

## TECHNICAL ASSISTANCE COMPLETION REPORT

Division : OGC

TA No., Country and Name <b>TA 3693-PHI: Strengthen the Independence of the Judiciary</b>			Amount Approved: \$1,200,000	
			Revised Amount: \$0	
Executing Agency Supreme Court of the Philippines		Source of Funding JSF	Amount Undisbursed: \$26,559.19	Amount Utilized: \$1,173,440.81
TA Approval Date: 2 Aug 2001	TA Signing Date: 6 Aug 2001	Fielding of First Consultant: 4 Jan 2002	TA Completion Date Original: 31 May 2003 Account Closing Date Original: 31 May 2003	Actual: 31 Dec 2006  Actual: 31 Dec 2006
<b>Description</b> <p>A prerequisite for economic growth and social development is a stable society, and the cornerstone is a judiciary that dispenses, and is seen to dispense, fair and impartial justice, efficiently and effectively. Independent, accountable, impartial, and competent judiciaries serve as a defense against corruption, reduce political interference in the dispensation of justice, enhance transparency, and help reduce waste of public funds. Judicial reform is central to predictability, one of four essential elements in ADB's governance policy. It also ensures participation, transparency and accountability.</p> <p>The Supreme Court of the Philippines—one of three separate co-equal branches of government under the Philippine Constitution—took concrete steps to establish a strong foundation for the long-term development of the judiciary. It adopted the Action Program for Judicial Reform (APJR) in November 2000, after undertaking several studies assessing the extent of changes needed and creating a project management office to manage these studies and coordinate reform proposals, and after creating an executive committee headed by the chief justice to provide overall policy direction for the reforms. The APJR, which received strong support from the executive branch, aimed to strengthen the judiciary's fiscal autonomy and independence from political interference and support the delivery of fair and speedy justice, among other things.</p> <p>Although the Philippine Constitution recognizes that the judiciary must have fiscal autonomy, in practice, the judiciary's budget and the cash releases were subject to the same terms and conditions applied to agencies without fiscal autonomy. This has forced the judiciary to negotiate budget items with the executive on a transaction-by-transaction basis, and has compelled lower courts to accept subsidies from local governments, rendering the judiciary vulnerable to political influence. The judiciary's resource constraints are aggravated by a lack of administrative autonomy. The evaluation and approval of salary grades; changes in staffing patterns; and creation, abolition, reclassification, and upgrade of positions are subject to the same review and approval procedures applied to executive agencies. This has resulted in work-task duplication, understaffing, inappropriate skills mix, and inefficiencies. A parallel step toward judicial independence and impartiality is strengthening the bench. When the APJR was launched, one-third of the lower courts were vacant. Therefore incentives and institutional support were needed to encourage capable candidates to volunteer for judicial posts. The judicial appointments system also needed to be improved so that competent and impartial members of the bench may be nominated in a transparent manner. Support for improving the capabilities of judges and candidates to the bench was also necessary.</p> <p>Public support for the judiciary is imperative if the latter is to maintain its role as an independent and accountable third-branch of government. The absence of institutionalized, systematic, performance monitoring and evaluation of judges' legal ability, behavior, court management skills, and impartiality contributed to the erosion of public confidence in the judicial system.</p> <p><b>Expected Impact, Outcome and Outputs</b></p> <p>The TA's goal was to contribute to strengthening and improving the Philippine judiciary through supporting its independence, accountability, impartiality and competence, so that the judiciary could help increase predictability, transparency and participation.</p> <p>The TA's outcome was expected to result in a more transparent and accountable judiciary that enjoys, and is perceived to possess, more fiscal and administrative independence; is capable of attracting and choosing through a transparent process, competent judges who dispense impartial, reasonable, and legally sound decisions; and is able to retain, and ensure the continued competence of judges. Its purpose was to design a framework for fiscal and administrative independence and accountability for the judiciary; improve transparency and participation in the appointment and nomination process for judges and justices; improve the incentives system under which judges and justices function; and contribute to enhancing continuing judicial education.</p> <p>The TA's outputs are: (1) a framework for budgetary, financial, revenue and administrative independence for the judiciary, including an accounting system to aid physical assets management; and a management staffing and staff performance structure; (2) a detailed analysis of the legal and institutional framework for and actual implementation of a reformulated process for screening and nominating judges and justices; (3) a judicial performance monitoring and evaluation system and a career program linked to this system and a competitive compensation-retirement plan for the bench; and (4) an improved legal education curricula of Philippine Judicial Academy (PhilJA); distance</p>				

training modules for regular courses; delivery of classroom based courses at PhilJA campus in Tagaytay, and distance training throughout the country; a training course in Japan for court administrators, judges and PhilJA trainers; (5) conference at ADB to present the findings and reforms drafted under the TA; workshops and dialogues to discuss TA reforms with all levels of the judiciary and offices connected with the judiciary and the administration of justice.

