

**UNITED NATIONS DEVELOPMENT PROGRAMME
DRAFT PROJECT DOCUMENT**

**STRENGTHENING THE ADMINISTRATION OF JUSTICE:
ECONOMIC TOOLS AND THE LAW**

SUPREME COURT
Executing Agency

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Prepared by:

Prof. Ma. Lourdes A. Sereno
University of the Philippines
College of Law

A. FACT SHEET -Executive Summary

1. Programme Background

The Philippines has embarked on major economic restructuring since 1986 which was further consolidated since 1992, when the present administration took over. The Medium-Term Philippine Development Plan (MTPDP, 1993-98) are keyed to the following areas of concern: (1) human development; (2) agri-industrial development; (3) infrastructure development; (4) macroeconomy and financing; and (5) development administration

If one were to identify a common precondition or assumption for the success of the first four key areas of concern, it is success in the fifth area, or development administration, which will determine whether there will be progress on a sustained and qualitative basis. However, development administration assumes a national capacity for managing the processes of growth - from planning to implementation, to management and monitoring, to building a feedback mechanism, to creating sustainability of institutional processes and capacities. This institutional capacity must exist not only in agencies primarily tasked with steering economic growth, but even peace-keeping and law-enforcement agencies. Any growth path requires corresponding institutional support.

If the MTPDP were to be scrutinized, however, it will be discovered as incomplete, and inevitably so, for its inability to bring within the support structure an institution which will determine to a great extent the success of the first four key areas of concern - the judiciary. The Constitution requires strict observance of the separation of powers doctrine and it therefore denies the MTPDP the ability to bring the judiciary within the sphere of discussion on economic development. Whereas, a major "processual" concern of the MTPDP is to build consensus between national and local agencies, the legislature, and even communities and non-governmental organizations, the judiciary, by the very nature of its office, cannot take part in this dialogue. It is isolated, to a certain degree, from the development dialogue, principally because it can not be consulted without transgressing Constitutionally-drawn limits. Seen in this light, it requires a major, creative undertaking for this information gap to be bridged, the only currently existing institutional discussion venue being the judicial forum when specific development projects are either stopped or assailed.

In the face of this information gap, the judiciary must resolve controversies, sometimes involving flagship programs of the government. It has no basis to resolve the case or controversy brought before it other than facts which it can take judicial notice of, or evidence submitted before it. It must hear the issues and arguments from both sides, and it assumes that counsel for each will bring forth the best arguments in behalf of their respective clients. On such bases, decisions are made which can either, from the perspective of the government, advance or retard its economic programs.

On occasions when the government loses in cases involving major economic projects, the courts, principally the Supreme Court, have been subject to criticism on charges of economic obstructionism. Critics and defenders of the judiciary abound, but what clearly emerges from the debate is that lawyers for both sides - for the government and for the project opponent - as well as the judges presiding over these important cases, do not present or hear enough of the relationship between law and economic development goals. The relationship between the two disciplines, law and economics, have not been raised in legal briefs, much less formulated into cogent and serious legal arguments. Worse, an even more basic problem could be present. There is a perception which was articulated by a respected legal scholar, that government lawyers have generally been rendering inferior service, which accounts for their dismal losses in some of the most important cases brought before the Supreme Court. This failure to provide excellent legal service, if this scholar's perception is true, can be remedied to a certain degree by a training program which can lead to internalization of economic development objectives, in a manner that these lawyers can transform development objectives into strong legal arguments.

On that note of controversy, a national multi-sectoral workshop by the National Economic Development Authority (NEDA) was conducted at which issues related to the legal and judicial institutions was conducted. It was the consensus that the possible usefulness of economic tools of analysis should be explored for the purpose of strengthening judicial and legal reform. The reasons for the need for reform of the judicial and legal systems expressed in that workshop are basically the same reasons that have been used in most law and development paradigms: that an efficient and honest judicial system is necessary to protect the liquidity of property, the binding character of contracts, and the predictability of commercial transactions - core requirements for the development of a strong market economy. Options and approaches were explored on how such a reform program can be specifically designed and launched.

That perspective however, bore its own seeds of difficulty. For the Philippine court system is both theoretically and in practice, highly independent of the two other branches of government - the legislature and the executive. While legislative-executive interaction has significantly increased through the Legislative-Executive Development Advisory Council, such a consultation mechanism is not constitutionally allowed the judiciary. It is ordered by the Constitution to bear no loyalty nor be the defender of any ideology, political or economic, other than that of the Constitution. To suggest that reforms be conducted in the judicial sector in order that development programs and projects decided upon by the Executive will encounter less opposition ignores the fundamental balance of powers which has been carefully designed by the Constitution. The economic goals of the State are defined by the Constitution. The parameters in which the executive and the legislature must work these goals are set by the Constitution. The judiciary is to be the arbiter of questions on whether these economic goals are served, or whether the parameters are transgressed. It is to pay no greater attention to any prophet of economic boom or gloom, than that it pays to its own enlightened understanding of what the Constitution says the government must and can do.

The idea that economic tools of analysis can have, to a certain degree, positive effects on legal reform, both in its substantive and procedural aspects, was pursued vigorously when it was discovered that the Supreme Court itself, through the incumbent Chief Justice, on certain occasions voiced the desire for judges to gain sufficient understanding of economic fundamentals to better equip them for their judicial role. From that point of reference, it was not difficult to articulate the relationship between economic tools, the law, the role of the judiciary, and the impact of the relationship of the three factors on economic development.

Inasmuch as the ultimate goal of any development assistance is to identify and strengthen societal structures that will lead to economic development, a project for the judiciary on law and economics could have substantial developmental effects, even without significant reference to any of the government's ongoing economic flagship projects. The very process of education and exposure in the field of economics will lead to improved skills levels in the judicial sector. With improved skills levels, judges are expected to resolve cases faster, more efficiently and from a broader macro perspective as a result of the nontraditional exposure contemplated in this project. The improvement in the justice delivery system alone will have strong and positive spin-off effects in the economy.

A caveat is therefore appropriate. The basic idea of this project is that the linkage of the disciplines of law and economics can provide the key actors in government, whether they are policy-makers or judges, a better understanding of the theories, processes and dynamics behind economic choices. It is not a forum for the executive to air its complaints before the judiciary. In fact, it requires that specific complaints from the government regarding its losses in the cases before the judiciary be completely ignored - in strict deference to the Constitutional requirement of separation of powers - while bringing the judicial sector at an information level at which they can better understand the dynamics of economic development, the impact of its own judicial processes on the litigants and on society, and because of which it will be better equipped to lead the modernization of legal education. On the independent merits of these activities by the judiciary, Philippine economic development will naturally be strengthened.

2. Description of the Programme

The proposed programme will support the country's economic development goals by: (1) strengthening the capacity of the judiciary to tackle increasingly complicated cases, especially when they relate to economic laws; (2) providing the judiciary an in-depth study of the costs, economic and otherwise, of judicial processes, and specific recommendations for reforms; and (3) paving the way for modernization of legal education by creating a national consensus for change, to be led by no less than the Supreme Court.

The programme has three (3) major components. The first component consists of exposure and training programs for judges. This will be accomplished in three (3) ways: local training, foreign study tours and discussion series on certain important economic topics. The second component consists of an extensive research program on the costs of justice. It will require an analysis of the processes and costs involved in representative civil cases, and will end with a report calling for specific reforms. The third component aims to create the development of a national consensus on modernizing legal education and will entail the conduct of several national and local conferences and workshops on legal education.

Since this is the first development assistance to be received by the judiciary, and especially because of the required independence of the judiciary from the executive, there will be no institutional linking to any specific government economic project or program. However, it is entirely complementary to existing economic reforms in the legal sector. The passage of important economic legislation has liberalized the trade, investment, financial and infrastructure markets significantly. The judicial sector should be prepared for the social and economic transformations taking place. The independent justification for this project, which was extensively discussed above, is deep and real. It arises out of the inescapable fact that the country can only succeed in its economic development goals if the judiciary is sufficiently equipped to handle the challenges posed by the growing complexities of modern development requirements. The support of the judicial infrastructure for sustained economic growth has been discussed at length by several development scholars. On a country study by the ADB on the Philippine legal framework, for example, it has been stated that: "A well-functioning legal system is essential to resolve disputes quickly and inexpensively, to enforce contracts properly and rapidly, and to ensure fair, transparent and competitive markets. Although existing firms, especially large ones, find ways to circumvent the existing legal barriers and use them in order to deter new firms from entering, a well-thought-out judicial reform could be an important component of a program to promote efficient private sector development."¹

3. Inputs

UNDP will provide funding for contractors/subcontractors in the conduct of the training programs, the studies and the provision of expert advice on all the three components. It will also provide support for the foreign study tour, the local training, the local discussion series, the conduct of the research and the various conferences, workshops and meetings. UNDP will also fund the publication of a maiden issue of a Journal on Law and Economics. Provision of basic and essential equipment, documentation, printing and other miscellaneous expenses necessary for undertaking and sustaining all the programme activities will also be included.

¹ Hilton Root, ADB Occasional Paper No. 12, October 1995.

B. PREPARATORY PROCESS

1. Evaluation of Past and On-going UNDP Experience

The Fifth Country Programme of the UNDP (1993-1997) provides integrated development assistance to national priority programmes within the context of four themes: (a) economic reform and management; (b) technology transfer; (c) environmental management; and (d) poverty alleviation. All of these are embraced in the umbrella concept of development assistance.

The concept of development assistance is large and flexible enough to target priority projects which, though not directly subsumed under any of the four themes, were supported because they were identified as urgent and of high-impact value. Most noteworthy of these are two of the more important recent successes of the UNDP. The first is the computerization programme of the Commission on Elections (COMELEC). The computerization programme of the COMELEC has been widely acclaimed as one of the watershed political reforms in the country. The second successful programme was the UNDP support of an advisory mission on structural reform which has been credited with producing valuable advice on policy options in response to adjustment programmes. The unique characteristic of UNDP's Fourth Country Programme, which has been carried over into the Fifth Country Programme, is its flexibility in supporting a range of activities enabling government to respond rapidly to crucial needs. In many ways, a programme leading to judicial reform satisfies all the characteristics of the past major successes of the UNDP in the country.

In recognition of the above experiences, and the fact that development can be a moving target, UNDP recognizes that needs and priorities evolve, and has earmarked a substantial portion of total IPF resources for the fifth country programme period (1993-1997) to these evolving priorities and needs. Two of the areas of concern that have been receiving increasing recognition from international bodies and donor agencies are the related concerns of governance and law and development. The computerization of the COMELEC, for example can fall both under the concept of governance and law and development. That law and development has been receiving strong international attention is demonstrated by the observation that the most significant development bank in the Asia-Pacific Region, the Asian Development Bank, has produced significant publications and conducted numerous symposia on law and development, and supports numerous projects in this area.

