

# **Part II: Alternative Dispute Resolution (ADR): How Out-of-Court Systems Are Used as Dispute Resolution Mechanism**

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## **I. Overview of ADR: Types and Functions**

### **1. Brief History**

Dispute resolution is one of the functions of a sound political system. Dispute resolution machinery already existed in the earliest communities in the Philippines even before the advent of the Spanish and American colonization. Disputes arising from the daily affairs of the communities were brought before the elders of such communities in a conversational fashion for the purpose of threshing out the issues and resolving them along the principles of justice and fairness. Outside of this forum, no other dispute-resolving forum existed.

During the Spanish and American regimes, dispute resolution mechanisms were made more rational through the inclusion of the said function in the local governmental systems. Gradually, the originally conversational mode of resolving disputes became more and more adversarial as the western-style judicial systems took over their functions. However, the values and traditions that were the heart of the early dispute-resolving systems were not lost.

The enactment of the Arbitration Law in 1953 supports this fact. The professed goal of this law was to re-establish the non-judicial forum for dispute resolution in the country, hence the concept of “alternative dispute resolution” or ADR. The word “alternative” was used to emphasize that recourse to the regular judicial courts shall still be considered as primary and arbitration only as secondary or voluntary.

In 1978, President Marcos decreed the formation of the *Katarungang*

*Pambarangay* (Community-based justice system, or *Barangay* Justice System) by virtue of Presidential Decree 1508. This law provided for the compulsory use in the *barangay*, the smallest unit of local government, of mediation, conciliation and arbitration in certain types of disputes. The system was later integrated into the Local Government Code, since its direction and supervision were entrusted to the Department of Interior and Local Government.

In 1997, the Supreme Court included in the New Rules of Civil Procedure provisions for the possible use of alternative modes of dispute resolution. (For example, Rules 18 on Pre-Trial, and Rule 70 on Forcible Entry and Unlawful Detainer) The Rules, however, do not provide that ADR be mandatory and judges, lawyers and litigants have not made much use of these alternative modes.

At present, studies are being undertaken with a view of developing alternative dispute resolution mechanisms in order to make justice more accessible to the people and to unclog the dockets of the courts. These studies, whether publicly funded or not, gave back much attention to the various modes of alternative dispute resolution which have been underutilized for so long.

There are at least twelve agencies that use alternative dispute resolution at present. Ten of the agencies are administrative agencies with quasi-judicial functions, one is the *barangay*, a local government unit, and one is a private agency. The different agencies use different modes of alternative dispute mechanisms.

It should be observed that the court system is one of the main forums for resolving disputes. However, due to lack of resources to respond to this increasing number of cases filed, court dockets are clogged, making court processes protracted and expensive. When disputes fester into open and sometimes violent conflicts, the situation becomes not only detrimental to growth and development, it also erodes the country's social fabric" (Supreme Court of the Philippines, Action Plan for Judicial Reform). Because of this observation, the use of alternative dispute resolution mechanisms was therefore not only justified, but is also found to be necessary.

In the Philippine context, alternative dispute resolution or ADR refers to several formal or informal processes for settlement of conflicts, outside of or in the periphery of institutional judicial process. It is another option to the structured adversarial approach adopted in court litigation. While ADR may be viewed as an intervention to the court's burdened dockets, it must be considered on its own merits

as an effective system of resolving disputes. It is less expensive, more swift and efficient, less or non-adversarial, thus generating results that can be more satisfying and enduring.” (op cit.)

## **2. Types of ADR**

There are three types of alternative dispute resolution mechanisms: conciliation, mediation and arbitration.

Although conciliation and mediation are two different modes, in the Philippines the two are used interchangeably. Thus, mediation or conciliation is a process whereby a third party facilitates a negotiation between two or more parties in dispute. In facilitating the negotiation, the third party assists the conflicting parties to come up with mutually acceptable and beneficial solutions to their dispute. To achieve this kind of agreement, the mediator helps the concerned parties express their perspectives to the situation, understand each other’s problems, and reach mutually acceptable settlements. The primary principle of the mediator’s role is: The success of negotiation rests upon the conflicting parties because the results of the negotiation lie in their hands. The main task of the mediator is to ensure that the negotiation process is systematic, effective and just.

Arbitration is different from mediation/conciliation. In arbitration, the third party, based on the information presented to him/her by the disputants and based on his/her own investigation of the case, makes the final decision on how to resolve the conflict. In many instances, s/he passes a judgment on who among the disputants is right. In mediation, on the other hand, the third party serves only as a facilitator of the negotiation process. The decision on how to resolve the conflict or the final solution to the issues in dispute rests on the negotiators or disputants.

## **II. Current Situation Regarding the Use of ADR**

As earlier mentioned, there are twelve agencies that use ADR in the Philippines today.

