechanisms.

It is said that the informal justice system may be more accessible to the poor in the sense that this system has been culturally rooted. Furthermore, it has the potential to provide an alternative for a speedy, affordable and meaningful remedy for the poor and the disadvantaged. However, the kind of justice derived from it may not always be effective and result in justice.²

In the problem on access to justice, there are key actors involved. They may be put into two categories, those on the demand side, and the supply side. The demand side includes the people or the members of the society. In this brief, the poor and the disadvantaged sectors would be focused on. The supply side on the other hand includes the judicial system, both the formal and the informal.

Common Problems and Issues in Access to Justice

There are quite a number of issues and problems that plague the justice system, thus hindering the poor and disadvantaged access to justice. There are several factors that may be said to greatly affect people's access to justice. These are the financial aspect, attitudes of the people toward the justice system, and the inability of the justice system to provide effective dispensation of justice.

Furthermore, access to justice is also limited by political, geographic or linguistic factors. Justice systems that are incomprehensible, remote, unaffordable, delayed and unfair, effectively deny legal protection to ordinary people.³ These problems and issues will be discussed more substantively in the succeeding parts of the paper.

Reluctance to Use the Law⁴

The reluctance of the poor and the disadvantaged to use the law can be characterized as culturally-rooted. Getting involved with the courts and the police even if the individual is innocent poses social stigma. Other members of the

community see litigation as making trouble while a simple "brush with the police can be interpreted as guilty until proven innocent." Furthermore, "a closer analysis reveals that for the poor, the decision to avoid contact with the legal system is less a symptom of parochial traditionalism than it is a rational response to the opportunities and risks which the legal system presents."⁵

In addition, there is also a growing mistrust by the poor and the disadvantaged of the judicial system as a whole. They view the law and consequently the entire legal system as not truly catering to the needs of the poor and the disadvantaged. Rather, they see the legal system as a tool of oppression by the wealthy members of society and by the government.

Furthermore, historical, social and cultural factors also contribute to the problem of "legal poverty" and access to justice in many societies. The entrenched discriminatory attitudes and practices against women, children and other vulnerable people reinforce a perception of discrimination as a matter of fate among such groups. Being so routinely treated with contempt, excluded groups can over time subscribe to social norms and subservient behaviors, which diminish their capacity to aspire and learn about their respective rights.⁶

In cases where the judicial system had been subject to corruption or had been used by the government or the elites to exploit or to harass them, then there is still that fear of the judicial system. This usually happens in authoritarian states where laws are at times used to harass people rather than to protect their rights. Even if there is already no authoritarian rule and that the state is in a process of democratization, the people still are skeptical about the judicial system.

Institutional Imbalances and Biases

The way the justice system conducts its processes can also serve as a factor that will inhibit the poor and the disadvantaged to engage or participate in the judicial system. This simply means that the manner in which the dispensation of justice is being done further alienates the poor and the disadvantaged from the judicial system.

More often than not, the laws that are being made in countries are not of the vernacular or of the native tongue. The laws are commonly written in English. The poor and the disadvantaged oftentimes do not understand these laws. How then can they know their rights and demand for justice when they do not understand or know what it is that they should be demanding?

In addition, the manner in which the justice system is made to operate is very formal and that it is commonly shrouded in mystery. A commoner,

especially the poor may not totally understand these processes. This in turn becomes target for abuse by some lawyers. They prey on the ignorance of the poor, thus enabling them to charge exorbitant fees. They have the tendency to delve into the technicalities oftentimes ignoring the fact that their clients do not fully comprehend what is happening.⁷

Furthermore, there are also instances wherein there are no courts present in far-flung places. Or if there are, there are no judges in-charge in those areas. In cases wherein there are no courts present, people are forced to travel to key cities or municipalities where there are courts. As stated before, this further drains the financial resources of the poor in terms of their fare, food, and other expenses. New technology that will improve the speed and efficiency of the courts are also lacking.

There are also instances wherein there is shortage of legal practitioners. This is especially true for those practitioners who are employed by the government to handle the cases of the poor. Lawyer to client proportions are oftentimes very low, thus further causing problems of access to justice. Even in countries where there are groups or lawyer's organizations giving free legal aid, they are operating in the cities. The rural poor and disadvantaged then have nowhere else to ask for free legal support.

Another common problem that most countries are facing are the court-associated delays. There are a lot of courts where they have an excessive number of backlogs. These delays in the dispensation of justice may be attributed to the lack of infrastructure, funding, personnel and even competent judges. This further removes the trust of the people in the judicial system thus making them wary of seeking and pursuing litigations.