In addition to falling under the concepts of governance and law and development, UNDP also extends technical and financial assistance to facilitate structural adjustment under the theme of economic reform and development management. UNDP considers the strengthening of key government institutions as catalytic, in enhancing development

and this is reflected in UNDP's assistance in projects which intensify democratic processes as a condition for development, such as the modernization of the electoral system.

In other countries, policy reforms and structural adjustment programmes have been launched by the UNDP in the judicial and legislative sectors which are considered vital institutions in accelerating development. Among UNDP-funded projects are:

- (a) *Legal Adjustment and Reform for the Global Economy (LARGE)* in India, which undertakes policy-oriented studies to assess the need for reform in certain aspects of the Indian legal system in the implementation of the Indian Government's liberalization policy;
- (b) *New Economic Mechanism Program Support to the Legal Framework, Phase II* in People's Democratic Republic of Lao, which consists mainly of the inventory of treaties, laws and regulations, review and drafting of economic, financial, and business legislation, training programs in business, economic, financial and commercial law, and the establishment of a legal library and information center.
- (c) *Building a National and Legal Framework in People's Democratic Republic of Lao* which is jointly funded by UNDP and other international funding agencies, aiming to strengthen the legal framework through the drafting of priority legislation in support of the improvement of the economic situation;
- (d) *Strengthening the Legal Capacity in Vietnam*, funded by UNDP and other funding agencies in order to assist the Vietnamese Government in establishing a legal framework to support its emerging market-based economic activity, and to support civil governance within the context of sustainable human development.

2. Needs Assessment

An evaluation of the assistance requirements of the Philippine judiciary can be viewed from different angles:

On the lowest levels of application, an efficient, swift, transparent and impartial judicial system will allow the ordinary man and woman on the street to go about her daily chore of earning a living unimpacted by fears of arbitrary arrests, excesses of government and unprovoked assaults on her person and property. It enables her to put her efforts to productive activities without need for any elaborate security precautions. It allows her and her family to lead productive, wholesome, healthy lives. X

On another level, the ordinary businessman will be able to make longer-term investment decisions. His cost of doing business will dramatically decrease and will enable him to render services or sell goods at more competitive prices. When this perspective is applied to projects of larger scale and which are more resource-intensive, investments which do not generate quick turnaround but which are critical to the country's economic infrastructure will more likely be undertaken.

On the national level, decisions to undertake difficult macroeconomic adjustments will be eased by the assurance of the stability of the judicial system. The political will to undertake even unpopular measures will more likely be present, when the structures of governance in the specific area of the judiciary are strong enough to maintain the integrity of the socio-political fabric.

On the international level, the world community has a stake in the success of the Philippine economy, as its upliftment will send a strong signal in behalf of "democracy with development." Efforts must therefore be exerted to give "democracy with development" the greatest possible chance of success.

Realizing how critical a credible and efficient judicial system is, it is important to understand concretely where the gap in institutional capacity lies. An important need that was easily identified was the need of judges to understand fundamentals of economics. As Chief Justice Andres Narvasa himself wisely observed:

"The work of the judge today has become quite complex: apart from familiarity with statutes, rules and jurisprudence, it is required that they have a grasp as well of those economic and other non-legal developments and issues which in some substantial manner affect the lives and activities of a significant number of people. Lectures . . . involving the intricacies of economic principles and precepts, are therefore invaluable to judges whose court decisions may not improbably produce some impact on the social and economic life of the nation.

" . . . (N)oted American jurist (Oliver Wendell Holmes) had occasion to point out the need for some knowledge of economic principles . . . He said (in *Plant v. Woods*, 57 NE 1011, 176 Mass. 492, 505, September 6, 1900):

"It is only by divesting our minds of questions of ownership and other machinery of distribution, by looking at the question of consumption, - asking ourselves what is the annual product, who consumes it, and what changes would or could we make, - that we can keep in the world of realities"²

There are also environmental factors which are making the work of judges more difficult: the rapidly expanding population, the growing scarcity of natural resources, the increasing urbanization and globalization of economy, the accelerated pace of development in mass media, information technology and the sciences, and increasing macroeconomic uncertainties.

² "Economics and the Judge," Speech before the Philippine Women Judges Association Educational Series (Focus on the GATT), December 5, 1994, Supreme Court Session Hall.

The full intent of the judiciary and the law machinery of the executive department to be positive contributors to economic development has never been in doubt.³ The judiciary, in particular, pays close attention to constitutional policies and precepts. It is keenly aware of the goals of the national economy set forth in the Constitution among which are: increasing income and opportunities for all. Additionally, it has not shirked from inquiry into executive action, even in the economic sphere, when it has understood its constitutional mandate as requiring it to so act.

More recent judicial decisions have raised questions on the exercise of the power of judicial review. It has been asked whether the judiciary should render decisions on economic issues, an area which some posit to be beyond its technical competence. On the other hand, it was suggested that the judiciary's continued exercise of its judicial review on economic policy issues is reflective of the weakness if not inability of the executive branch to lay down clear and transparent policies based on the technical merits of the proposed economic projects, as well as the poor quality of legal service government is getting.

In addressing the gap between the desired objectives of the judiciary and its current levels of delivery, close attention must be paid to its capacity to address the complicated issues it is facing. For example, the training in the law schools is geared towards justice and redistributional issues rather than on the optimal use of resources. This accounts for the failure of legal advocates to appreciate end-results other than win-lose outcomes, or to realize that in a world of dwindling resources, compromises may be a better overall strategy.

How can economic tools of analysis help address this need? The primary focus of economics is optimizing limited use of resources to maximize satisfaction of unlimited wants. Contribution to legal rule formulation can be made by applying economic theory to specify and quantify direct and indirect economic effects of certain laws, as well as the distribution of these effects. Specifically, this "effect valuation" could be undertaken using the concepts and tools of economic theory and econometrics. These tools can be used directly in research programs on the economics of the judicial processes in the hope that this will contribute directly to judicial reform.

It is not only the tools of economic analysis that will help clarify direct and indirect economic effects of judicial decisions; a more direct avenue would be an introduction to development economics and the dynamics of government economic policy formulation and implementation.

³ In remarks delivered at the Philippine Insurers Club on August 18, 1993, entitled "The Citizen's Role in Judicial Reforms" Chief Justice Narvasa said as much:

"As members of the business community, you no doubt appreciate the fact that an efficient, competent and ethical court system contributes significantly to the climate of stability and order that best attracts foreign investment and its promised benefits in the form of wider business opportunities, greater employment increased real incomes, and accelerated national recovery."

The discipline of economics can assist the judiciary in facing some common legal issues to be resolved. At the same time, it can assist the judiciary in its ongoing procedural reform program. Economics can be of value because its search for options or solutions requires that the following principal issues be faced: (a) unlimited wants and limited resources; (b) redistribution and cost allocation; (c) cost and benefit analysis; (d) incentives and deterrents; (e) market forces, prices, monopolies and competitiveness.

What economics can do in legal and even judicial reform is to provide a framework for identifying, clarifying, and weighing the costs of various options; explain the dynamics of economic development; articulate the underlying assumptions in contract, tort, property and even criminal law; and provide the tools for understanding business, intellectual property, and competition law.

The use of economics in adjudication has traditionally been confined to anti-trust cases and those where the relation of economics and law are explicit. However, the use of economics as a tool of analysis in adjudication of cases has expanded, and now covers even non-traditional fields, such as tort, contract and property, the theory and practice of punishment, rules of procedure, theory of legislation, judicial enforcement, and judicial administration.⁴

In the United States, for example, several judges and legal academicians have already developed analytical frameworks in decisionmaking. The earliest and pioneering work was that of Guido Calabresi's article on torts and Ronald Coase's article on social cost.⁵ A model for both common law interpretation using the concept of ordered liberty and wealth maximization was constructed by Professor Cooter.⁶ A model on statutory law construction was also developed by American law professors Rizzo and Arnold.⁷

In the field of civil procedure, a model has been developed which presents a legal claim as an economic asset and the litigation process as a device by which the plaintiff in effect sells his claim to the defendant with the promise never to sue the defendant again.⁸ The cost would depend on the result of the litigation — zero if the case is dismissed or defendant obtains a judgment, otherwise, it is the amount of settlement for the plaintiff.

Some judges use economic analysis in adjudication with the view that justice is equated with efficiency, or in another sense distributive justice,⁹ such that in determining

⁴ RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* (1977).

⁵ Guido Calabresi, "Some Thoughts on Risk Distribution and the Law of Torts," *70 Yale Law Journal* 499, (1961); Ronald H. Coase, "The Problem of Social Cost," *3 Journal of Law and Economics* 1 (1960)

⁶ _____ Cooter, "Liberty, Efficiency and the Law," *Law and Contemporary Problems* (Autumn 1987) at 141.

⁷ _____ Rizzo and _____ Arnold, "Ways of Criticizing the Court," *95 Harvard Law Review* 802, (1982)

⁸ Miller, "Introduction: Economic Analysis of Civil Procedure." *The Journal of Legal Studies*, January 1994 at 303.

⁹ Posner, *op.cit.*, at 22.

which decision is best, judges try to consider that which advances efficiency and wealth maximization. It is the opinion of a federal judge that "judges use economic analysis because they are convinced that legal policies face real constraints and that these constraints can be illuminated by economic analysis."¹⁰ It was likewise stated that these judges view that the major role of courts is to "back up free marketplace, leaving a limited role for the government to play in advancing equality and redistributing wealth or power and protecting particular groups from exploitation."¹¹ Judges who use economics analysis, focus on their role in rule-making such that in whatever decisions are made by them, they take into consideration the prospective effects on society. "For them, courts are and should be yet another societal mechanism for inducing behavior which promotes wealth maximization and efficiency in resource allocation."¹²

In administrative cases appealed to courts, it is alleged that the use of economic analysis "would lead to a more rational judicial policy by giving the appellate courts more with which to evaluate the actions of the administrators", as judges "would engage in more extensive investigation of economic factors and assumptions on how various factors would influence economic actors."¹³ The hope was expressed that the use of economic analysis would lead courts to change the nature of evidence and rules of procedure, resulting in more efficient and rational decisionmaking.

Economics cannot answer many legal questions,¹⁴ but definitely economics can at times provide an indispensable tool to illuminate issues which may be decisive in reaching a viable solution.

A program is therefore proposed which will incorporate certain aspects of the discipline of economics in the training of judges to equip them better for the increasingly complex questions they face, which will employ economic tools of analysis to understand the real costs of justice, and which will spearhead the advancement towards modern legal education.