### **1. The Katarungang Pambarangay**

Under the law that mandates the KP (Presidential Decree 1508, signed on June 11,

1978, later integrated into the Local Government Code (RA 7160), amicable settlement of certain disputes are to be employed using the traditional Filipino values (e.g. community harmony, *hiya*, *utang na loob*, *amor propio* and *palabra de honor*) that governed the early dispute resolution systems in the country. The goal of this law is (1) to obtain a just, speedy and inexpensive settlement of disputes at the *barangay* level; (2) to preserve Filipino culture and tradition concerning amicably settling disputes; and (3) to help unclog court dockets.

Under this framework, a dispute is a controversy between parties that are ripe for judicial determination. The *Lupon*, which is the body tasked to undertake the process of dispute resolution, has jurisdiction over all disputes except:

- (i) where the government is a party to the dispute;
- (ii) where a public officer or employee is a party and the dispute relates to the performance of his official functions;
- (iii) criminal offenses punishable by imprisonment of more than 30 days or a fine exceeding P200.00 are involved;
- (iv) offenses where there is no private offended party, such as littering, jaywalking, prostitution, etc;
- (v) disputes involving real properties situated in different cities and municipalities.

The resolution process of any dispute within the KP's jurisdiction is begun by an oral or written complaint given to the Barangay Chairman. The facility in the referral system of the KP is remarkably important as it allows even illiterates to gain access to the justice system of the local government. The next working day, the alleged offender is given the chance to answer the complaint, again either orally or in writing. A meeting is held for the purpose of bringing together the complainant and the respondent, along with their witnesses, in order to define the issues. Then Barangay Chairman determines whether or not the dispute falls within the resolutely power of the KP.

The primary conciliatory-body in the KP is a group of volunteers called the *Lupong Tagapamayapa (Lupon)*, led by the Barangay Chairman. The members of the Lupon are nominated by the residents and appointed by the Barangay Chairman, after his determination that they have characteristics like optimism, flexibility, moral probity and ascendancy. Out of this pool of conciliators-mediators is constituted the

*Pangkat Tagapagkasundo (Pangkat).*

The KP uses mediation and conciliation as the primary technique in settling disputes. These two techniques are not treated as exclusive of each other but instead are mere contingent stages of the entire process of dispute resolution. Mediation, as the initial stage, involves the face-to-face confrontation of the parties, with the *Barangay* Chairman (an elected official) who acts as the mediator and assists the parties in negotiating some possible solution. If this fails, conciliation is resorted. Conciliation differs from mediation only in the limited sense that a panel of persons called the *Pangkat Tagapagkasundo* conducts the former.

When an amicable settlement (in mediation) or arbitral award (conciliation) is reached, it becomes final in ten days and has the force and effect of a court judgment. However, any party may repudiate the said settlement or award on grounds of fraud, violence, intimidation, or any factor, which vitiates consent. If no such repudiation is requested, the parties are given five days to comply with the agreement; and in the absence of compliance, the *Barangay* Chairman is empowered to take sufficient personal property from the respondent and sell the same, the proceeds of which is applied for the satisfaction of the award.

## **2. The Cooperative Development Authority**

The Cooperative Development Authority (CDA) was created by virtue of Republic Act 6939, for the purpose of promoting the viability and growth of cooperatives as instruments of equity, social justice, and economic development.” Because of the nature of this agency, law granted it quasi-judicial power to adjudicate disputes concerning cooperatives and their activities. Disputes between natural persons who are members of cooperative, federation or union that arise from issues like mismanagement, election protests, violations of the Cooperative Law, misdemeanors of members and fraud are exclusively within CDA’s jurisdiction.

Dispute is brought before the CDA either by a written complaint; by a referral from another government agency; by the Cooperative Development Council; by a federation or union; or by the court. A Legal Officer is appointed by the CDA to undertake the resolution process. Written pleadings are then required of the complainants and the respondents. A conference is then held by the hearing officer to determine whether the case is within its power to resolve using ADR. If mediation is

used, the case should be resolved within a period not exceeding three months. If no agreement is reached by the parties, a Certificate of Non-Resolution is issued and the entire process will be arbitrated.

All resolutions or agreements become final and executory within fifteen days from the receipt of the parties of a copy of the resolution and if no appeal or motion for reconsideration is filed within the prescribed period. The enforcement of the award is either done by the court sheriff or the police.

### **3. The Philippine Construction Industry Arbitration Commission**

The Philippine Construction Industry Arbitration Commission (CIAC) was created by Executive Order No. 1008, on February 4, 1985, for the specific purpose of resolving the rising number of litigation cases involving contractual claims within the industry. It was in reaction to the fact that disputes involving these contracts usually took more than ten years to be resolved that this agency was mandated to exist. The goal of the CIAC is to promote honest, fair, and just relationships by providing speedy and fair resolution of construction disputes outside of court so as to encourage and preserve harmony and friendly association.

