

## **Chapter One**

# **Overview of the Dispute Resolution Mechanisms**

# **Part I: Court System: How the Court System is used as a Dispute Resolution Mechanism**

*Concepcion L. Jardeleza*

## **I. Current Situation Regarding the Use of Courts**

The traditional duty of the courts to settle actual controversies involving rights, which are legally demandable and enforceable, is exercised in the Philippines through a *hierarchical organization*. There are four levels of courts wherein judicial power is vested: the *first level courts*, which are basically trial courts of limited jurisdiction consisting of the Metropolitan Trial Courts (MeTC), the Municipal Trial Courts (MTC), the Municipal Trial Courts in Cities (MTCC), and Municipal Circuit Trial Courts (MCTC); the *second level courts*, which include the Regional Trial Courts (RTC), and Shari'ah District Courts; the *appellate court*, the Court of Appeals (CA) which reviews cases elevated to it from the RTCs, as well as from quasi-judicial agencies and the Court of Tax Appeals (CTA); and at the apex of this four-tiered hierarchy is the *Supreme Court*, the only "constitutional court," the sole judicial body created by the Constitution itself and the court of last resort. There are two special courts, namely, the *Sandiganbayan* and the *Court of Tax Appeals* -- the former is an anti-graft court where public officers charged with graft and corrupt practices are tried, while the latter entertains appeals from decisions of the Commissioner of Internal Revenue and, in certain cases, appeals from the decisions of the Commissioner of Customs. The Philippine government also allows administrative agencies to exercise adjudicatory powers in certain types of controversies solely in aid of their administrative functions and objectives. A policy of strict observance of such hierarchical structure is enforced by the Supreme Court, which will not entertain direct resort to it unless the desired redress cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy calling for its primary jurisdiction (Article VIII, Section 1, *1987 Constitution*).

The view has been expressed that Filipinos seem to be a litigious people. This perception is based on the heavy case inflow in the first and second level courts, which means a high number of cases actually filed by parties for the period 1995 to

2000. Further, losing parties in those cases decided by the lower courts pursue their appeals all the way to the Supreme Court, which accounts for heavy caseload even in the review courts. The problem of perennial clogged court dockets has become a primary focus of judicial reforms currently implemented by the Supreme Court. As part of the overall mission to improve effectiveness and efficiency in the Philippine Judiciary, the Supreme Court had prioritized the following goals: (1) dispose of the existing backlog of cases in all courts; (2) study and address the causes of failure to observe the periods to decide cases mandated by the Constitution; and (3) promote alternative modes of dispute resolution (*The Davide Watch*).

## **II. Parties' Viewpoints with Regard to the Court System**

Despite statistics showing a high volume of controversies submitted for judicial resolution, there is a growing dissatisfaction among our citizens in the use of the courts for settling their disputes. A number of reasons have been given which discourage parties from seeking redress through the courts, foremost of these are: (1) the costly and slow process of litigation; (2) rigidity of procedural and technical rules; (2) adversarial nature of our litigation system; and (3) inadequacy of legal solutions or frameworks for resolving intricate and complex issues involved in commercial transactions amidst tremendous developments in global trade and information technology.

One important consideration, which militates against litigation and favors out-of-court settlement is the culture of the Filipinos that strongly values the preservation of amicable relationship especially between parties with a history of kinship and community ties. For instance, corporate disputes usually commercial in nature, although eventually resolved through arbitration and litigation, are principally resolved through consultation and negotiation among the parties. Should negotiations fail, it is common for the parties to seek the assistance of a third party to informally facilitate the resolution of the conflict through mediation and conciliation and not to impose any settlement. Such third party is usually a common relative or friend with ascendancy; a political and/or religious leader; and a reputable business associate or colleague. (*Alternative Modes of Dispute Resolution: The Philippine Practice* by Victor P. Lazatin) Parties may also avail of the facilities of arbitration institutions like the Philippine Dispute Resolution Center, Inc. (PDRCI) or the Construction Industry