3. Policy Dialogue

The uniqueness of the principal sector concerned, *i.e.*, the judiciary, required that the dialogue be kept within the circle of those whose intervention and inputs could not be interpreted as "interference" with the judicial processes. Several justices and administrative officers in the Supreme Court as well as academes were constantly consulted, as well as academics, especially those with extensive experience in the training

¹⁰ Foreword: "Economists on the Bench," *Law and Contemporary Problems*, Autumn 1987 at 16.

¹¹ Wald, "Limits on the Use of Economic Analysis in Judicial Decision-Making," *Law and Contemporary Problems* (1988) at 226.

¹² *Ibid.*, at 230.

¹³ *Op. cit.*, note 10 at 7.

¹⁴ Prof. Patricia Wald commented that "Judges will not initiate economic analysis unless they are convinced that it is the appropriate analysis...Whether economics is a help or a hindrance will depend on the case before the judge, the issue posed to the court and the law."

of judges. Legal scholars and economists were sought out for their views. The UNDP was intensively involved and appraised of these dialogues. NEDA was likewise sufficiently informed of both the processes and content of these consultations.

4. Identification of UNDP Role

The assistance of UNDP is requested in view of its priority concern for the enhancement of the capacity of vital institutions as a requisite for development. Strengthening the capacity of the judiciary in the administration of justice, which the project seeks to address, falls squarely within the ambit of UNDP's concerns.

Moreover, its flexibility in providing the needed inputs, its ready access to a pool of international experts and institutions and the multilateral character and reasonableness of its terms and agreements make UNDP an appropriate source of assistance.

UNDP played a crucial role in bringing to fore the perceived problems related to the judiciary in the overall picture of development. As the result of the national workshop it conducted, the possibility of using law and economics as a tool for addressing institutional problems in the judicial and legal sectors was articulated. UNDP is therefore the most appropriate institution to support this project in judicial reform.

5. Responsibility for Project Formulation

During the 1995 Annual Review of the 5th UNDP Country Programme, a project on the regulatory and judicial reform was proposed, in response to the identified problem brought about by the apparent inadequacy of the legal/regulatory framework and judicial process to provide an environment supportive of economic growth.

Subsequently, multi-sectoral project development workshops were held and participated in by representatives from the judiciary, Congress, regulatory agencies, NEDA, UNDP and the academe, in order to identify areas of concern in the field of law and economics, to explore the areas for technical assistance.

Initially, the project was envisioned to consist of two interrelated components: (a) a judicial component and (b) a regulatory/legal component. However, due to substantial differences in target participants and beneficiaries and the desire to observe the independence of the judiciary, it was decided that the project for the judiciary proceed as a separate and distinct project. Consultants were required to ensure the correct identification of the problems, needs, and strategies related to the judicial and the legislative/executive sectors.

After numerous consultations with Justices of the Supreme Court, the proposal was approved and support was assured by the Supreme Court. Briefly, the project will

consist of three major components: (a) judicial training and education; (b) research on the costs of justice; and (c) consensus-building on modernizing legal education.

C. DEVELOPMENT CONTEXT

Among the countries in East Asia, the Philippines has the lowest record of industrial growth in the last decade. While most of the Asian economies have posted high gross national product (GNP), the Philippines lags behind. Under the present administration, the government has laid down the MTPDP. The stated objective of the Plan is the improvement of the quality of life through people empowerment and global competitiveness. It envisions the Philippines as a newly industrialized nation by the year 2000. *growth rates*

To attain economic development, it is imperative that society provide a conducive environment for private sector initiative. Government must establish the necessary infrastructure, create vital mechanisms and implement necessary reforms to attract domestic and foreign investments to fuel the engine towards economic growth. *growth / poverty / governance*

Philippine experience under martial law tried to attain development at the expense of democracy. Its sad history reveals that Philippine development does not necessarily succeed under a dictatorship. The false sense of security benefited only a few and left the majority wallowing in poverty. Individual liberties and property rights were grossly violated in the guise of public welfare and national development. After the dictator fled, the country found itself ravaged in abject poverty and deep indebtedness. *SHD*

Learning from the past, the country has launched a new attempt to attain economic development. Development this time, is envisioned under a democratic system, where the rule of law and not of men prevails - a development which results from the effective functioning of the executive, legislative, and judicial branches of government in providing a democratic environment as a condition for development.

Efforts must therefore be exerted to give "democracy with development" the greatest possible chance of success. A large part of this effort must be focused on the issue of GOVERNANCE.

Effective governance presupposes a well-functioning legal system which resolves disputes quickly and inexpensively, enforces contracts properly and rapidly, and ensures impartial, transparent and competitive markets. On the other hand, a dysfunctional legal system undermines the confidence of economic actors in economic agreements, and impairs their capacity to assess business risks correctly, impairing the probability of good investment decisions being made. Effective governance is therefore a primary condition for development.

C. 1. Problems of the Judiciary and the Process of Development

The development problem can be addressed only by understanding first the major problems currently being faced by the judiciary. Five major problems have been identified: (1) docket congestion and delay; (2) the difficulties posed by judicial review of economic policies and/or projects; (3) prohibitive or skewed cost of litigation; (4) increasing complexity of judicial controversies; and (5) corruption or perceived corruption in the court system

C. 1.1. Congestion in the Dockets and the Problems of Delay

The present judicial system has been described by some sectors as inefficient and slow-paced. It might have been caused or compounded by the increasing volume of cases pending in the court dockets. An interesting comparison is revealed in two studies,¹⁵ one done in 1977 (Martinez) and the other in 1988 (Raval and Legada). These were conducted prior to the introduction of the continuous trial system. The comparison reveals that in most cases, litigation time significantly increased:

TABLE I. Comparison of Litigation Time in 1977 and 1988

Case Type	1977	1988
criminal case	202 days	478 days
ordinary civil case	180 days	433 days
special civil case	447 days	749 days
special proceedings	1,095 days	438 days
land registration	220 days	840 days

A study on docket congestion¹⁶ conducted in 1981 states there were about 600,000 pending cases in various courts throughout the country compared to about 250,000 pending cases ten years earlier. This represents an increase of 350,000 pending cases within 10 years, or a 140% increase from 1971 to 1981.

¹⁵ The comparison of studies on litigation time appears in the 1989 study "Overcoming Delay and Docket Congestion in the Philippine Courts" by the Institute of Judicial Administration, at 11. The 1977 study was conducted by Daniel T. Martinez entitled "Congestion and Delay in Metro Manila Trial Courts: Extent, Causes and Remedies."

¹⁶ "Towards Expeditious Justice: A Policy Analysis of the Law's Delay", *Philippine Journal of Public Administration*, Vol. XXV, No. 2, April 1981 at 117.

In a more recent study¹⁷ covering a period from 1980 to 1986, results showed that the annual average number of cases filed annually was 399,999 with 398,541 cases disposed on the average and 405,836 pending cases on the average. In the same study, it was noted that the total number of cases filed in 1986 was 359,072 cases with 36,655 disposed cases and 342,751 pending cases. The highest number of cases filed was in the Regional Trial Courts, with 39.72% of the total cases filed; followed by the Metropolitan Trial Courts 17.23% of the total number of cases filed. Apparently, the Metropolitan Trial Court had the highest rate of disposal with 99 cases per month or 1,191 cases per year.

There has been a significant change in the number of cases filed, decided, and pending from 1988 to 1994, as shown below:

TABLE II. COMPARISON OF ANNUAL VOLUME OF CASES FILED, DECIDED AND PENDING FROM 1988 TO 1994

Status	1988	1989	1990	1992	1993	1994
Newly filed	341,927	328,905	323,829	352,893	409,718	463,767
Decided	364,187	240,700	243,439	238,280	254,049	304,735
Pending	307,038	292,414	271,062	292,094	366,382	525,231

It is significant to note that there has been a decrease in the annual number of new cases filed, from an average of 399,999 (from 1980-1986) to the number of filings from 1988 to 1992. However, the volume of filings suddenly increased in 1993, with 409,718 new cases or an increase of 56,825 cases. The growth in volume of new cases continued in 1994, with a total number of 463,767 new cases indicating an increase of 54,049 cases.

A similar trend was observed with the number of pending cases. The figures from 1988 to 1992 are relatively lower compared with the annual average of 405,836 pending cases for a representative period of 1980 to 1986. However, there has been a significant increase in the number of pending cases in 1993, with a difference of 74,298 cases from 1992 figures. The growth doubled in 1994 with an increase of 158,849 pending cases compared with the volume during the previous year. In 1994, the bulk of cases was filed in the metropolitan/municipal court level. Table II presents this distribution picture:

TABLE III. Distribution of New Cases Filed in 1994

Court	Caseload	Percentage
CA	23,526	2.83%
Sandiganbayan	5,419	.65%
CTA	675	.08%

¹⁷ Raval, Demaree and Legada, "Delay and Docket Congestion in the Philippine Judiciary", *The Judges Journal*, Vol. III, No. 2 (1988).

RTC	382,810	46.13%
MeTC/MTC/MTCC/ MCTC	417,406	50.24%
Total	829,836	99.93%

A possible explanation for the shift in the volume of caseload from the RTC to the MeTCs/MTCs/MTCs/MTCCs could be the recent increase in the number of RTCs by virtue of RA 7154 which took effect in June 1993, as well as the passage of RA 7691 which limited the jurisdiction of RTCs and which correspondingly expanded that of the MeTCs/MTCs/MTCs/MTCCs.

The steady increase in the volume of cases filed and pending within the last six years has not been met with a corresponding increase in the rate of disposition of cases. In 1994, the total cases decided by the courts amounted only to 36.7% of the total case load for the year, as shown in the table below:

TABLE IV. Rate of Disposition of Cases in 1994

Court	Total Caseload	Decided Cases	Disposition Rate
CA	23,526	8,432	36%
Sandiganbayan	5,419	1,931	35%
CTA	675	190	28%
RTC	382,810	132,554	35%
MeTC/ MTCC/ MTC/ MCTC	417,406	161,628	39%
Total	829,836	304,735	36.7%

The increase in the volume as well as complexity of cases filed with the courts has not been accompanied by a sufficient increase in the number of judges. From 1988 to 1994, there has been no significant increase in the number of judges and justices throughout the Philippines, as shown in the table below:

TABLE V. ANNUAL POPULATION OF JUDGES AND JUSTICES

YEAR	JUDICIAL POSITIONS	OCCUPIED	VACANCY
June 1991	1,985	283	1,702
June 1992	2,101	352	1,249
July 1994	2,206	1,670	536

July 1995	2,207	1,704	503
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The problems of delay in the disposition of the cases and congestion in court dockets, according to Chief Justice Narvasa, are caused by several factors, among which are: 1) a heightened awareness of rights and privileges among the public; (2) the enactment of new laws and rules as well as increased government action affecting private individuals; (3) the lack of courts and slowness in filling up vacancies in the judiciary; 4) the small budgetary allocation to the judiciary; (5) the complexity of rules of procedure and inadequacy; and (6) the failure of cooperation between court related agencies and officers.