The CIAC is imbued with exclusive jurisdiction over disputes arising out of contracts involving the construction industry, like delays in payment or completion of jobs, claims for liquidated damages, requests payment of progress billings, retention, workmanship issues and breaches. Disputes involving any of these cases are brought before the CIAC through a written request for arbitration, which must comply with a prescribed form. Some disputes are also referred by the regular courts to the CIAC when it is found that an arbitration clause is provided for in the contract between the disputing parties.

Although the CIAC's rules provide for the use of arbitration only, mediation also plays a major role in resolving disputes before it, as when the parties agree to resolve rather than go into arbitration. The CIAC's jurisdiction is determined either by the presence of an arbitration clause in the contract or by a subsequent agreement between the parties to submit their dispute for arbitration. The arbitrators, who may act alone or as a panel, should be at least forty years old, with integrity and experience in the construction industry.

After hearing the parties, an arbitral award is issued, which will become final

upon the lapse of fifteen days from receipt of the notice of award and no appeal has been filed. A writ of execution may be issued by the arbitral body to compel compliance by the parties.

#### **4. The Department of Agrarian Reform Adjudication Board**

The Department of Agrarian Reform Adjudication Board (DARAB) is an office connected with the Department of Agrarian Reform (DAR), which was created by virtue of the 1987 Constitution and Executive Order No. 129-A. The DARAB is mandated to provide a forum for the settlement of agrarian disputes, with the Regional Director as the designated hearing officer. Later on, adjudicators were trained and appointed specifically for the purpose. The DARAB has exclusive jurisdiction over disputes arising from agrarian relationships and other land related issues between landlord and tenants, or among cooperatives and tenants them.

Cases cognizable by the DARAB are filed either by written or oral complaint. The courts are also empowered to refer agrarian cases to the DARAB. The disputes are resolved via mediation and arbitration, before the *Barangay* Agrarian Reform Committee (BARC), which is composed of ten members representing the DAR, the Department of Environment and Natural Resources, the Land Bank and other agricultural organizations. The Chairman of the BARC is initially tasked to mediate the dispute. When mediation fails, the case is brought before the Provincial Adjudicator for arbitration.

After hearing the parties, an agreement or arbitral award is entered as an Order by the DARAB. An Award issued by the PARAD may be appealed to the DARAB Board, which is composed of the DAR Secretary, two Undersecretaries and one Assistant Secretary. Further appeal may be brought to the Court of Appeals. If no appeal is filed, the order becomes final and executory and enforceable by the sheriff or the police deputed for the purpose.

#### **5. The Philippine Dispute Resolution Center, Inc.**

The Philippine Dispute Resolution Center, Inc. is a private non-stock, non-profit corporation organized in 1996 for the purpose of promoting and encouraging the use of arbitration, conciliation, mediation and other modes of non-judicial dispute

resolution for the settlement of domestic and international disputes in the Philippines. Its services are open to the public at large, especially to those engaged in business. Its services include commercial arbitration, organizing seminars, trainings and accreditation in the field of commercial arbitration, referral and information dissemination.

The PDRCI primarily uses arbitration to resolve disputes arising from contracts, especially in the fields of commerce and trade, intellectual property rights, securities, insurance domestic relations and claims, among others. The resolution process is commenced by the filing of a written complaint with the PDRCI. In order for the PDRCI to assume arbitral power, the parties must agree that their dispute be submitted before it for arbitration. In some instances, courts have referred certain cases to the PDRCI, after finding that an arbitration clause is provided for in the contract between the parties.

The parties may agree that the arbitrators in their dispute come from the pool of accredited arbitrators of the PDRCI. They may also agree to select other arbitrators of their choice, provided that they are familiar with the rules and procedures of the PDRCI. Hearings will be conducted, after which an arbitral award is issued. Under the PDRCI rules, the parties must give their prior consent to resolve their dispute swiftly and abide by the award without delay. They are also asked to waive their rights to any form of appeal. Because of this, all awards by the PDRCI are immediately final and executory. However, delay in the compliance of the award is subject to the jurisdiction of the regular courts.

## **6. The National Conciliation and Mediation Board**

The National Conciliation and Mediation Board (NCMB) was created in 1987 by virtue of Executive Order 126, and is an agency under the Department of Labor and Employment (DOLE). Its function is to resolve certain labor disputes involving unionized workers, especially involving issues related to the filing of a notice of strike or lockout, deadlock in the Collective Bargaining Agreement, unfair labor practice and interpretation of company policies involving the personnel.

The resolution process before the NCMB is set into motion when, after the parties have failed to negotiate among themselves, a request for a conference is filed with the NCMB. Such conference should commence within ten days after its filing. If



the dispute is still unsettled, the NCMB, upon request by either party or on its own initiative, immediately calls for conciliation meetings. If both fail, voluntary arbitration is encouraged. If the latter is not resorted to, the case becomes ripe for adjudication by the National Labor Relations Commission.

The NCMB enforces its award by a writ of execution after voluntary compliance by the parties is breached. However, since the NCMB has no mechanism to compel compliance, it may never fully enforce its award.