#### **Delivery of Inputs and Conduct of Activities**

Overall, the relative cost and productivity of TA inputs vis-à-vis TA outputs is good, and the Executing Agency and ADB's performance as regards this TA is satisfactory. The TA design and TORs were formulated adequately, enabling the consultants to perform their tasks successfully. Quality of consultant inputs was excellent, as is reflected in the PER for consultants submitted to COSO.

The Inception Report was submitted and discussed at a high level stakeholder meeting at ADB. The Report outlined the general directions to be taken by the consultants in preparing the recommendations. The international consultants submitted desk reviews that contributed to the philosophy behind the recommendations proposed by the consultants. The draft report on a decentralized approach to organization and administration of the judiciary was the subject of nationwide stakeholder consultations and it appeared during these consultations that there was general approval for the decentralized approach. Detailed design recommendations were submitted during a high level validation workshop to the Supreme Court justices, the Office of the Court Administrator, Clerk of Court and the presiding and executive judges of the Court of Appeals, Court of Tax Appeals and Sandiganbayan. These were largely accepted by the decisionmakers. Consultants were successful in delivering 13 volumes of a final report that detailed outputs (1), (2), (3) and (4) above. The final report was submitted to and approved by the Supreme Court en banc. The conference at ADB was successful in presenting the findings and reforms drafted under the TA.

Among the reforms proposed by the TA reports was the establishment of a regional court administrator's office (RCAO). The Supreme Court has approved the formation of a pilot RCAO in region 7. ADB is providing a new TA to support the establishment and operations of the pilot RCAO.<sup>1</sup>

A two-module training course on training needs analysis was held in Manila and Cebu. PhilJA staff were trained, and consultants recorded the inputs from executive judges on the training needs of their constituents. A three-week training program was held in Japan. This program was jointly prepared by the Japan Ministry of Justice, the Supreme Court of the Philippines' Project Management Office, and PhilJA. It was deemed successful by both the Philippine delegation and the Japanese participants.

The TA also provided some support to two international conferences hosted by the Supreme Court--the International Conference & Showcase on Judicial Reforms: Strengthening the Judiciaries of the 21st Century, and the Global Conference on Liberty and Prosperity, which showcased the TA findings and its contribution to the judicial reform process.

#### **Evaluation of Outputs and Achievement of Outcome**

All matters within the scope of the TA were carried out. Consultants complied with the submission of all required reports on schedule. Consultants' work products were comprehensive, and report quality was rated by ADB and the executing agency (EA) as highly successful. The SC's Project Management Office was deeply involved in the formulation and implementation of the TA.

The TA reports were published on the Supreme Court website and in CD versions that were made available at the international conferences. In addition, a coffee table book on judicial reform in the Philippines was published and presented to the Supreme Court at the first of two international conferences supported in part by ADB. These two conferences, the first held in 2005, and the second, in 2006, were supported by the TA as they were venues within which ADB could disseminate effectively the findings and recommendations of the TA. This is in line with the original scope of the TA.

The TA reports were very ambitious in scope; hence, while there appeared to be strong support for the principles and ideas embodied in the reports, it was not expected that all the reforms described in the reports would be fully complied with at the end of TA implementation. That said, much has been accomplished through the TA's support. The regular consultations with all levels of the judiciary and offices connected to the judiciary and/or the administration of justice funded by the TA helped build a general consensus that judicial reform is necessary. The executive expressed clear support for the strategy and framework for fiscal and administrative independence for the judiciary, and several members of the legislative branch also expressed the same support. The Department of Budget and Management strongly supported judicial independence and seemed to be amenable to conceding many of the oversight control it exercises, provided that appropriate measures ensuring accountability were introduced by the courts. The Supreme Court showed commitment to accountability but such commitment still needs to be engendered at all levels of the judiciary.

At the consultations, there appeared to be sufficient willingness on the part of all levels of the judiciary and offices connected to the judiciary and/or the administration of justice to prepare and train for new systems. There was no 100% consensus among court staff as regards some of the suggested reforms, particularly as regards decentralization and streamlining administrative functions, but this was expected as the reforms would affect entrenched interests. A change management program needs to be taken up separately to ensure that the TA's reforms are pursued in an effective and considerate manner.