1.2.2. Judicial Review and Economic Policies and Programs

In recent years, criticism has been hurled against the judiciary's competence in resolving issues involving economic policy. Criticisms have become frequent, as the Court in the mind of some, ventures into the realm of questions which were traditionally considered as *terra incognita*. Several arguments have been raised against the exercise by the judiciary of its power of review in cases which involve political questions,¹⁸ or those where the economic policy of the state is in issue.¹⁹

¹⁸ Political questions "are those questions which under the Constitution, are to be decided by the people in their sovereign capacity or as regards to which full discretionary authority has been delegated to the Legislative or Executive Branch of government. They are concerned with the issues dependent on the wisdom, not the legality of a particular measure (Javellana v. Executive Secretary, GR No L-36142, March 31, 1973). There are specific grounds for the evolution of the political question doctrine, namely:

1. there is a need for a quick and single policy, especially in the field of foreign affairs;
2. judicial incompetence, as when a particular problem is in fact solvable by a legislative solution which a court is totally incapable of providing, or where the action requires information which a court cannot have or get;
3. clear prerogative of another branch of government, which includes cases in which courts do not pass upon claimed rights because someone else has a clear and unequivocal responsibility to make the particular decision; and,
4. avoidance of unmanageable situations, which involves the reluctance of the courts to give orders which will either not be enforced or are practically enforceable, and on occasion may be hesitant to precipitate situations which may outrage the popular attitude." (Cristobal, *The Supreme Court and Judicial Policy Making*, 36 *Ateneo Law Journal* 89, 90 (1991), p. 38-39, cited in Castro and Pison, *The "Economic Policy Determining Function of the Supreme Court in Times of National Crisis"*, *Philippine Law Journal*, pp. 400-401).

¹⁹ With the expansion of the power of judicial review, a myriad controversies questioning the propriety of its exercise, particularly in matters affecting government policies, have been raised. Prof. Carmelo V. Sison in his article "The Supreme Court and the Constitution" (PLJ v. 67 March 1993, p. 311), raised as one of the reasons against judicial review is that it is counter-majoritarian, citing Alexander Bickel, that "when the Supreme Court declares unconstitutional a legislative act or the action of an elected executive it thwarts the will of representatives of the actual people of the here and now; it exercises control not in behalf of the prevailing majority but against it." [A. Beckel, *The Least Dangerous Branch* 25 (1962)].

In Atty. Ricardo Romulo's article entitled "The Supreme Court and Economic Policy: A Plea for Judicial Abstinence," among the reasons raised against judicial review in these matters were:

It has been argued for example, that "the court is intrinsically unsuited to deal with economic issues" and that since "the country is in the process of attracting foreign investment and that the foreign investors must rely on the economic decisions of the executive department, they would have a very low level of confidence on policy decision made by the executive if decisions would be overruled by the Supreme Court."

On the other hand, the Court views the matter not as a simple case of lack of technical competence, but the inevitable exercise of its constitutional mandate. The present Constitution expanded the power of judicial review, to include the determination of "whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government"²⁰ Thus, although a particular branch or agency of government has exclusive discretion to decide on certain matters, the court can still step in and decide if such power was exercised with grave abuse of discretion. To a certain extent, the political question doctrine has been diminished in favor of the greater power to review.

One of the oft-cited illustrations of this dilemma is the case of *Garcia v. Board of Investments (BOI)*.²¹ The Supreme Court initially observed judicial abstinence by candidly claiming that the Court "was not about to delve into the economics and politics of this case" because "it did not possess the necessary technology and scientific expertise to determine whether the transfer of the proposed petrochemical complex from Bataan to Batangas ... will be best for the project and for the country." On reconsideration, however, it reversed the BOI decision in favor of such transfer on the ground of the government's failure to give notice and conduct hearing on the proposed transfer. It is alleged that as a result of the defeat of the project proponent, the principal investor of the plant, USI Fareast Corporation, pulled out its investment and over-all investment to the country declined.²²

Similarly, it is the claim of a scholar that certain Department of Agrarian Reform officials attributed the standstill of the agrarian reform program to the Supreme Court ruling on just compensation of expropriated lands in *Export Processing Zone Authority (EPZA) v. Dulay*.²³ The argument further claims that the decision and other similarly decided cases have blown the price of lands "sky-high." In the view of this scholar, the Supreme Court should have distinguished expropriation of lands under the power of

"1. The Court is intrinsically unsuited to deal with economic issues...

2. Economic and industrial policies are generally the result of compromise, whether within the competing interests in Congress or between Congress and the President...

3. The more a court essay into the areas normally reserved to Congress and the President, the more it will be embroiled in politics and be the object of outside pressure and partisan attack...

²⁰ *Ibid.*, Art. VIII, sec. 1

²¹ 191 SCRA 288 (1990)

²² _____ Lim, "US Trade Policy Toward the New NICs of Southeast Asia," 11 *Mich. J. Int'l L.* 466 (1990).

²³ 149 SCRA 305 (1987)

eminent domain, the assessment of which should be validly based on market price, from the acquisition as an exercise of police power, in support of welfare programs of the state like agrarian reform, for which a different basis for the determination of value should be considered.²⁴ It is his view that the decision effectively rendered the agrarian reform policy nugatory and the comprehensive agrarian reform program moribund.²⁵

The Supreme Court, through Chief Justice Andres Narvasa, has responded to such criticisms by categorically stating that:

“(T)he Court makes no judgment as to the wisdom or advisability of one or another industrial project, or its approval by administrative authority. The court confines itself chiefly to the discharge of its judicial power as it is defined in Article VIII of the Constitution: i.e., the determination of whether or not executive action has been taken without or in excess of jurisdiction or with grave abuse of discretion.

“Nor should such decisions of the Court striking down executive action respecting some industrial or economic undertaking, be hastily condemned as tending to stifle economic growth or discourage investment, particularly government investment believed to be beneficial. I repeat that while the Court will not set itself up as a judge of the wisdom of government economic policy, it will never abdicate its sworn duty as guardian of the Constitution.”²⁶

A respected constitutionalist believes that the recently observed activism of the Supreme Court does not amount to judicial excess. He attributes the losses of the government in these important cases to executive inadequacy, not to judicial obstructionism. He believes that the reasoning of the Court in the petrochemical case and the oil rate hike case are basically sound, and government legal counsel simply did not provide the quality service which the oppositors' counsel provided. Instead of recognizing the poor quality of the legal service the government has been receiving, blame has been unfairly passed to the Court.²⁷

1.2.3. Corruption or Perceived Corruption

Courts have been subject to attacks for decisions, the merits or basis of which the public remains unconvinced. The media has been more pronounced in criticizing the judicial system, particularly for the existence of so-called “hoodlums in robes.” In some cases, the party adversely affected by the decision or the even the public-at-large has the

²⁴ Perfecto V. Fernandez, “Judicial Overreaching in Selected Supreme Court Decisions Affecting Economic Policy”, *Philippine Law Journal*, Volume 67, Third Quarter, March 1993, p. 335.

²⁵ During a seminar in Cavite for DAR Senior Staff and operations officers, as cited by Fernandez, *op. cit.* p. 336.

²⁶ *Individual Liberty and Economic Progress*, Speech delivered on the occasion of the 90th Anniversary Celebrations, Filipino-Chinese Chamber of commerce, December 6, 1994.

²⁷ “An Activist Supreme Court” in *Sounding Board*, Joaquin G. Bernas, S.J., *Sunday Chronicle*, April 11, 1993.

propensity to impute malice on the judge, whose reputation and credibility might have consequently been tarnished even before he is given an opportunity to explain his decision. ✓

The Constitutional requirement for the disposition of a case to include the facts of the case and the law upon which the decision was based affords the parties sufficient information on the merits of claims and defenses. Appeal and special remedies are provided in the Rules of Court for errors in the appreciation of facts and application of the law.

There are procedures established to address the problem of graft and corruption and other irregularities committed by the Bench. Rule 140 of the Rules of Court prescribes the procedure by which a judge may be proceeded against administratively.

Furthermore, criminal charges in ordinary courts may be filed against erring judges for crimes, not in relation to their duties (e.g. rape, murder). They may also be prosecuted in the Sandiganbayan for violation of the Anti-Graft and Corrupt Practices Act, or law against illegally acquired wealth or other crimes committed in relation to the discharge of their office. *3/10/10*

Civil cases may also be filed against judges under Article 32 for acts or omissions which directly or indirectly obstruct, defeat, violate or in any manner impede or impair any constitutional rights and liberties of the person. *x*

The power of administrative supervision over all courts from the Court of Appeals to the lowest court and personnel thereof is vested in the Court Administrator. It was created on December 12, 1975, by virtue of Presidential Decree 842. It primarily addresses grievances against erring judges and justices.

It was reported that during the period from 1980 to 1992, there were 156 judges out of a total of 1,700 judges subjected to administrative penalties by the Court for various offenses, from censure or reprimand to dismissal. The table below shows the administrative cases handled by the Office of the Court Administrator, based on the Supreme Court Annual Reports for the representative years:

TABLE VI. ADMINISTRATIVE ACTION ON COMPLAINTS FILED IN THE OFFICE OF THE COURT ADMINISTRATOR

Action Taken	1989	1990	1991	1992	1993	1994
admonished	16	16	3	8	17	37
censured	12	11	4	4	9	17
suspended	2	0		0		7

dismissed	6	0	1	16	13	30
fined	8	12	2	12	22	55
warned					3	2

Yet many opt to attack the Courts without formally filing charges against alleged erring judges and justices. Media is often too willing to ventilate the unsubstantiated and non-formal complaints against the judiciary. whether the charges are deserved or not, the persistence of this perception of corruption remains a problem.

C.1.4. Prohibitive or Skewed Cost of Litigation

The high cost of litigation causes apprehensions for parties who may have a legally demandable right against other parties, but are prevented from enforcing them due to the costs involved. Expenses often increase because of delay in the litigation of cases.

Under Administrative Circular No. 11-94 dated June 28, 1994, the Supreme Court prescribed new legal fees in view of the expanded jurisdiction of the lower courts under RA 7691, and the fees vary according to the amount demanded or the value of the property under litigation.