## **7. The National Labor Relations Commission**

The National Labor Relations Commission (NLRC) is an agency under the Department of Labor and Employment, which was given quasi-judicial powers by law. Its mandate is to settle or adjudicate labor disputes involving unfair labor practice, termination, breach of labor standards with claim for reinstatement, legality of strikes and lockouts, money claims arising from employer-employee relationship exceeding P5,000.00 and other claims for damages arising from such relationship, and the likes.

Cases cognizable by the NLRC are brought before it in the following manner:

- (i) Filing of complaint with the NLRC or its Regional Arbitration Branch;
- (ii) The Arbiter summons the parties to a conference for the purpose of amicably settling the dispute through a fair compromise; for the determination of the real parties, the issues, and including the entering of admissions or stipulations of relevant facts and other preliminary matters necessary to thresh out the relevant matters;
- (iii) At this point, if a written amicable settlement is had, the arbiter signs the same and it will become final and executory;
- (iv) In the absence of an agreement, the parties are required to submit position papers and other documents for the adjudication of the issues on the merits. Adjudication is the process that converts the process from mediation to arbitration. Hearings may be held if necessary;
- (v) Presentation of evidence and examination of witnesses may be conducted. However, the law provides that at any point of the arbitration stage, conciliation may still be resorted to;
- (vi) After the hearings, the Arbitrator issues an arbitral award based on the facts and the law applicable to the case;

- (vii) The awards of the NLRC are enforced by a stringent mechanism put in place by law, like the power to issue writs of execution and the power to impose administrative fines. The NLRC also has at its disposal sheriffs to execute its orders.

The judgments by the NLRC may be brought to the Court of Appeals and to the Supreme Court by *certiorari*.

## **8. Bureau of Labor Relations**

Like the NLRC, the Bureau of Labor Relations (BLR) is another agency under the DOLE concerned with settling labor disputes. However, the BLR's mandate is limited to resolving inter-union and intra-union disputes, disputes arising from conflicts in union representation, cancellation of union registration, administration of union funds, petition for election of union officers, and the violation of rights of union members.

Cases are brought before the BLR through requests made by the parties; by referral of other agencies; by referral of the court; or on its own initiative. Disputes before it are resolved by the use of conciliation, mediation and voluntary arbitration methods, as well as the use of other mechanisms like union internal settlement mechanism, labor-management council, and grievance machinery system. However, because of the nature of the cases the BLR is mandated to resolve, it sometimes shares its responsibility with the NCMB.

The BLR has the power to subpoena and to legitimize or cancel union registration, as incident to its power to enforce its awards. Compromise agreements reached before the BLR are binding. Cases resolved by the BLR may not be appealed to the NLRC, except in cases of non-compliance with the compromise agreements reached before it.

## **9. The Commission on the Settlement of Land Problems**

The Commission on the Settlement of Land Problems (COSLAP) is an agency under the Department of Justice (DOJ), which was created on September 21, 1979 by President Marcos through Executive Order 561. It was neglected for so long that there was a plan to abolish it. In 1996, quite a number of land disputes were referred to the

Commission such that the government decided not to dissolve it.

COSLAP, as a quasi-judicial body, is mandated to settle all types of dispute involving land, whether urban or rural, involving occupants/squatters and pasture lease holders and timber concessionaires; occupants/squatters and government reservation guarantees; occupants/squatters and public land claimants; petition for classification, release and subdivision of lands of the public domain; and other similar land problems of grave importance, like demolition, etc.

The resolution process begins upon filing of a complaint. The defendant is required to answer before the issues are joined. Once the issues are joined, the dispute is referred to a “mediation committee,” which is composed of representatives from different government agencies. Upon failure of mediation, trial ensues for the purpose of arbitrating the dispute. The COSLAP is not strictly governed by the rules of procedure and evidence, and therefore allows a great window for stipulations and agreements that hasten the resolution process.

COSLAP decisions are binding on the parties and all government agencies involved in the land in issue. COSLAP also has the power to issue subpoenas and writs of execution, accompanied by a certified copy of the judgment, once a decision has become final and executory. Enforcement of the award is usually done by the court sheriff or the police. Non-compliance to the order of the COSLAP is a ground to be cited for contempt. However, there is relative difficulty in the implementation of its decisions because other government agencies have their own procedures for investigating a dispute and do not allow for an automatic execution of a COSLAP order.

## **10. The Insurance Commission**

The Insurance Commission is an independent quasi-judicial body, tasked with resolving disputes in the insurance industry.

The Insurance Commission has jurisdiction in the settlement of claims and other types of disputes related to the insurance industry, provided the amount of the claim does not exceed One Hundred Thousand Pesos (P100,000.00), exclusive of damages.