Arbitration Commission. Pursuant to Republic Act No. 876, otherwise known as the Arbitration Law, enacted by the Philippine Congress in 1953, parties to a contract are allowed to arbitrate their controversy under specific procedure stipulated by them and in the absence or insufficiency thereof, the provisions of said law will apply suppletorily. With the adherence of the Philippine Senate in 1965 to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the enforceability of international arbitral agreements between parties of different nationalities within a contracting state was also recognized in this jurisdiction (*National Union Fire Insurance Co. of Pittsburgh vs. Stolt-Nielsen Phils., Inc.*, G.R. No. 87958, April 26, 1990, 184 SCRA 682). More recent legislative enactments which provide for either arbitration or mediation as dispute resolution are: the Local Government Code of 1991 on *Katarungang Pambarangay Law* (R.A. No. 7160) which requires certain controversies to be referred to a *barangay lupon* or *pangkat* as condition precedent to filing an action in court (Sec. 413, in relation to Sec. 418); Consumer Act of the Philippines of 1992 (R.A. No. 7394) which vests consumer arbitrators (government employees appointed by either the Secretaries of Health, Agriculture or Trade and Industry) with original and exclusive jurisdiction to mediate, conciliate and hear or adjudicate all consumer complaints (Sec. 160); the Mining Act of 1995 (R.A. No. 7942) which provides for the appointment of a panel of government-employed arbitrators in every regional office of the Department of Environment and Natural Resources to exercise exclusive and original jurisdiction involving disputes over mining areas, mineral agreements or permits and surface owners or occupants and claimholders or concessionaires (Secs. 77 and 78); and the Intellectual Property Code of 1998 (R.A. No. 8293) stating that "(i)n the event the technology transfer agreement shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country."

The parties' choice of in-court or out-of-court settlement of their disputes is also influenced by the level of trust they repose on the courts. Although for the past two years, we have witnessed a dramatic rise in the trust ratings of the Philippines

Supreme Court, as compared with other government institutions, there lingers a pervasive image of inefficiency and corruption in the judiciary involving judges and court personnel which continue to erode public confidence and diminish the people's hope in attaining a just and fair resolution of their controversies through the courts. Even in cases where favorable judgment is obtained by a party, such long delay often rendered empty any victory, not to mention other hindrances to enforcement of judgments such as dilatory tactics employed by lawyers and, dearth of court personnel and resources. Clearly, solving the problem of delayed justice serves as the cornerstone of a meaningful judicial reform program aimed at achieving independence, integrity and effectiveness.

### **III. Problems of the Court System**

The clogging of court dockets has been identified as the single most important problem currently being addressed by the Supreme Court. The latest figures showing the case inflow and case outflow for the period January to December 2000 presents a discouraging scenario for litigants awaiting the final outcome of cases filed in the various courts:

# SUMMARY REPORT OF CASES FOR THE MONTHS OF JANUARY TO DECEMBER 2000

BRANCH/ STATION	CASE INFLOW				CASE OUTFLOW				PENDING CASES AS OF 12/31/00
	PENDING CASES AS OF 12/31/99	CASES NEWLY FILED	CASES REVIVED/ REOPENED	CASES RECD FR OTHER SALAS/CTS	CASES DECIDED/ RESOLVED	CASES ARCHIVED	CASES TRANS- FERRED TO OTHER SALAS/CTS	CASES W/PROC SUSP	
COURT OF APPEALS	18,381	11,350	0	0	11,239	0	0	0	18,492
SANDIGANBAYAN	3,513	660	150	0	967	0	0	0	3,356
COURT OF TAX APPEALS	359	228	0	0	177	0	0	0	410
REGIONAL TRIAL COURTS	251,351	180,659	12,356	20,402	128,134	42,489	24,183	3,567	266,395
METROPOLITAN TRIAL COURTS	186,799	129,352	8,253	27,457	58,400	84,210	2,739	15,222	191,290
MUNICIPAL TRIAL COURTS IN CITIES	180,456	106,755	8,409	6,741	70,427	65,006	4,537	2,940	159,451
MUNICIPAL TRIAL COURTS	118,255	86,710	2,835	3,629	54,044	23,762	15,861	667	117,095
MUNICIPAL CIRCUIT TRIAL COURTS	66,191	51,078	1,784	1,197	34,047	7,817	9,599	887	67,900
SHARIA DISTRICT COURTS	179	28	0	0	30	0	1	0	167
SHARIA CIRCUIT COURTS	222	231	0	10	179	7	0	12	265
TOTAL	825,706	567,051	33,787	59,436	357,644	223,291	56,920	23,304	824,821