The fees in the RTCs are:

1. for civil action involving money claim or property with value :
 - up to P100,000 P 400
 - greater than P100,000 up to P150,00 P 600
 - For every P1,000 in excess of P150,000 P 5
2. for special proceedings, where the value of the property is:
 - more than P100,000
 - but not more than P150,000 P1,300
 - For each P1,000 in excess of P150,000 P 5

The fees in MTCs are:

1. for civil action involving money claim or property with value:
 - not more than to P20,000 P 120
 - more than P20,000 up to P100,000 P 400
 - more than P100,000 P 850
 - up to P200,000
2. for special proceedings, where the value of the property is:
 - not more than P20,000 P 200
 - more than P20,000 up to P100,000 P1,100
 - more than P100,000
 - up to P200,000 P1,550

Aside from filing fees, litigants have to bear the cost of lawyers, fees, and other expenses such as notarial acts, affidavits, acknowledgment, certification, registration, procurement and reproduction of transcripts or court proceedings and transportation cost.

1.2.5. Increasing Complexity of Judicial Controversies

With the growing complexity of modern life and the increasing number of laws that govern ever complicating relationships among individuals, courts are often left without the capacity to cope with such controversies. The complex issues that courts currently face is often a factor that prolongs the disposition of a case; furthermore, having disposed of the case, the court may have to explain itself against irreverent criticisms on the reasonableness of decisions it arrives at. ✓

There are also environmental factors contributing to the increase of cases filed in court: the rapidly expanding population, the depleting natural resources, the increasing urbanization and globalization of the economy, the accelerated pace of development in mass media information and technology and increasing macroeconomic difficulties. ✓

C.2. Host Country Objectives, Strategies and Programmes

C. 2. 1. National Development Objectives in Relation to the Judiciary

The MTPDP recognizes the conditions for the government's success in developing international competitiveness. It states: "government must play a prominent role in several areas. At the minimum, it must safeguard political stability, national security, and peace and order, so that producers and households may carry out their plans with less risk and uncertainty... Similarly, the government must provide an administrative framework that permits private enterprises to operate under a system of impartial and consistent rules. This requires an honest and competent bureaucracy and a judicial system that fairly and swiftly decides contractual disputes." ✓

C.2.2. Executive and Legislative Role in Judicial Reform

The Constitution vests in the Supreme Court the exclusive power to supervise courts. Within the sphere of their powers, both the executive and the legislative departments have nevertheless sought to contribute programs of action to support judicial reform. ✓

On the part of the Executive, it created a Presidential Task Force on Improving the Judicial System. Not much has been reported in media on the accomplishments of the Commission, but it has been credited with pushing for the increased allocation for the

construction of courthouses and related facilities. In 1988, the government earmarked P340 million and in 1989, P300 million for the construction of courtrooms and related facilities.²⁹ There is also a joint task force between the executive and the judiciary to address these concerns.

On the part of the Legislative department, it has been aggressively pushing for reforms in the judiciary through several important bills. Among the more important measures it has passed since 1995 are Republic Act 7902 and Republic Act 7975. Republic Act 7902 expanded the jurisdiction of the Court of Appeals by vesting it with the exclusive appellate jurisdiction over certain quasi-judicial agencies the decisions of which used to be directly appealable to the Supreme Court. Republic Act 7975 on the other hand, divested the Sandiganbayan of jurisdiction over offenses committed by public officials, when none of the principal accused are appointed to positions with at least Salary Grade Level 27. Jurisdiction over such cases were transferred to the Regional Trial Court. It also increased the number of divisions in the Sandiganbayan, creating a division for cases originating in the Visayas and in Mindanao.

C.2.3. The Objectives and Strategies of the Supreme Court and Development Objectives

There is not one master document which can be specifically called the development plan for the Supreme Court. The development program of the Supreme Court can be found in the various circulars, and resolutions it has issued over the past decade. These are discussed in greater detail below.

C.2.3.1 On Docket Congestion and Delay

The judiciary has adopted several reform measures in recent years. Among those which have thus far been identified are:

1. encouraging the settlement of disputes (under Art. 2038 of the Civil Code) and strengthening the Katarungang Pambarangay (originally created under PD 1508, now under the Local Government Code);
2. upgrading the skills of the judges for an effective pre-trial proceedings in order to reduce trial time by admissions and stipulations and obviate the need of presenting formal proof;
3. implementing the continuous trial system, by virtue of Supreme Court Circular No. 4 issued on Sept. 22, 1988 which authorized the establishment of pilot projects in selected courts to determine if trial of one or, at most, three cases at a time within three months, would expedite the disposition of cases; based on the favorable results of the system in the speedy disposition of cases, the Supreme Court, through Administrative Order No. 135-C issued on August 11, 1989,

²⁹ *Ibid.*

designated 1,377 more trial courts to implement the mandatory continuous trial calendar.

4. conducting continuous judicial education, including the orientation seminar and immersion for newly appointed judges and a continuing judicial career development program which is a one week seminar workshop for judges to upgrade their knowledge and skills in the adjudication of cases as well as court management.
5. instituting a monitoring and feedback mechanism on judicial performance, with the creation by the Judicial Planning and Implementation Office of regional monitoring systems to provide the Supreme Court with information on the performance of judges based on specific criteria;
6. continuing revision and reform in court rules and procedure, with the creation of a Committee on the Revision of Rules of Court, revisions on the Rules of Evidence and Criminal Procedure. In addition, the Supreme Court issued Court Circular No. 13 dated July 1, 1987 which contains "Guidelines on the Administration of Justice" and recommends measures for strict observance to prevent and minimize delay in the administration of justice.

In addition to the above, the Supreme Court issued several Administrative Circulars and Resolutions on procedural reforms, among which are :

- a. Administrative Circular No. 1 (January 28, 1988), the first circular to implement sec. 12 Art. XVIII of the 1987 Constitution;
- b. Resolution of April 17, 1987 requiring petitions for review to be strictly scrutinized;
- c. Circular No. 2-90 (March 9, 1990) providing guidelines to be observed in the appeals to the Court of Appeals and the Supreme Court;
- d. Circular No. 1-88 (Effective January 1, 1989 revised on July 1, 1991) which supplements circular No. 1 of January 28, 1988 on the expeditious disposition of cases pending in the Supreme Court;
- e. Circular No. 1-91 (February 27, 1991) prescribing the rules governing appeals to the Court of Appeals from the final decision of the Court of Tax Appeals and Quasi-Judicial Agencies;
- f. Circular No. 19-91 (dated August 13, 1991) prescribing strict compliance with Sec. 3 and 5 in relation to Sec. 10 (proof of service) of Rule 13 of the Rules of Court on service of petitions or motions for extension;
- g. Circular No. 28-91 (September 4, 1991) providing additional requirements for petitions filed with the Supreme Court and the Court of Appeals to prevent forum shopping on multiple-filing of petition and complaints;
- h. Revised Circular No. 28-91 (effective April 1, 1994) clarifying Circular No. 28-91 applicable to petitions filed in the Supreme Court and the Court of Appeals;
- i. Administrative Circular No. 04-94 making the anti-forum shopping rule applicable to all courts and agencies other than the Supreme Court and the Court of Appeals;

The Supreme Court also created offices and committees to ensure efficiency in disposition of cases, among which are:

- a. A Management Information System Office which was created to provide technical support on formulating appropriate software and hardware systems, among which is the newly installed Case Administration System (CAS) which became operational in February 1995. The CAS provides information on the status of a particular case pending with the Supreme Court. The Supreme Court also started its modernization program by providing and distributing initially to selected RTCs a computerized collation of statutes as well as jurisprudence, which they plan to eventually provide all courts;
- b. A Judiciary Planning Development Implementation Office in 1989, which monitors, among others, caseload, records, and management systems of courts;
- c. A Trial Court Manual Committee, under Administrative Order No. 10-A-90, tasked to formulate general and uniform guidelines for judges to assist them in functioning both as adjudicator and as court managers; and,
- d. The Case Digest Committee, under the continuing legal education program, tasked to make synopses and summaries of Supreme Court decisions and to distribute them to trial judges to keep them informed of developments in jurisprudence.

The judiciary also requested assistance from Congress in the following matters:

- a. The allocation of funds for newly created courts and increasing incentives to attract nominees to the judiciary;
- b. An increase in appropriation from just slightly 1% of the national budget to 2.5% of the annual appropriation;
- c. Legislation to encourage alternative dispute resolution;
- d. Relief from the Supreme Court, of jurisdiction over appealed cases from NLRC, CSC, CBAA;
- e. Increase in the number of divisions of the Court of Appeals, the MTCs and MeTCs;
- f. The establishment of a National Commission on Criminal Justice to review all penal statutes.

The Executive Department, through the agencies concerned, has been requested by the judiciary to:

- a. effectively carry out summons, warrants of arrest and seizures, execution of judgment; furnish necessary information requiring investigation facilities;
- b. increase the number of prosecutors, probation officers and other support staff,
- c. expand the Public Attorney's Office and provide adequate legal assistance;
- d. construct more court houses in the various judicial regions.

C.2.3.2. Accessibility to Courts

Regarding the problem of accessibility of courts, Rule 3, Section 22 of the Rules of Court contains specific provisions concerning pauper litigants, specifically exempting them from filing fees and appeal bond. Such exemption however, is not sufficient considering other factors which figure as cost in the litigation of a case.

C.2.3 On Graft and Corruption

The Supreme Court has been addressing the problem of graft and corruption in the judiciary. It created an Ad Hoc Committee on January 25, 1993 which was charged with the task of ascertaining the truth of reports of graft and corruption, and to gather evidence thereon. It was the Supreme Court's response to criticisms of its alleged inaction amidst charges of widespread anomalies and graft and corruption in the judiciary as reported in the media.

Among the more famous cases investigated by the committee are the alleged "Hoodlums in Robes" and the "Magnificent Seven" in the Makati Regional Trial Courts who protect drug traffickers and other crime syndicates. The allegations originated from Major Laciste's confidential report to the PACC which leaked to the media.

As a result of the investigation, the committee recommended further investigation on complaints against some judges, but most complaints were dismissed due to flimsy or baseless charges. It reported difficulty in investigating the complaints not only because of hesitation by parties involved to disclose irregularities or incidents of graft and corruption but also due to the admission that such reports are in fact based on hearsay.

Among the measures suggested by the Committee were:

- a. to conduct a study on the possibility of granting immunity or protection to witnesses who come forward with their perceived anomalies/irregularities in the Judiciary, assuming their contentions are substantiated;
- b. to conduct a study on the feasibility of a constitutionally created independent office of the Judicial Ombudsman;
- c. in the absence of (b), to create a continuing body to which public may air their grievances against judges and justices.