Initially, the Commission uses mediation and conciliation as the primary methods of dispute resolution. Upon the failure of these two methods, the

Commission resorts to arbitration. After hearing the opposing sides, the Arbitrator hands down a decision using facts and applicable law. The decision shall then be executed by the sheriffs of the court where the domicile of a party is located.

## **11. The Bureau of Trade regulation and Consumer Protection**

The Bureau of Trade Regulation and Consumer Protection (BTRCP) is a quasi-judicial agency under the Department of Trade and Industry created to investigate, arbitrate, and resolve complaints from consumers involving violations of Republic Act. 7394, otherwise known as the Consumer Act of the Philippines. Other laws, like Executive Order 913 and Joint Department of Trade and Industry-Department of Health-Department of Agriculture Administrative Order No. 1, series of 1993 also govern the Bureau in the exercise of its power.

Disputes involving untrue, deceptive or misleading advertisements; sale of paints and paint materials; fraudulent advertising, mislabeling and misbranding; monopolies and combinations in restraint of trade; importation and disposition of falsely marked articles; price tags; and product standards are under the exclusive jurisdiction of the Bureau.

The Bureau uses mediation and arbitration as the modes of settling disputes that are brought before it by means of consumer complaint. The enforcement of its orders and decisions are done by means of writs of execution, which deputize the police and other law enforcement agencies.

## **12. The Court-Annexed Pilot Mediation Project**

The Supreme Court allowed the use of ADR in the 1977 Rules of Civil Procedure. However, people did not know how to avail themselves of the system such that the trial courts were authorized to refer certain cases to mediation/conciliation, in order to minimize court workload.

The cities of Mandaluyong and Valenzuela were named as pilot-test areas for the project. Lawyers and non-lawyers selected by the trial courts in these cities were trained in pursuance of its goals. On November 17, 1999, the Supreme Court issued a Resolution adopting Implementing Guidelines for the project, which provide that (1) judges shall encourage litigants at the pre-trial stage to submit their dispute to

mediation/conciliation; (2) court proceedings shall be suspended for a maximum of 60 days to enable the parties to mediate; (3) all admissions, statements, or other evidence cited in mediation proceedings shall be kept confidential; (4) any agreement reached in mediation shall be the basis of the court decision. The cases referred by the courts for this purpose consisted of cases involving inter-personal relation and neighborhood disputes; collection cases based on credit-debtor relationship; claims for damages; disputes arising out of landlord-tenant relationship; and settlement of estate.

The agreement reached through mediation is reduced into writing and submitted to the court where the case is pending. If the agreement is not contrary to law, moral and public policy, it is approved by the court and becomes final and executory. If a party violates the agreement, the other can ask the court for a writ of execution.

### **III. Incidence of Cases before ADR Institutions**

Any study on the ADR on the Philippines faces an inherent limitation because of the lack of monitoring and data recording in almost all institutions concerned in ADR. This fact was perhaps more eloquently expressed by the Supreme Court Judicial Reform Project team itself when, in its report draft, it stated:

Another problem is the lack of data because detailed monitoring, evaluation and documentation of ADR experience are not widely practiced. Many, for example, could not provide data on the cost of disputes, durability of mediation agreement and arbitral awards and quantify the effectiveness of their mode of dispute resolution. (Supreme Court of the Philippines Judicial Reform Project, *Assessment of the Alternative Dispute Resolution Programs in the Philippines and Recommendations for the Future*, p. 9.)

This study is not exempt from this limitation. For instance, there had been a difficulty in knowing, with relative certainty, the quantity of ADR cases resolved in each of the concerned agencies cited in this study. However, it is important to note that it is not the case that there *are* data on ADR that are just difficult to locate. The fact of the matter is that there is just no information on certain matters regarding ADR being kept anywhere at all. This is a very sad fact to contemplate because data evaluation is indispensable for the success of this undertaking. It is with regard to this limitation, therefore, that this study should be appraised.

## 1. The Katarungang Pambarangay (KP)

Since its institution in 1980 up to 1999, the Katarungang Pambarangay (Lupon) has received an average of 147,341 cases per year. Around 128,416 , or roughly 87% of these had been settled through mediation or arbitration. However, the number of cases which did not prosper (e.g. dismissed or withdrawn) have not been recorded.

Below is a diagram showing the number of cases referred to the KP for the period 1980-1999.

| Agency/<br>Organizations   | Caseload Per<br>Year | Number Settled              | Average Settlement<br>Duration            |
|----------------------------|----------------------|-----------------------------|-------------------------------------------|
| Katarungang<br>Pambarangay | 147,341<br>cases/yr  | 128,416<br>cases/year (87%) | 1-30 days depending<br>on case complexity |

**Diagram 1: The Katarungang Pambarangay** (Supreme Court of the Philippines Judicial Reform Project, Assessment of the Alternative Dispute Resolution Programs in the Philippines and Recommendations for the Future, p. 13)

The Department of the Interior and Local Government (DILG) estimated that every case takes about 1-30 days to be resolved. There is also no way of determining whether or not compromise agreements arrived by mediation or arbitration has been properly complied with.