Access to Justice: The Philippine Case

In the previous discussions on access to justice, it was shown that the poor and the disadvantaged sectors (women, children, old people, indigenous peoples) are wanting when it comes to access to justice. The discussions above however tackled access to justice in a very general manner. Different cases were taken from different countries. However, it can be observed that the discussions above holds true in the Philippines.

The Philippines also suffers from an inaccessible justice system. There are also countless reforms being initiated by the different government agencies. These however are not enough based on the statistics being presented.

Causes of Delays in the Provision of Justice Remedies⁸

Lawyer-attributed delay

- Notorious filing of petitions for extensions and postponements
- Absence, tardiness and ill preparedness of lawyers
- Lack of competence in discovery proceedings
- Abuse of procedures and provisional remedies (such as TROs)
- Heavy lawyer caseload and indiscriminate acceptance of caseload resulting in incompetence
- Protracting of cross examinations
- Propensity to elevate case by filing petitions for *mandamus*, prohibition or *certiorari*

Judge-attributed delay

- Insufficient knowledge on developments in law and jurisprudence
- Deficient knowledge of court procedures
- Judge absenteeism and tardiness
- Trials are conducted on piece meal basis
- Leniency in granting of postponements by judges and laxity in enforcement of rules of procedures
- Lack of competence in judicial decision writing (decisions wanting in clarity, precision, coherence and depth)
- Poor administrative skills, poor case management, laziness, inefficiency and corruption

Law enforcement-attributed delay

- Delay in transmittal of case to the Prosecutor's Office
- Protracted investigations and inquiries thus preliminary investigations remain unresolved
- Evidence not promptly submitted to court
- Non- appearance during trial
- Failure to effect a valid arrest
- Preliminary investigations are appealed to the secretary of justice
- Heavy prosecutor caseload
- Deficient prosecutor competencies

Delay caused by institutional weakness

- Lack of court resources and facilities
- Inefficiencies in the postal service particularly delays in the delivery of notices
- Delays in the filling up of judicial vacancies
- Weakness in the judicial appointment systems
- Complicated rules couched in complex language
- Insufficient training of court personnel
- Lack of formal systems for ensuring inter- pillar coordination

- Deficient case management system and tools and information technology support across pillars

Republic Act 8493 (The Speedy Trial Act of 1998)

RA 8493 was made into law as an answer or solution to the increasing backlogs and case congestion in the court systems. The law states that in 11 months time from the filing of information to the issuance of decision by the lower courts, the case must take only 11 months or 330 days.

Table 1. Stages of and Mandated Duration of Case Resolution in Court

LEGAL BASIS, STAGE IN THE PROCESS	DURATION SPECIFIED BY LAW
SPEEDY TRIAL ACT	Number of Days
From filing to arraignment	30
From time of arraignment to first day of trial	30
From the first day of trial to the termination of trial	180
From the termination of trial to the issuance of decision	90

Even with the passing of Republic Act (RA) 8493 or more commonly known as the Speedy Trial Act of 1998, the number of cases pending in the courts has not changed noticeably. From the period of 2000-2004, the clearance rates of the courts are just averaging 42.94%.⁹

Table 2. Annual Case Load and Clearance Rates of Lower Courts, 2000-20004

YEAR	TOTAL CASELOAD	TOTAL DISPOSED	CLEARANCE RATE (%)
2000	1,510,558	685,977	40.63
2001	1,416,667	575,69	37.15
2002	1,405,972	587,093	41.75
2003	1,352,452	529,553	39.15
2004	1,534,528	905,925	56.03

Original Source: OCA, Supreme Court of the Philippines

The disposition rates however during the years 200-2004 were relatively high considering that judges in the lower courts have case loads that range from 300-3,000. The disposition rate has a very high average of 104.09%. This means that there are still judges who are working hard.

Table 3. Annual Case Flows and Disposition Rates of Lower Courts, 2000-2004

YEAR	INFLOWS	OUTFLOWS	DISPOSITION RATE (%)
2000	695,417	685,977	98.64
2001	592,086	575,699	97.23
2002	565,004	587,093	103.90
2003	533,573	529,553	99.24
2004	745,737	905,925	121.48

Original Source: OCA, Supreme Court of the Philippines

Furthermore, there is a high archival rate at the lower courts. It was seen that this high archival rate of the lower courts is attributed to the inability of the police to nab the suspects within the prescribed 6-month period.