C. 3. Institutional Framework and Capacity Constraints

C.3.1. The Judiciary as an Institution³⁰

The Philippine Court System is a hierarchy of *regular courts* with different levels and jurisdiction. At the highest level is the **Supreme Court**, the highest court of the land exercising both original and appellate powers. It is known as the court of last resort as there is no appeal available after its final order.

At the next lower level is the **Court of Appeals**, which may review questions of facts or mixed questions of facts and law and whose jurisdiction is provided for by law; the **Regional Trial Court** follows as a court which has original jurisdiction over certain cases specified by law and general jurisdiction over cases not falling under any other courts; and finally, the **Metropolitan Trial Court or the Municipal Trial Court** which has original jurisdiction over cases provided by law.

Aside from the regular courts, *special courts* have also been created by law. These include: the **Court of Tax Appeals**,³¹ which is a collegiate body of three justices exercising power to review decisions of the Commissioner of Customs and the Commissioner of Internal Revenue and whose decisions are appealable to the Court of Appeals; and, the **Sandiganbayan**³² which is a collegiate court with power to try and decide criminal cases involving violations of RA 3019 or the Anti-Graft and Corrupt Practices Act, RA 1379 or the Law Providing for Forfeiture of Illegally Acquired Property, or certain crimes under the Revised Penal Code committed by specific officials and employees. The Sandiganbayan also exercises jurisdiction over offenses or felonies in relation to their offices, as well as civil and criminal cases filed pursuant to or in connection with Executive Orders 1, 2, 14 and 14-A, series of 19__ (sequestration cases involving cronies and close associates of former President Marcos).

There are also *quasi-courts* or administrative agencies which by virtue of the Constitution or statute are vested the quasi-judicial function of hearing and deciding controversies. These include: Constitutional Commissions such as the Civil Service Commission (CSC), the Commission on Elections (COMELEC) and the Commission on Audit (COA), whose decisions are reviewable directly on *certiorari* by the Supreme Court; and other agencies whose decisions are taken to the Court of Appeals on petition for review, such as the National Labor Relations Commission, Securities and Exchange Commission, Land Registration Authority, Social Security System, Office of the President, Civil Aeronautics Board, Central Board of Assessment Appeals, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulation Board, National Telecommunications Commission, Department of

³⁰ The description of the judiciary is taken principally from Chief Justice Andres Narvasa's "Handbook on the Courts and the Criminal Justice System".

³¹ Created on June 16, 1954 by virtue of R.A. 1125

³² Created under P.D. No. 1606, as amended by R.A. 7975 which took effect on May 6, 1995

Agrarian Reform, Government Service and Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investment, and the Construction Industry and Arbitration Commission.³³

As of December 1995, there were 950 Regional Trial Courts (RTCs) stationed in the thirteen judicial regions, 82 Metropolitan Trial Courts (MeTCs) stationed in Metro Manila, 124 Municipal Trial Courts in Cities (MTCCs), 428 Municipal Trial Courts (MTCs), 480 Municipal Circuit Trial Courts (MCTCs) or a total of 2064 trial courts.³⁴

As of the same date, there were a total of 1,704 judges and justices throughout the Philippines, with the following breakdown :

TABLE VII. POPULATION OF JUDGES AND JUSTICES

Court Classification	Positions Available	Occupied	Vacant
Supreme Court (SC)	15	14	1
Court of Appeals (CA)	51	49	2
Sandiganbayan	9	8	1
Court of Tax Appeals (CTAs)	3	3	0
Regional Trial Courts (RTCs)	950	775	175
Metropolitan Trial Courts/Municipal Trial Courts in Cities/Municipal Trial Courts and Municipal Circuit Trial Courts (MeTCs/MTCCs/MTCs/MCTCs)	1,124	836	288
Shari'a District Courts/Shari'a Circuit Courts	55	19	36
TOTAL	2,207	1,704	503

Based on the most recent data on the inflow and outflow of cases, there were 463,767 new cases filed and a total of 304,735 decided cases for the year 1994. About 525,101 cases were pending at the end of the same year.

TABLE VIII. INFLOW-OUTFLOW OF CASES FOR 1994

Court	Pending Cases as of 12/31/93	Newly- filed Cases 1994	Total Caseload	Decided Cases	Pending Cases as of 12/31/94

³³ Revised Administrative Circular No. 1-95

³⁴ Data gathered from the Statistics Office under the Office of the Court Administrator, Supreme Court

CA	14,024	9,502	23,526	8,432	15,094
Sandigan- bayan	3,683	1,736	5,419	1,931	3,488
CTA	541	134	675	190	485
RTC	230,305	152,505	382,810	132,554	250,256
MeTC/ MTCC/ MTC/ MCTC	117,516	299,890	417,406	161,628	255,778
Total	366,069	463,767	829,836	304,735	525,101

The figures reveal that in 1994, every justice in the Court of Appeals was able to decide at least 172 cases a year or 36% of its total 480 caseload. In the Sandiganbayan, 241 cases were decided by each judge per year or 35% of its 677 caseload. In the Court of Tax Appeals, each judge was able to dispose 63 cases per year or 28% of its 225 average caseload. An RTC judge was able to decide on the average, 171 cases per year, or 35% of its 493 average caseload, while every MeTC/MTC/MTCC/MCTC judge was able to decide an average of 193 cases per year or 39% of its 499 caseload. X

Out of the total caseload for the year 1994, 55% were newly filed cases and 45% were cases pending from the previous year. Only 36.7% of the total caseload was decided and 23.3% were pending at the end of the same year. X

C.3.2. The Capacity of the Judiciary

Capacity can be measured in several ways. The first way of measuring capacity is by evaluating the number of judges necessary to resolve a certain volume of caseload, within a target period. Although there has been no established mechanism to measure the capacity gap in this regard, the general complaint made by judges is that they are already suffering from the "burn-out" syndrome due to excessively heavy caseloads which they have to dispose of within a narrow period of time. From a cursory observation alone, and from public complaints made, it is quite apparent that the number of judges is not sufficient to handle the volume of case filings. ✓

The second way of measuring capacity is by determining the skills that are the general norm in the judiciary at the different hierarchy levels. To obtain empirical data on this, a judges' proficiency profile must be drawn for every judicial level; there is no existing data on the matter. It can be safely said, however, that in the absence of any other data, all judges satisfy, by legal precondition, only the following characterization:

all judges have taken the bar examination; all judges who graduated after 1964 have gone through eight semesters of training in law schools; all judges in the RTC and MTC levels are at least 35 years old, all judges in the CA and SC levels are at least 40 years old; all judges who were appointed after 19__ have gone through the screening conducted by the Judicial and Bar Council.

All newly appointed judges are required to undergo the Continuing Judicial Education Program. The Continuing Judicial Education Program was administered from __ to __ by the Institute of Judicial Administration (IJA) of the University of the Philippines College of Law. Starting in 1996, this program is being administered by the Philippine Judicial Academy (Philja), with the technical and administrative support of the IJA. The Philja was established through Supreme Court Resolution No. __ issued on _____.

A review of the law curriculum, however, and the Continuing Judicial Education Program, reveals that except for a program conducted jointly with the World Intellectual Property Organization in 1995, there is no other course which will expose the judges to the dynamics of economic theories and programs nor even the most important economic laws which have been recently legislated.

Considering the enormous burdens imposed on the judiciary by the increasing caseload and the complexity of the issues they face, there is absolutely no consistent or reliable mechanism for the judges themselves to conduct an internal review of judicial processes and systems. The various committees created by the Supreme Court perform management systems review, but only in very specific problems, and not as holistic as the needs of the system requires. The judiciary must be aided in this manner by conducting for them, a research program which will at the same time serve as a management systems review.

The Supreme Court at the moment cannot exercise its leadership role in legal education simply because the Justices have too much work on their hands. Neither do they have the time nor inclination to review the admission requirements to the bar, considering other pressing matters they have to address. National conferences and workshops can catalyze the issues of legal education in a way no other method can. However, an agency must organize and manage these conferences and workshops for the Supreme Court.

The training and education of judges, will upgrade the capacity of incumbent judges. A revision of the law curriculum will mold future crops of judges. The long-term benefits of these twin objectives, would be profound and positive.

C. 4. Role Of External Cooperation

Some of the projects identified as receiving support from international funding agencies, for reforms in the legal system are on the :

- (1) Procedures on privatization, funded by ADB and executed by the Metropolitan Waterworks and Sewerage System. The project, which is under preparation, will feature a study on the legal and administrative procedures required to transfer the management of one of the operating sectors of the MWSS to the private sector under a management contract;
- (2) Encouragement of commercial alternative dispute resolution, funded by The Asia Foundation and USAID to be executed by CONCORD Foundation, which aims to establish a credible, swift and commercially viable alternative to the court system;
- (3) Resolution of agrarian conflicts in the Philippines, funded by the Asia Foundation and USAID and to be executed by the Department of Agrarian Reform, is designed to develop and promote the use of mediation in the resolution of agrarian disputes;
- (4) Provision of legal services for the affirmation of the Paitan Mangyan Reservation, funded by the Sisters of the Holy Spirit, Paitan Mangyan Mission aims to provide legal assistance to the SANAMA, a people's organization of the Alangan Mangyan to recover the possession of and quiet the title to their ancestral lands which has been occupied by non-Mangyans, and to achieve the cancellation of titles illegally issued to the Mangyans;
- (5) Program to improve access to justice through community-based legal aid, funded by USAID and executed by the Free Legal Assistance Volunteers Association which provides legal education and paralegal training to people at the grassroots level in selected depressed communities in Cebu City;
- (6) Democratic development projects, funded by USAID and executed by the Asia Foundation, which provides institutional and program support to community-based legal service NGOs for improved delivery of legal aid to the poor and to media organizations for monitoring the performance of the judges and the court system;
- (7) Encouragement of local initiatives in sustainable development, funded by USAID and executed by The Asia Foundation, which seeks to improve the policies on local management of resources by local governments in partnership with NGOs; and
- (8) Regulatory issues for water supply and sewerage sector privatization, funded by USAID and executed by the Coordinating Council of the Philippine Assistance Program which conducted a study on the strengthening of regulatory framework in the water supply and sewerage sector in order to encourage private sector participation

What sets this project apart is the fact that the need has been identified by the Supreme Court itself, and to be applied to the nerve center of the legal system itself - the

*Should be
initiated
earlier
to put
proper
context*

judiciary. Since this project involves a large degree of self-examination on the part of the judiciary, the results are expected to be deeper and more permanent.