## 2. The Cooperative Development Authority

For the year 1997, the estimated number of cases filed before the CDA was pegged at 279. Around 230, or 82% of these, were resolved using mediation and/or conciliation and 49, or around 18% were adjudicated through arbitration. Among those cases that were mediated, 155 or 67% were resolved. Of those adjudicated, 35 or 71% were resolved by arbitration. The remainder is either pending, archived and unaccounted for, referred to other agencies or on appeal.

For the year 1998, 264 cases were filed. Of which, 224 or 85% were given due course (mediated); while 25 or 12% were adjudicated. Around 131 or 58% of the 224 mediated cases actually resolved; and 17 or 8% of those adjudicated were resolved. The remaining cases are pending, archived or unaccounted for, referred to other agencies, on appeal or unresolved.

Below is a diagram showing the number of cases referred to the CDA for the period 1997-1998.

| Agency/<br>Organizations                | Caseload<br>Per Year |      | Number Settled |      |      | Average<br>Settlement<br>Duration |
|-----------------------------------------|----------------------|------|----------------|------|------|-----------------------------------|
|                                         | 1997                 | 1998 |                | 1997 | 1998 |                                   |
| Cooperative<br>Development<br>Authority | 297                  | 264  | Mediation:     | 155  | 224  | 3 to 4 months                     |
|                                         |                      |      | Arbitration:   | 35   | 40   |                                   |

**Diagram 2: The Cooperative Development Authority** (Supreme Court of the Philippines Judicial Reform Project, Assessment of the Alternative Dispute Resolution Programs in the Philippines and Recommendations for the Future, p. 19.)

It takes an average of 3-4 months for the CDA to resolve a case either through mediation or adjudication. There is no data on the cost of the resolution processes; amount saved because of the use of ADR or the faithfulness of the parties to the settlement agreements.

### 3. Philippine Construction Industry Arbitration Commission

From the time of its establishment until February of 1998, the estimated number of cases resolved or settled by the CIAC is 95 or 67% of the total of 141 cases instituted. Of this, 40 cases involve government contracts and 55 involve private projects. Of the 141 cases filed, 22 were dismissed, 12 opted to settle their differences even before arbitration was commenced, and 10 were dismissed because of want of jurisdiction. Around 20 cases were still pending at the end of the period.

As of January 2000, a total of 235 cases were brought before the CIAC; 58 or 25% were brought on appeal. However, of the cases appealed to the regular courts, only 2 reversals and 3 modifications were made. Compliance with the awards is not tracked.

Below is a diagram showing the number of cases referred to the CIAC from the moment it was established up to February of 1998.

| Agency/Organizations                                  | Caseload Per Year       | Number Settled   | Average Settlement Duration |
|-------------------------------------------------------|-------------------------|------------------|-----------------------------|
| Construction Industries Arbitration Commission (CIAC) | 141 cases over 10 years | 95 over 10 years | 11 mos. & 12 days           |

**Diagram 3: The Construction Industries Arbitration Commission** (Loc Cit , p. 24.)

#### **4. Department of Agrarian Reform Adjudication Board (DARAB)**

The DARAB gave due course to a total of 167,525 cases during the period of 1988 to 1999. Out of this number, 153,674 cases, or 92% were resolved. The remaining 13,851 cases represent cases that were either withdrawn, dismissed or are still pending.

Depending on the level of difficulty of the issues in each case, it is estimated that most cases took 60-70 days to be resolved. The DARAB does not keep track of the durability of the arbitral awards or agreements, as well as the progress of each case beyond its jurisdiction.

Below is a diagram showing the number of cases referred to the DARAB from 1988 up to 1999.

| Agency/Organizations                                   | Caseload Per Year | Number Settled | Average Settlement Duration |
|--------------------------------------------------------|-------------------|----------------|-----------------------------|
| Department of Agrarian Reform and Adjudication (DARAB) | 167,525 per year  | 153,674 (92%)  | 60 to 70 days               |

**Diagram 4: The Department of Agrarian Reform and Adjudication** (Loc Cit , p. 29)

#### **5. The Philippine Dispute Resolution Center Inc (PDRCI)**

The PDRCI, which was created in 1998, has presided over only 11 cases. The only case filed before it in 1998 was settled/resolved through arbitration. The following year, 10 cases were brought to the PDRCI and as of the latest record (1999), all of them are still pending. Cases withdrawn or dismissed by this body were not tracked anymore.