Table 4. Composition of Judicial Actions

YEAR	CASES RESOLVED/ DECIDED		ARCHIVAL RATE	
	% OF TOTAL CASE LOAD	% OF ALL CASES DISPOSED	% OF TOTAL CASELOAD	% OF ALL CASES DISPOSED
2000	23.42	51.56	15.64	34.43
2001	23.78	58.52	13.43	33.05
2002	24.79	59.38	14.58	39.91
2003	23.96	61.21	12.55	32.06
2004	29.60	50.15	14.67	24.86

Original Source: OCA, Supreme Court of the Philippines

There are also cases that are still pending with the lower courts. These pending cases have already exceeded the prescribed time limit stated in the Speedy Trial Act of 1998.

Table 5. Percentage of Civil and Criminal Case Exceeding Prescribed Time Limits (Lower Courts)

COURT	CIVIL	CRIMINAL
RTC	57.6	46.1
METC	38.8	51.4
MTCC	57.0	27.4
MTC	35.1	51.2
MCTC	50.0	34.6

In terms of children's access to justice, the problems is basically on what to do with children who are in conflict with the law or the juvenile delinquents.

From 1995 to 2000 alone, more than 10,500 children were arrested and detained every year. In the first quarter of 2003, more than 4,500 children have been imprisoned, 441 of them are girls. What is more alarming is the fact that 5% of the total population of jails is made up of children.¹⁰

But what makes a juvenile offender? They are either male or females of ages between 14 and 17. They are said to be elementary school drop-outs coming from urban or rural poor families commonly living in the slums. UNICEF provides a more comprehensive and formal definition. Juvenile justice refers to all the offences committed by children and young people (below the age of 18) whether: discovered or not; reported or not to the police or any other law enforcement agency; brought before a judicial, administrative or other body; sentenced or not. Children may also be considered an offender for acts that would not be punishable if committed by an adult (e.g. status offences; vagrancy). The terms "juvenile delinquents", "juvenile offenders", "children in conflict with the law" and "children in contact with the law" have the same meaning.¹¹ They are detained because of minor offenses like petty theft, sniffing of solvent (rugby), and vagrancy.

The problem with access to justice of these children comes from their being children and that they should not be mixed with the hardened criminals in jail. Amnesty International found out that a common practice by the police is to mix these children in the same facilities where the adults are detained. Furthermore, the punishments for their offenses are oftentimes similar to those

imposed on the adults. With them being children and in close contact with criminals, they are oftentimes subject to torture and abuse.

There is another problem that is being faced by children. It may come in the forms of abuse or harassment coming from their own homes. Since they are children, the persons who should be protecting them in the first place, that is their families, are the ones who oftentimes violate their rights.

Table 6. Cases of Violence Against Children by Classification of Offenses and Year

	1999	2000	2001	2002	2003
Rape	2348	2354	2275	2732	3107
Physical Injuries/ Maltreatment	1225	1973	2274	2086	1947
Acts of Lasciviousness	786	1181	1312	1155	1090
Violation of 7610 – Child Abuse	516	516	516	516	516
Attempted Rape	210	303	271	321	293
Maltreatment	139	139	139	139	139
Missing/Abduction	106	106	106	106	106
Child Labor/Exploitation	58	58	58	58	58
Grave Threats	32	32	32	32	32
Child Prostitution	31	31	31	31	31
Sexual Harrassment	7	7	7	7	7
Neglect/Abandonment	79	79	79	79	79
Others	16	16	16	16	16

Source: Philippine National Police.

Reforms Initiated by the Different Agencies of the Government

There are several reforms initiated by the government to answer the increasing inaccessibility to justice. These reforms came from the judiciary, legislature, and the executive branch through its agencies concerned with access to justice.

The judiciary under the leadership of Chief Justice Hilario Davide Jr. came up with the Action Program for Judicial Reform (APJR). It is a comprehensive program for the judiciary with the purpose of making the judiciary work more efficiently and effectively. "The APJR's mission is to provide speedy and fair dispensation of justice to all, have judicial autonomy and independence from political interference, improve the people's access to judicial and legal services, install systems to improve quality of external inputs to the judicial process, promote efficient, effective and continuously improving judicial institutions, and conduct its business with dignity, integrity, accountability and transparency."¹² For the purpose of this document, the programs that are relevant to access to justice will be highlighted.