The implementation of the project is highly significant for the UNDP, as it is its first project involving the judiciary. The agreement to proceed with the project itself is significant, and if successful, will be a positive example that democracy and development go hand-in-hand.

D. PROGRAMME SUPPORT ELEMENTS

1. DEVELOPMENT OBJECTIVES

The over-all objective of the project is to enhance the administration of justice and contribute to the establishment of an atmosphere that encourages economic development. The first component aims to equip judges and justices with economic tools which may be used in the adjudication of cases. The second component aims to determine the costs incurred in court litigation in order that measures for swifter, fairer and more predictable resolution of cases may be formulated and recommended. The third component aims to generate concrete suggestions which the Supreme Court may adopt in the exercise of its power to regulate admission to the bar, and which law schools may incorporate in their curricula.

2. IMMEDIATE OBJECTIVES, OUTPUT AND ACTIVITIES

Immediate Objectives

Component I. Training and Education of Judges and Justices

Immediate Objective #1 This component aims to strengthen the institutional capacity and competence of the Judiciary by equipping judges and justices with economic tools in adjudication to improve their capability of handling the increasing volume and complexity of cases.

This objective shall be achieved through local and foreign trainings of judges and justices, and the conduct of discussion series on important economic issues.

Success criteria:

Output #1.1 A Training Programme and a Training Manual with four identified modules namely : (a) the economics of a case; (b) the judiciary and economic development; (c) major laws affecting business and (d) legal analysis and economic tools which may be used and replicated in succeeding education and training programmes of the Judiciary.

Activity 1.1.1 Conduct a pre-assessment of the training needs of the judges in the area of law and economics.

Activity 1.1.2 Identify and hire consultants to assist in designing the training programme and to prepare the training manual.

Activity 1.1.3 Design the training program.

Activity 1.1.4 Prepare the materials and hire resource persons.

Activity 1.1.5 Identify the participants and procure the equipment.

Activity 1.1.6 Conduct the training program

Activity 1.1.7 Conduct a post-training assessment on the last day to evaluate the effectiveness of the training program and usefulness of the manual and to modify/improve the conduct of the program.

Activity 1.1.8 Draft a revised training programme and manual which would incorporate the comments and suggestions of the participants.

Output #1.2 Study Tour of Judges.

Activity 1.2.1 Identify foreign institutions capable of providing specific and specialized training programs/seminars for judges.

Activity 1.2.2 Design the training program/seminars.

Activity 1.2.3 Identify and select participants.

Activity 1.2.4 Conduct the study tour.

Activity 1.2.5 Document the results of the program and assess its effectiveness.

Output #1.3 Established venue or mechanisms for exchange of information among former government officials (i.e. administrative bodies with quasi-judicial functions) and the Judiciary through a Policy Forum/Discussion Series.

Activity 1.3.1 Consult with justices and hired consultants to identify the parameters of the discussion series, the topics to be tackled, the participants as well as the discussants.

Activity 1.3.2 Prepare the appropriate materials and logistics.

Activity 1.3.3 Conduct the discussion series.

Activity 1.3.4 Document/publish the proceedings of the discussion series.

Activity 1.3.5 Disseminate the results of the discussion series specifically to concerned agencies for appropriate action (i.e. formulation of guidelines for administrative bodies, bills for legislation).

Component II. Research on the Costs of Justice

Immediate Objective #2 The research component aims to generate concrete suggestions for a swifter, fairer and more predictable judicial process. In order to achieve this goal, the research will endeavor to identify all the costs that are involved in the litigation and adjudication of cases from the pre-trial to the post-trial stage; the institutions/entities involved and the alternative dispute settlement systems.

Success criteria

Output #2.1 A policy study on the cost of litigation.

Activity 2.1.1 Identify the proposed contents/objectives of the study and draw up the terms of reference.

Activity 2.1.2 Identify and hire a team of international and local experts to conduct the study.

Activity 2.1.3 Formulate the framework of the study, methodology, review of related literature.

Activity 2.1.4 Hire researchers to gather data

Activity 2.1.5 Formulate survey questionnaires and identify the respondents.

Activity 2.1.6 Gather data.

Activity 2.1.7 Encode and analyze data, document research draft..

Activity 2.1.8 Finalize the results

Activity 2.1.9 Present the results in a National Conference to be attended by members of the judiciary, government lawyers, private practitioners including NGO lawyers, members of the academe.

Output #2.2 Draft SC circulars which aim to make the courts more accessible to the wider public (e.g. cost-cutting measures) to be submitted to the Supreme Court for consideration.

Activity 2.2.1 Based on the research findings of output 2.1, provide recommendations towards minimizing the cost of litigation and adjudication of cases.

Activity 2.2.2 Translate the suggestions and recommendations to draft circulars

Activity 2.2.3 Present draft circulars to the Supreme Court for possible adoption.

Component III. Modernizing Legal Education

Immediate Objective #3 This component aims to generate concrete suggestions which the Supreme Court may adopt in the exercise of its power to regulate admission to the bar and which law schools may incorporate in their curricula and which are necessary to modernize legal education.

Success criteria:

Output #3.1 A revised curriculum that will incorporate a new course on law and economics and other courses/methods and approaches necessary to modernize legal education.

Activity 3.1.1 Review/assess the existing curricula from selected law schools.

Activity 3.1.2 Conduct national conferences and regional consultations to be participated in by the deans of law schools, law professors, government lawyers, private practitioners (i.e. NGO lawyers) and law school associations on the needs of modern legal education.

Activity 3.1.3 Invite foreign academicians to lecture on law and economics.

Activity 3.1.4 Create a committee which will design the proposed curriculum.

Activity 3.1.5 Design the proposed curriculum and establish a directory of law deans and academicians who may facilitate the introduction and teaching of law and economics as a course of study.

Activity 3.1.6 Based on the results of the conference/consultation, draft proposed revisions of the Rules of Court.

Activity 3.1.7 Present the proposed curriculum/revisions of the Rules of Court to the Supreme Court for approval.

Output #3.2 A maiden issue of scholarly papers or articles in a Journal of Law and Economics as a tool for exchange of ideas and information.

Activity 3.2.1 Solicit articles from participants of the national conferences and regional consultations.

Activity 3.2.2 Hire writers, editors, lay-out artists, and contract with printing companies.

Note-to-File
Comments on the Initial draft project document on Judicial Reform

DRR Comments

1. The document has a very weak linkages with the Governance theme. While we had to engage the Supreme Court in the project, I thought that the local court system should be paid more attention in view of the number of cases to be handled at the local level.
2. Biased judgement by the court may stem from not only because of the judges' knowledge of the economy, but because of their salary. Their corruption is very much related to "civil service reform."
3. This type of project is very difficult to establish success criteria. If you are asked, how do we know this project is contributing to judicial reform process.
4. The format is too top heavy. Some of the information should be put in annexes.
5. The people engaged in this filed are conservative to break an ice. We should consider a phased approach: preparatory assistance then fully fledged project.
6. Decentralization - Judicial Reform - Economic Reform: How do we logically link them.

RR's comments based on discussion with EB

1. Considering the problem of the judiciary, is the proposed intervention the most critical one in improving access to justice especially the poor? Is it consistent with the SHD framework of UNDP. How do we ensure its consistency.?
2. By training judges on law and economic concepts, are we not in effect asking or expecting the judiciary to "get into" executive and legislative areas of concern? The function of the judiciary is to check and balance the actions of the other co-equal branches of the government. It is to render decision and interpret the law impartially regardless of whatever perspective they have. Training them on law and economics does not guarantee that they will render decisions that are consistent with the government's program and not favorable to some interest. Perhaps, this component should form a smaller part of the project.
3. If the problem is access to justice, shouldn't the project intervention focus at enhancing access at the grassroots level, for instance, improving the judicial system at the local level?

Activity 3.2.3 Publish and distribute the journals to the judiciary, law school, law associations and legal practitioners.

E. RISKS AND ASSUMPTIONS

The only risk identified in the implementation of the project is the possible delay of the project implementation because of the requirement of prior consultation every time there is a decision to be made, or due to the tardy procurement of facilities or hiring of personnel. In order to avoid the delay, the implementation arrangement has been designed in such a manner as to allow the Project Director to decide on the daily concerns of project implementation.

The prior approval of the Supreme Court will be required only on matters which will substantially alter the implementation of the project, which will involve major policy decisions, or which will involve matters usually decided by the Supreme Court. The Supreme Court will make its decisions through the Chief Justice or his representative.

Furthermore, the Project Director and all project officers and personnel will report in the same office, which will facilitate coordination, monitoring, and consultation on the implementation of the project.

F. IMPLEMENTATION ARRANGEMENT

Within the framework of the UNDP Development Programme, the project has been designed in a manner as to ensure its effective and prompt implementation.

UNDP will provide both financial and technical assistance in the implementation of the project, while the Supreme Court will provide both material and human resources.

The U.P. College of Law will be the implementing agency for all the three components, namely: (a) education and training, (b) research on the costs of justice and (c) continuing legal education.

G. MANAGEMENT AND COORDINATION ARRANGEMENT

There will be a Project Management Office, to be headed by the Program Director, who will report to the Supreme Court and the UNDP on the status of the implementation of the project. The Program Director shall be assisted by a Deputy Program Director, project officers and an administrative staff throughout the duration of

the project. The Program Director shall report directly to the Chief Justice of the Supreme Court or his representative

The Program Director shall oversee and coordinate the three components of the project which will be implemented simultaneously. For every component, there will be a Special Project Officer who will regularly consult and coordinate with the Project Director on the direction and pace of the component.