Below is a diagram showing the number of cases referred to the PDRCI from 1988 up to 1999.



| Agency/Organizations                                                                                                  | Caseload Per Year |       | Number Settled |          | Average Settlement Duration |
|-----------------------------------------------------------------------------------------------------------------------|-------------------|-------|----------------|----------|-----------------------------|
|                                                                                                                       | Year              | Cases | Year           | Cases    |                             |
| Philippine Dispute Resolution Center, Inc (PDRCI- arbitration arm of the Philippine Chamber of Commerce & Industries) | 1998              | 1     | 1998           | 1 (100%) | 6 months                    |
|                                                                                                                       | 1999              | 11    | 1999           | 0        |                             |

**Diagram 5: The Philippines Dispute Resolution Center, Inc.** (Loc Cit , p. 34.)

## 6. The National Conciliation and Mediation Board (NCMB)

Between the years 1996 and 1999, the NCMB recorded an average of 400 cases; about 34 or 8.5% of this were settled yearly. The small number of cases handled by the NCMB may be explained by the fact that it only entertains cases filed by organized workers. Since only 15% of the country's labor force is unionized, a sizeable portion of the labor force have no access to the NCMB's services at all. Some of them turn to the NLRC. On the average, it takes the NCMB approximately 34 days to resolve disputes.

Below is a diagram showing the number of cases referred to the NCMB from 1996 to 1999.

| Agency/Organizations                          | Caseload Per Year |       | Number Settled |       | Average Settlement Duration |
|-----------------------------------------------|-------------------|-------|----------------|-------|-----------------------------|
|                                               | Year              | Cases | Year           | Cases |                             |
| The National Conciliation and Mediation Board | 1999              | 323   | 1999           | 17    | 34 days                     |
|                                               | 1998              | 407   | 1998           | 31    |                             |
|                                               | 1997              | 431   | 1997           | 33    |                             |
|                                               | 1996              | 438   | 1996           | 55    |                             |

**Diagram 6: The National Conciliation and Mediation Board** (Loc Cit , p. 40.)

## 7. The National Labor Relations Commission

Of all the institutions so far cited as engaging in ADR, perhaps the NLRC is the most active and the most burdened. An estimated 35-40,000 cases were filed in 1999 alone. Twenty-nine thousand (29,000) of the cases were resolved or adjudicated through arbitration. Around 31.6% were resolved through mediation or conciliation. No figures are available on the number of cases dismissed or withdrawn. Cases before the NLRC take about 5-6 months to resolve.

Below is a diagram showing the number of cases brought before the NLRC for the year 1999.

| Agency/Organizations                           | Caseload Per Year   | Number Settled |        | Average Settlement Duration |
|------------------------------------------------|---------------------|----------------|--------|-----------------------------|
| The National Labor Relations Commission (NLRC) | 40,000 cases (1999) | Mediation      | 9,280  | Approximately 5-6 months    |
|                                                |                     | Arbitration    | 18,850 |                             |
|                                                |                     | Pending        | 11,870 |                             |

**Diagram 7: The National Labor Relations Commission** (Loc Cit , p. 47.)

## 8. Bureau of Labor Relations (BLR)

For the year 1999, the BLR handled a total of 13 cases involving inter and intra-union disputes. Of these, 8 were settled through mediation and arbitration, while 5 were pending by the end of the year.

The number of cases appealed to BLR from its regional offices for 1999 totaled 117. 79 or 68% of which were settled, and 38 remained unresolved by the end of the year. The length of time for an average case to be resolved by the BLR averages at about 30-60 days.

Below is a diagram showing the number of cases brought before to the BLR for the year 1999.

| Agency/Organizations      | Caseload Per Year                 | Number Settled                                                 | Average Settlement Duration |
|---------------------------|-----------------------------------|----------------------------------------------------------------|-----------------------------|
| Bureau of Labor Relations | 13 cases<br>– 117 appealed (1999) | 8 (by Mediation/ Arbitration)<br>79 (of appealed cases) (1999) | 30 – 60 days                |

**Diagram 8: The Bureau of Labor Relations** (Loc Cit , p. 53)

## 9. The Commission on the Settlement of Land Problems (COSLAP)

The number of cases referred to the COSLAP has gradually increased since 1996 when its existence was allowed to continue. In 1996, it only handled 76 cases; but this steadily increased to 222, 364, and 538 in 1997, 1998 and 1999 respectively. Subsequently, the number of cases resolved also grew to 36 (16.2%), 105 (28.8%) and 106 (2%) in 1997, 1998 and 1999. An estimated 80% of the cases brought before

COSLAP were settled through mediation-conciliation; while the remainder were arbitrated. Cases before the COSLAP usually take approximately 3 months to 1 year to be resolved. COSLAP has no record of the number of cases withdrawn nor the number of cases dismissed nor the compliance to its awards.