SOURCE: 2000 Annual Report of the Supreme Court of the Philippines

Delays in the disposition of court cases have been attributed to several factors, among which are: (1) due process mechanics in the Philippine adversarial system of litigation take time as great care is observed in safeguarding the constitutional rights of the parties; (2) the appellate system is generally speaking, open-ended so that litigants refuse to surrender and tenaciously pursue their appeals all the way up to the Highest Court; (3) first-level courts are flooded with collection cases due to Batas Pambansa Blg. 22 (The Bouncing Checks Law); (4) automatic appeals to the Supreme Court of death penalties imposed by trial courts alone number about 1,500 at present and counting, and in addition, the High Tribunal cannot refuse appeal of criminal

cases in which the penalty imposed by the lower court is *reclusion perpetua* or life imprisonment. Combined, these appeals number about three thousand; (5) apart from reviewing lower court decisions, the Supreme Court also handles appeals of decisions issued by other constitutional bodies like the Commission on Elections, Commission on Audit and the Ombudsman, and also adjudicates complaints against lower court magistrates and lawyers pursuant to its supervisory and administrative powers over all courts and lawyers. Other causes identified were laziness, inept and sometimes corrupt judges, as well as unfilled vacancies in the judiciary due to unattractive compensation and benefits. Also cited is the propensity of lawyers themselves to misuse and abuse the Rules of Court by resorting to all sorts of delaying tactics against their opponents (*Speeding Up Quality Justice* by Justice Artemio V. Panganiban).

Aside from existing systemic problems being addressed by the Supreme Court, there are also challenges presented by emerging global trade and *e*-technology. With the passage of the Electronic Commerce Act by the Philippine Congress (R.A. No. 8792), the Supreme Court's Committee on Revision of Rules drafted the Rules on Electronic Evidence, which was approved by the Court *en banc* on July 17, 2001 and became effective on August 1, 2001. Another milestone in Philippine judicial history is the adoption of video-conferencing technology as an innovative procedure to protect child witnesses and ensure utmost confidentiality in court proceedings involving child witnesses, child offender and child victim. The proposed Rule on Examination of a Child Witness was submitted to the Court *en banc* on October 6, 2000. These developments illustrate the use of latest technology to create a more child-friendly court and further strengthen the legal protection of children.

In view of the transfer of jurisdiction to the courts of cases formerly cognizable by the Securities and Exchange Commission (SEC) as mandated by Sec. 5.2. of R.A. No. 8799 (Securities and Regulation Code), the Supreme Court approved the Interim Rules on Corporate Rehabilitation on November 23, 2000 and became effective on December 15, 2000, while the Interim Rules of Procedure for Intra-Corporate Controversies on March 31, 2001 and the same took effect on April 1, 2001.

#### **IV. Direction of Judicial Reforms**

Alternative dispute resolution (ADR) has emerged as the key to decongesting court dockets. The term collectively refers to negotiation, conciliation, mediation and

arbitration. The most popular techniques of this approach to legal disputes are arbitration and mediation. Of these two methods, it seems mediation holds greater promise for concrete and immediate gains. The potential of *in-court* mediation for reducing the caseload of trial courts has been recognized by the present leadership of the Supreme Court. (*Mediation: The Court's Partner For Justice in the New Millenium* by Chief Justice Hilario G. Davide, Jr.) Thus, current reforms are focused on in-court mediation as strategy for the promotion of dispute resolution methods other than costly, stressful and time-consuming judicial proceedings.

Section 2 (a) of the 1997 Rules of Civil Procedure requires the parties to hold a pre-trial conference whereby the court shall consider the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution. To effectively implement this provision, the Supreme Court on September 16, 2001, promulgated Administrative Order No. 21-2001 designating the Philippine Judicial Academy (PHILJA) as its component unit for court-referred, court-related mediation cases and other alternative dispute resolution mechanisms, and establishing the Philippine Mediation Center (PMC) for the purpose. This measure was preceded by the high success rate of 85% in the pilot areas -- the Cities of Mandaluyong, Valenzuela, Quezon and Pasay. Funded by PHIL-EXPORT TAPS, PHILJA conducted workshop trainings, internship programs and evaluation workshop on pilot testing of court-referred mediation.

The Philippine Mediation Center is tasked to:

- (i) Establish, in coordination with the Office of the Court Administrator (OCA), units of the Philippine Mediation Center (PMC) in courthouses, and in such other places as may be necessary. Each unit, manned by Mediators and Supervisors, shall render mediation services to parties in court-referred, court-related mediation cases;
- (ii) Recruit, screen, train and recommend Mediators for accreditation to this Court;
- (iii) Require prospective Mediators to undergo four-week internship programs;
- (iv) Provide training in mediation to judges, court personnel, educators, trainers, lawyers, and officials and personnel of quasi-judicial agencies;



- (v) Oversee and evaluate the performance of Mediators and Supervisors who are assigned cases by the courts;
- (vi) Implement the procedures in the assignment by the PMC Units of court-referred, court-related mediation cases to particular Mediators;
- (vii) Propose to the Supreme Court (1) Guidelines on mediation and (2) Compensation Guidelines for Mediators and Supervisors; and
- (viii) Perform other related functions.