<sup>1</sup> TA 4832-PHI: Enhancing the Autonomy, Accountability and Efficiency of the Judiciary, and Improving the Administration of Justice.

As regards incentives for judges and justices, it would not be possible to substantially improve the compensation package for judges and justices due to extreme budgetary pressures. However, it is notable that Republic Act No. 9227 (passed in 2003) granted special allowances equivalent to 100% of the basic monthly salary specified for their respective salary grades to be implemented over a period of four years. This indicates that the executive and legislature recognize the importance of increasing incentives to attract and retain good judges and justices. The real problem in finding enough budget support for a revised remuneration package for judges and justices is that the government is hard pressed to find the funds for many things including such a package.

As regards reforms in the process of nominating and appointing members of the judiciary, it is significant that applicants for judicial positions are now interviewed at public hearings. As regards the training seminars for the judges, the PhilJA training seminars were generally well attended, and the trainers were very good. The international conferences supported by the TA increased public knowledge about judicial reforms in the Philippines and also the commitment of the judiciary to the reforms.

All these outputs contributed to strengthened commitment among the three branches of government and key decision makers to fiscal and administrative independence, a more transparent process of nominating and choosing competent judges and justices, an improved incentives system under which judges and justices function, and enhanced continuing judicial education.

#### **Overall Assessment and Rating**

Overall, the TA was successful. The quality of consultants' output was very good. The PMO was highly involved in the reform process, fully supportive, and often took the lead in the consultation process, and socializing of the proposed reforms. All levels of the judiciary and administrative offices connected to the judiciary were involved in a level of debate that entailed much interaction and involvement. This increased commitment to the reform process and is expected to bring about implementation of a material portion of the recommended frameworks for fiscal and administrative independence, increased transparency in the selection of judges and justices, the adoption of an improved incentives system and better continuing judicial education.

**Major Lessons** (1) It is important to institutionalize a system and adopt a comprehensive roadmap for judicial reform. Under the current environment, reform and progress are usually made only when there is a champion in the Judiciary who is committed in introducing reform. (2) The reform process requires high level socialization with and between Supreme Court justices and court staff, as well as continuous consultations with other all levels of the judiciary and offices connected to the judiciary and/or the administration of justice throughout the organization. These consultations are an iterative process (back and forth) and may take a long time in building relationships that facilitate reform and trust among the reformers and other all levels of the judiciary and offices connected to the judiciary and/or the administration of justice. (3) The reform process must be communicated clearly to all all levels of the judiciary and offices connected to the judiciary and/or the administration of justice, and the form in which such communication is done is important in determining the success of such communication strategies. The manner in which the judiciary communicates its reform projects and successes to donors is different from the manner in which this is communicated to court staff and all levels of the judiciary and offices connected to the judiciary and/or the administration of justice. Reformers should take care that the message and form in which it is communicated considers its audience. (4) Low grade support activities where no money is exchanged (such as participation in international judicial networks) allows the judiciary to validate its reform experiences by comparing these with the experiences of other judiciaries and inspires greater commitment to reform. However, participation of members of the judiciary in these networks requires both time and money, of which they have very little. Embarking on these strategies requires the examination and balancing of resources. (5) Reforms undertaken by the Supreme Court should be pushed down to the level of lower courts. The feasibility of doing this is driven by the availability of resources that would allow this to take place. Donors such as ADB should examine whether they should provide more administrative flexibility that would allow them to support reform at the lowest levels of the justice system. (6) ADB staff must be closely involved in the design and implementation of various decisions. They should keep a close watch over TA administration, the consultation process, the formulation of recommendations and policy directions, and the preparation and finalization of consultants' reports, as judicial reform and related issues can be extremely sensitive.

#### **Recommendations and Follow-Up Actions**

Support to the Philippine judiciary should be continued, as there is commitment to and interest in this reform process. Of particular note is the support that DBM has expressed for judicial independence, and its expressed willingness to concede many of the oversight control it exercises, provided that appropriate accountability measures are set up within the Judiciary. Support should be expanded so that lower courts may benefit from the reform process. It is recommended that support be provided not only to the Philippine judiciary but the justice sector as a whole<sup>2</sup>, including agencies involved in law enforcement and prosecution. Other pillars of justice affect the effectiveness and efficiency of the judiciary. Support to implement and roll out the recommended reforms should be considered and pursued.

Prepared by: Elsie Louise P. Araneta

Designation: Principal IEI Specialist, RSOD-SI

<sup>2</sup> Under TA 4832: Enhancing Judicial Autonomy, Accountability and Efficiency, and Improving the Administration of Justice, ADB is currently working with the justice sector as a whole.