Below is a diagram showing the number of cases brought before to the COSLAP for the years 1996 to 1999.

| Agency/<br>Organizations                           | Caseload Per Year                                                                                                                           | Number Settled                                                                                 | Average Settlement Duration                        |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------------------------------|
| Commission on Settlement of Land Problems (COSLAP) | An increasing number of land disputes were referred to the Commission since 1996;<br>1996 – 76;<br>1997 – 222;<br>1998 – 364;<br>1999 - 538 | Settlement rate is on a decline.<br>1997 – 36 (16.2%)<br>1998 – 105 (28.8%)<br>1999 – 106 (2%) | No exact data but approximately 3 months to 1 year |

**Diagram 9: The Commission on Settlement of Land Problems** (Loc Cit, op. p. 59.)

## 10. The Insurance Commission

The Insurance Commission has no record of the number of cases it handles per year, but an estimated average of five formal complaints are filed each month. Reportedly, sixty to seventy (60-70%) of the cases filed before the Commission, most of which last about 6 months, are settled amicably. The rest are resolved through arbitration.

Below is a diagram showing the number of cases brought before the Commission yearly.

| Agency/<br>Organizations | Caseload Per Year | Number Settled                 | Average Settlement Duration                  |
|--------------------------|-------------------|--------------------------------|----------------------------------------------|
| The Insurance Commission | 60 cases / year   | 60 to 70% are settled amicably | Variably 6 mos. depending on case complexity |

**Diagram 10: The Insurance Commission** (Loc Cit , p. 64.)

## 11. Bureau of Trade Regulation and Consumer Protection

During the year 1999, the Bureau handled cases involving piracy and

counterfeiting (55), product quality and safety (2,518), hoarding and profiteering (36), weighs and measures (130), labeling and packaging (114), consumer products and service warranties (2,818), advertising and sales promo (131), service and repair shop (204), liability for product and service (237), deceptive, unfair and unconscionable sales act (250), price tag (5,496) and others (5,496); or a total of 12,139 cases. Out of this, 11,177 (92%) were resolved, either through mediation or arbitration. The balance represents pending cases.

Depending on the difficulties in the issues of a particular case, the duration of mediation and/or arbitration range from two days to three months.

Below is a diagram showing the number of cases brought before the Bureau.

| Agency/<br>Organizations      | Caseload Per<br>Year | Number Settled                                                                                                                                          | Average Settlement<br>Duration                                     |
|-------------------------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Bureau of Trade<br>Regulation | 12,139<br>cases/year | 11,177/year (1,421 or<br>69% by DTI/9,756 or<br>97% by business<br>establishments,<br>balance of 962<br>endorsed to other<br>agencies or in<br>process) | Depending on<br>complexity<br>of case, two days to<br>three months |

**Diagram 11: The Bureau of Trade Regulation** (Loc cit., p. 67)

## 12. The Court Annexed Pilot Mediation Project

About 100 cases were referred by the courts to 20 mediators from January 3 to February 29, 2000. As of January 25, out of the 25 cases referred, 8 were did not prosper because of the inapplicability of mediation. Of the 17 cases mediated, 8 (47%) reached an agreement. Cases were settled in about 3 one-hour sessions. (A more complete data is yet to be released by the Supreme Court.)

Below is a diagram showing the number of cases brought before the Bureau.

| Agency/<br>Organizations                        | Caseload Per<br>Year   | Number Settled                                      | Average<br>Settlement<br>Duration |
|-------------------------------------------------|------------------------|-----------------------------------------------------|-----------------------------------|
| The Court Annexed<br>Pilot Mediation<br>Project | 25 cases<br>(Jan 3-25) | 8 – not mediated<br>8 – settled (47%) Jan 3<br>– 25 | 3 sessions of 1<br>hour each      |

**Diagram 12: The Court Annexed Pilot Mediation Project** (Loc cit., p. 72)

## IV. Conclusion

Access to justice is not confined to access to the judicial system. The availability of means other than judicial, *i.e.* conciliation, mediation, arbitration and, even negotiation, collectively called alternative dispute resolution (ADR) mechanisms are a testimony to this reality. ADR is provided by law although the manner by which the means are employed may be more cultural than law-based. This is particularly manifest in the *barangay* where various cultural values provide the backdrop for conflict resolution.

Not many Filipinos are aware of, much less familiar with, ADR. It is popularly thought that the only means by which justice is attained is through the courts. This belief leads to clogged dockets, which in turn affect the speed and efficiency with which cases are resolved by courts.

While law-mandated, ADR mechanisms do not enjoy the trust of the ordinary citizen who believes that only the judicial court can dispense justice. Evidently, there is a need to inform the citizenry, and more importantly the lawyers of this alternative avenue of attaining justice. The Supreme Court acknowledges the effect upon the judicial system of an effective ADR system. In fact, it has incorporated in its judicial reform program support for ADR systems.

ADR as a means of conflict resolution must be given importance in law education. Law schools must incorporate ADR in their curricula. In the right direction is the inclusion of ADR in the Supreme Court mandated Continuing Legal Education for members of the bar.

The use of ADR is foreseen to be more extensive and popular in the coming years. This should pave the way for a more secure feeling of justice amongst the citizenry as well as amongst those engaged in business in the country.

Currently, the legislature has commenced efforts to enact into law the institutionalization of ADR. The ADR future looks rosy.