PHILJA was likewise directed to study and recommend the use of other forms of court-diversion, or other modes of alternative dispute resolution, and upon its approval, to implement the same in accordance with such rules as may be promulgated by the Supreme Court. The Administrative Order may be implemented by the PHILJA nationwide, or initially in selected pilot areas.

Under the Second Revised Guidelines on Mediation promulgated on September 5, 2001, the trial court, after determining the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution, is mandated to issue an Order referring the case to the PMC Unit for mediation and directing the parties to proceed immediately to the PMC Unit. The Order for Mediation shall be personally given to the parties during the pre-trial and copy of the same together with a copy of the Complaint and Answer/s, shall be furnished the PMC Unit within the same date.

The following cases are referable by the trial courts to mediation:

- (i) all civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised;
- (ii) Cases cognizable by the Lupon Tagapamayapa under the Katarungang Pambarangay Law;
- (iii) The civil aspect of BP 22 cases; and
- (iv) The civil aspect of quasi offenses under Title 14 of the Revised Penal Code.

To encourage the spontaneity that is conducive to effective communication, thereby enhancing the possibility of successful mediation efforts, the mediation proceedings and all incidents thereto shall be kept strictly confidential, unless otherwise specifically provided by law, and all admissions or statements made therein

shall be inadmissible for any purpose in any proceeding. The period during which the case is undergoing mediation shall be excluded from the regular and mandatory periods for trial and rendition of judgment in ordinary cases and in cases under summary procedure. The period for mediation shall not exceed 30 days, extendible for another 30 days, in order to allow the parties sufficient time to reach a compromise agreement and put an end to litigation. If the mediation is successful, the trial court shall immediately be informed and given (a) the original Compromise Agreement entered into by the parties as basis for the rendition of judgment by compromise which may be enforced by execution, or, (b) a withdrawal of the Complaint, or, (c) satisfaction of the claim. On the other hand, if the mediation is not successful, the Mediator shall issue a "Certificate of Failed Mediation" for the purpose of returning the case for further judicial proceedings. And since mediation is part of the Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings.

Under Rule 4 of the new Interim Rules on Corporate Rehabilitation, referral to mediation is likewise mandated during the pre-trial conference. On the other hand, the new Electronic Commerce Act and the Retail Trade Liberalization Law also encourage the use of the ADRs.

Mediation is expected to produce a two-fold advantage for the Philippine judiciary. One is the effective declogging of court dockets, which will enable trial court judges to concentrate on more important cases and thus find more time to increase their knowledge and improve their skills. This will result in a more thorough deliberation of cases and rendition of quality decisions that in turn will promote the trust and confidence of the public in the judicial system. The other benefit pertains to the restoration of the traditional Filipino spirit that highly values unity, cooperation and solidarity, after such positive cultural traits were undermined by the glorified media portrayal of American/Western courtroom dramas with the resulting litigious trend in recent years. (*Mediation: the Court's Partner for Justice in the New Millenium*, by Chief Justice Hilario G. Davide, Jr.) Mediation is regarded as more in keeping with Filipino traditions and values as it allows the parties to submit to mutually acceptable solutions without a loss of face and enables each contending party to understand the

issue/s from the viewpoint of the other. Most important, the amicable atmosphere leading to final compromise ensures that goodwill between the parties is preserved at all costs and personal animosities in the aftermath of a legal battle --- the usual and inevitable consequences of emotionally charged and highly confrontational judicial proceedings --- are practically avoided.

Aside from the promotion of ADR, the repeal of B.P. Blg. 22 (Bouncing Checks Law) and creation of "small claims courts" have also been proposed. In this regard, the Supreme Court promulgated Administrative Circular No. 12-2000 (November 21, 2000) and Administrative Circular No. 13-2001 (February 14, 2001), affirming the policy laid down in two earlier cases which enjoin the judge to exercise judicial discretion in the imposition of the penalty of imprisonment for those found guilty of violating the Bouncing Checks Law. On the other hand, "small claims courts" are similar to those institutionalized in the United States of America to relieve trial courts of small money claims, which principally clog dockets. Congress now drafts a proposal for the establishment of "small claims courts" in the Philippines to submission.

## **V. Conclusion**

The Philippine judiciary has been gearing itself for the challenges brought by rapid changes and developments in this era of globalized trade and e-technology. Increasing the efficiency and effectiveness of the court system becomes imperative as more complex, more technical and more intricate issues surface in various fields as commerce, trade, environment, culture and science. On the other hand, exploring other avenues and modes of resolving legal disputes outside the judicial forum presents a truly viable alternative especially when such methods not only permits the application of more competent and specialized knowledge but also provides less confrontational proceedings and more lasting solutions that enhance inter-personal relations and Filipino cultural values.