In order to ease the increasing number of backlogs of cases in the courts, the Supreme Court came up with a project called "Justice on Wheels." It was patterned after the Guatemalan Mobile Court System. The Mobile Court was initially assigned to hear cases involving juveniles in conflict with the law. The main purpose was to hear cases involving juveniles who wanted to plead guilty, or who wanted to be diverted or released on recognizance. More importantly, the Mobile Court prioritized the hearing of cases of those who have been in detention for more than the maximum penalty for their particular cases. This strategy was intended to help decongest the various youth reception and detention centers within the Metro Manila area, which were holding up to five times their designed capacities.¹³

Sixty-six days after it first operated on 20 December 2004 until 11 November 2005, the Justice on Wheels Project was able to visit quite a number of juvenile detention centers and jails within Metro Manila. It was able to hear a total of 1,126 cases and to secure the release of 391 detainees. This accounts for 35% of the total number of cases heard.

In addition to reforms that aim at reduction in case backlogs, there are also reforms initiated by the judiciary to make Supreme Court decisions be easily understood by ordinary people. In order to break the language barrier that inhibits people to participate or pursue litigations, the Supreme Court plans to translate its landmark decisions into Filipino and other major dialects. To facilitate this reform, the Supreme Court designated Court of Appeals Justice Jose Dela Rama as Chairman.¹⁴

Alternative Justice and Dispute Resolutions

It was stated in the beginning paragraphs that the informal mechanisms of dispensation of justice are more accessible to the poor and the disadvantaged. The informal system can be seen as having the potential to help make justice more accessible.

The most prominent example of alternative dispute resolution is the Barangay Justice System (BJS). Indigenous justice practices of mediation and conciliation are now being formalized and institutionalized through the BJS. The BJS is seen by the government, non-governmental organizations and some development agencies as an effective mechanism to meet the justice needs of the disadvantaged and marginalized sectors. Furthermore, it can resolve issues of court backlogs. For the community, it enables them to resolve their own conflicts.¹⁵

Laws Created for the Protection of the Disadvantaged and Vulnerable Sector

There are also laws created in order to help prevent the violation of the disadvantaged sectors' rights. These in certain ways give the disadvantaged sectors protection to their own rights. Furthermore, with the creation of such laws, the disadvantaged sectors are seen to be acknowledged as indeed in need of protection.

The recently enacted Juvenile Justice Act is one of the landmark legislations that was formulated for the protection and enhancement of children's Access to Justice. This legislation calls for restorative justice to be incorporated into all laws, policies and programmes applicable to children in conflict with the law.

Restorative Justice under this law is defined as:

"... a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies."

Under this new law, children who are under the age of 15 are not to be charged with crimes. Rather, these offenders would be subject to diversion programs. They will go undergo anger management trainings, participate in community services, make apologies, and strive for the reparation of the damage they have caused.

The Juvenile Justice Act gives protection and access to justice to "children in conflict with the law" (CICL). They are not subjected to the trauma of having to stay in jail with criminals. Rather, they are subjected to psychological therapies, which seek to address the root cause of their delinquency. Furthermore, they are

Table 7. Philippine Laws For the Disadvantaged Sectors

SECTOR	PHILIPPINE LAW	
Victims of unjust imprisonment/detention and victims of crimes	RA 7309	Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes
Arrested persons/detainees	RA 7438	Defining Certain Rights of persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Violations for Penalties Thereof.
Senior Citizens	RA 9257	Expanded Senior Citizen's Act of 2003
Women	RA 7877	Anti Sexual Harassment Act of 1995
	RA 6725	An Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment, Amending for the Purpose Article 135 of the Labor Code as amended.
	RA 6955	An Act to Declare Unlawful the Practice of Matching for Marriage to Foreign Nationals on a Mail-Order Basis and for Other Similar Practices including the Advertisement, Publication, Printing or Distribution of Brochures, Flyers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor.
	RA 7192	An Act Promoting the Integration of Women as Full and Equal Partners in Development and Nation-Building and for Other Purposes.
	RA 8353	An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code and for Other Purposes.
Women and Children	RA 9208	Anti Trafficking in Persons Act of 2003
Persons with Disabilities	RA 7277	Magna Carta for Disabled Persons An Act Providing for the Rehabilitation, Self-development, and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society and for Other Purposes.
Indigenous Peoples	RA 9371	Indigenous Peoples Rights Act of 1997
Children in Conflict with the Law	RA 9344	An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes.

not subjected to physical, psychological and sexual abuse, unlike when they are kept and mixed with other criminals.

Discussion of Alternatives

There is a need first and foremost to improve the capacity of the primary actor, the judicial system, in promoting and championing access to justice and participation of disadvantaged sectors. The mere fact that they are tasked to promote and protect this right of the poor and disadvantaged puts them in a position wherein they have the ability to provide for a substantial change.

To answer the burgeoning problem of case backlogs, there is a need to upgrade the capacity of the staff and of the judges so that they may be able to utilize present technology to make dispensation of justice a lot speedier. In addition, and if not, the more important one, is to make their salaries competitive in order to attract private legal practitioners to serve as judges of courts.

In addition, there is also a need to strengthen and "build justice values." These values must be incorporated into the work ethics of all court personnel. They must be trained to act in accordance with the promotion of access to justice and participation of all sectors.

To further improve the mechanisms of inter-agency communication between and among government agencies in-charge of access to justice and participation of disadvantaged sectors, coalitions and cooperation mechanisms must be established. There must also be a closer link-up and coordination of activities with law groups, NGOs and the media in order to avoid duplication of projects.

As stated above, the court personnel must develop work ethics in order to reduce delays in the dispensation of justice due to personnel absenteeism and tardiness. Likewise, judges must impose more stringent punishments or sanctions to lawyers who are causing delays.

In order to avoid the alienation of indigenous peoples, the disadvantaged sectors particularly the intellectually-challenged and illiterate, court proceedings and laws must be translated into more easily digestible and comprehensible ways. The efforts of the Supreme Court to translate Supreme Court decisions in Filipino is a laudable move; however, there are still a number of indigenous peoples who do not understand Filipino. The only language they know is their ethnic dialect.

In order to educate the common people of their rights, and in order to empower them and improve their justice demanding skills, they must first be taught the basics of the law. Information dissemination and campaigns must not stop at merely putting posters and giving out flyers. Rather, there should be

teach-ins and group discussions especially with the indigenous and disadvantaged people. This could be done in partnership with volunteer groups or NGOs and Law Groups.

Earlier, alternative dispute resolution (ADR) was said to have the potential to reach out to people who are seeking justice. It is faster than court settlements. It costs lower compared to expenses incurred in court litigations. This mechanism should be used to the fullest by the courts.

To fully realize the potentials that ADR possesses, there is also a need to strengthen people's trust in it as an alternative to court litigations. The benefits, processes and complexities of ADR must be fully known and explained to the people in the community for it to be accepted and trusted.

In addition, people will tend to trust and utilize ADR more if they know that the mediator is competent enough in his capacity to act. Therefore, there should be training programs designed to increase the capacity of these mediators.

The poor and the disadvantaged must also be empowered. Strengthening the supply side of justice is just the half side of the coin. People must also be empowered in order for them to demand justice. Educating the poor and the disadvantaged, in addition to providing them with development programs to fully empower them is the key. This can be done in partnership with foreign organizations and local NGOs. The setting up of legal clinics and legal aid centers can be of great help to the poor.

Summary and Conclusion

There are a lot of issues confronting access to justice and participation of the disadvantaged sectors. In order to address these issue, there is a need for a two-fold reform. Reforms to improve access to justice must not be concentrated on the supply side of justice, but also on the demand side of justice.

Increasing the number of judges and personnel in the judiciary cannot alone solve the problem. People must also be educated and empowered in order for them to have the capacity to demand for their rights. Aside from strengthening the court systems through technological and personnel capacity upgrades, the poor and disadvantaged must also be given legal empowerment, awareness, and legal aid and counsel.

In order to facilitate an impartial and equally accessible justice system, discriminatory acts aimed at women, indigenous peoples, children, old people, persons with disabilities, etc., must be eliminated. When these reforms are taken into consideration and applied to the justice system, then, it can be said that justice is not far at hand.

Endnotes

- ¹ UNDP, "Programming for Justice Access to All," (Bangkok: UNDP, 2006) 5.
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- ³ Decker, Klaus, et al., "Law or Justice: Building Equitable Justice Institutions."
- ⁴ Anderson, Michael, "Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in LDCs," (Sussex: Institute of Development Studies) 16.
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- ⁷ Anderson (19).
- ⁸ CPRM, "conduct of Further Study on Operations and Linkages of the 5 Pillars of Justice," (Manila: UNDP-Supreme Court, 2006).
- ¹⁰ UNICEF, "Children in Conflict with the Law: Factsheet."
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- ¹³ Hon. Adolfo Azcuna, "The Justice on Wheels of the Philippines."
- ¹⁴ Supreme Court (2006)
- ¹⁵ Restorative Justice Online, "Using Traditional Practices to Improve the Justice System," 2004.