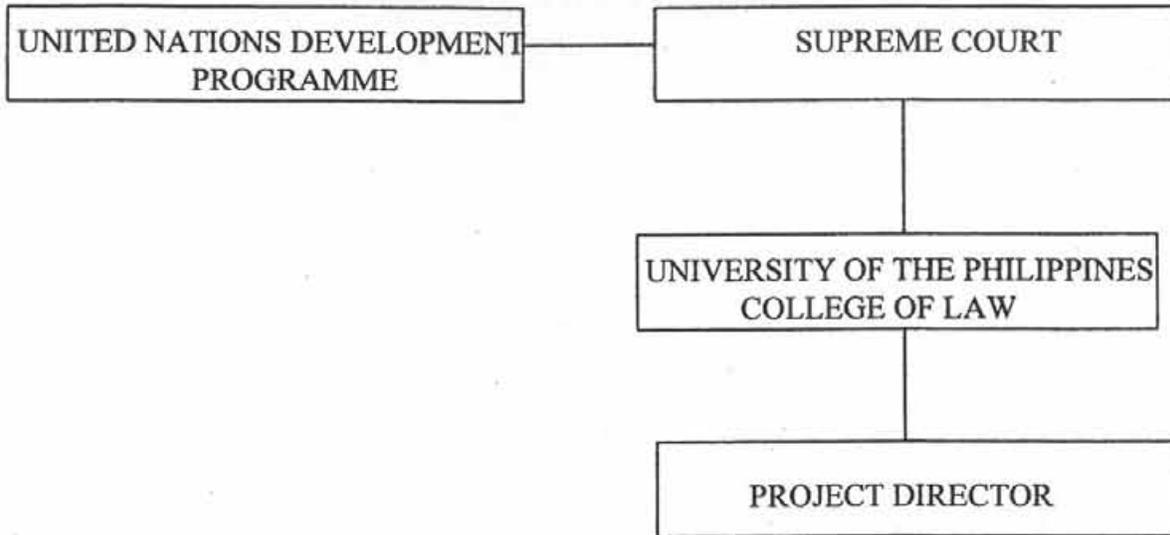
A Project Management Team will be responsible for the financial management and monitoring, formulating terms of reference, hiring and supervising of consultants/subcontractors, and ensuring timely and efficient implementation of activities within their respective phases.

H. MONITORING AND EVALUATION

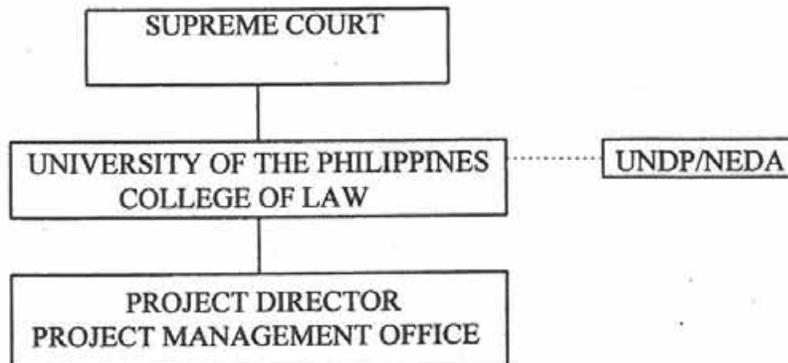
The three components of the project will be monitored annually. The Program Director will submit an annual project report to the UNDP, the Supreme Court and the College of Law. A terminal report will be submitted at the end of the project period.

A midterm evaluation of the project may be conducted, when it is deemed necessary. The organization, terms of reference and timing will be evaluated in close consultation with the parties (UNDP and SC).

IMPLEMENTATION ARRANGEMENT



MANAGEMENT ARRANGEMENT



<p>Component I. Training and Education</p> <p>1. local training <i>frequency:</i> bi-annual training for three years <i>venue:</i> Tagaytay, Philja Training Center and other regional canters <i>duration:</i> two weeks <i>content:</i> four modules, namely:</p> <ol style="list-style-type: none"> economics of a case the judiciary and economic development major laws affecting business legal analysis and economic tools <p><i>participants:</i> 30 judges</p>	<p>To strengthen the institutional capacity and competence of the Judiciary by equipping judges and justices with economic tools in adjudication to render them capable of handling the increasing volume and complexity of cases</p>	<p>1.1 A training programme and a training module with four identified modules</p>	<p>Activity 1.1.1 Conduct a pre-assessment of the training needs of the judges in the area of law and economics.</p> <p>Activity 1.1.2 Identify and hire consultants to assist in designing the training programme and to prepare the training manual.</p> <p>Activity 1.1.3 Design the training program.</p> <p>Activity 1.1.4 Prepare the materials and hire resource persons.</p> <p>Activity 1.1.5 Identify the participants and procure the equipment.</p> <p>Activity 1.1.6 Conduct the training program</p> <p>Activity 1.1.7 Conduct a post-training assessment on the last day to evaluate the effectiveness of the training program and usefulness of the manual and to modify/improve the conduct of the program.</p> <p>Activity 1.1.8 Draft a revised</p>	<p>-consultants (local and foreign) -lecturers -researchers -encoders -administrative staff -conference staff (includes fees, travel fare, billeting) -for foreign training, air fare, accommodation, per diem of participant judges and expenses for training (training fees, foreign books, etc.) equipment: -computers (3 desktop computers and 1 notebook, preferably one with CD rom) -laser printers (2) -photocopier -binding</p>
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<p>2. foreign training <i>frequency:</i> annual training for three years <i>venue:</i> Washington, New York <i>duration:</i> two weeks <i>contents:</i> exposure to trends in resolving disputes in the fields of environmental law, antitrust law, intellectual property rights, human rights and economic programs, international trade and investment and international financial transaction. <i>participants:</i> 14 judges and justices and the Project Director/Deputy/Officer</p> <p>3. Discussion series <i>frequency:</i> every two months for three years <i>venue:</i> Supreme Court <i>duration:</i> one-half day discussion <i>contents:</i> current socio-economic trends; envisioned to involve retired government officials (e.g. executive, legislative and administrative) to discuss views or retrospection of issues related to the dynamics of economic reform <i>participants:</i> SC justices, CA justices, RTC judges</p>	<p>1.2 Study Tour of Judges</p> <p>1.3. established mechanism for coordination and exchange of information between the judiciary and other government agencies</p>	<p>training programme and manual which would incorporate the comments and suggestions of the participants.</p> <p>Activity 1.2.1 Identify foreign institutions capable of providing specific and specialized training programs/seminars for judges.</p> <p>Activity 1.2.2 Design the training program/seminars.</p> <p>Activity 1.2.3 Identify and select participants.</p> <p>Activity 1.2.4 Conduct the study tour.</p> <p>Activity 1.2.5 Document the results of the program and assess its effectiveness.</p> <p>Activity 1.3.1 Consult with justices and hired consultants to identify the parameters of the discussion series, the topics to be tackled, the participants as well as the discussants.</p> <p>Activity 1.3.2 Prepare the appropriate materials and logistics.</p>	<p>machines -portable computer projector(magnabyte) -audio equipment -video equipment (v-8, editing machine) -telephone -fax machine -a set of Philjuris (CD) -a set of lex libris and philjuris (CD) -Vehicle -office supplies</p>
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<p>Component II. Research on the Costs of Justice</p> <p>The study is envisioned to be undertaken within three years and will entail survey of randomly sampled courts and cases.</p> <p><i>Duration:</i> 3 years</p> <p>Year 1- 1st 4 months- hiring of consultants, research team members;</p> <p>next 6 months - formulation of research design, methodology, framework, review of related literature;</p> <p>on the 11th month until Year II - data gathering, encoding and analysis</p> <p>Year III-</p> <p>(1) finalization of research report, (2) presentation to the Supreme Court and other members of the Judiciary; (3) holding of national conference to report research findings, (4) drafting SC circulars, as needed, drafting legislative bills and submission thereof for proper action; (5) written publication of results</p>	<p>2. To generate concrete suggestions for swifter, fairer and more predictable judicial processes.</p> <p>To identify all the costs that figure in the litigation and adjudication of cases from the pre-trial stage to post trial stage; all the factors and sources of costs, the entities which bear or incur the costs, and alternative ways to minimize costs.</p>	<p>2.1 Policy Study on the Cost of Litigation</p>	<p>Activity 2.1.1 Identify the proposed contents/objectives of the study and draw up the terms of reference.</p> <p>Activity 2.1.2 Identify and hire a team of international and local experts to conduct the study.</p> <p>Activity 2.1.3 Formulate the framework of the study, methodology, review of related literature.</p> <p>Activity 2.1.4 Hire researchers to gather data</p> <p>Activity 2.1.5 Formulate survey questionnaires and identify the respondents.</p> <p>Activity 2.1.6 Gather data.</p> <p>Activity 2.1.7 Encode and analyze data, document research draft..</p> <p>Activity 2.1.8 Finalize of the results</p> <p>Activity 2.1.9 Present the results in a National Conference to be attended by</p>	<p>-consultants -research team members (retired judge, law professors, economist, statistician, researchers) -encoders</p> <p>equipment: -tape recorder -video camera -computer -printer -CD rom -a set of lex libris and phil.juris -Software</p>
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		<p>2.2 Draft SC circulars</p>	<p>members of the judiciary, government lawyers, private practitioners including NGO lawyers, members of the academe.</p> <p>Activity 2.2.1 Based on the research findings of output 2.1, provide recommendations towards minimizing the cost of litigation and adjudication of cases.</p> <p>Activity 2.2.2 Translate the suggestions and recommendations to draft circulars</p> <p>Activity 2.2.3 Present draft circulars to the Supreme Court for possible adoption.</p>
		<p>2.3 Draft bills</p>	<p>Activity 2.3.1 Cross-referenced with activities under Output 2.2</p> <p>Activity 2.3.2 Based on research findings, draft bills</p> <p>Activity 2.3.3 Submit bills for legislative consideration.</p>

<p>Component III. Modernizing Legal Education</p> <p>1. Review of the Law Curriculum</p> <p>- will include the holding of conferences and workshops to be participated in by deans of law schools and legal academicians for the purpose of sensitizing the need for modernizing the law curricula.</p> <p><i>duration:</i> 3 years</p> <p>national conference - once in the first year</p> <p>regional consultation (Luzon, Visayas, Mindanao and NCR) - once every three months</p> <p>national conference - once in the third year</p> <p>2. Publication of a Journal on Law and Economics</p> <p><i>frequency:</i> journals- bi-annual publication, starting on the second half of the first year</p> <p>publication of conference/consultation proceedings - at the end of every conference</p>	<p>3. To generate concrete suggestion which the Supreme Court may adopt in the exercise of its power to regulate admission to the bar and which law schools may incorporate in their curricula</p>	<p>3.1. revised curriculum</p>	<p>Activity 3.1.1 Review/assess the existing curricula from selected law schools.</p> <p>Activity 3.1.2 Conduct national conferences and regional consultations to be participated in by the deans of law schools, law professors, government lawyers, private practitioners (i.e. NGO lawyers) and law school associations on the needs of modern legal education.</p> <p>Activity 3.1.3 Invite foreign academicians to lecture on law and economics.</p> <p>Activity 3.1.4 Create a committee which will design the proposed curriculum.</p> <p>Activity 3.1.5 Design the</p>	<p>-speakers (local and foreign)</p> <p>-researchers</p> <p>-statisticians</p> <p>-administrative staff</p> <p>-reports of sectors with significant connection to the issue such as Chambers of Commerce, lawyers, -writers -editors -artists -desktop publication equipment</p>
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		<p>3.2 A maiden issue of scholarly papers and articles in a Journal of Law and Economics</p>	<p>proposed curriculum and establish a directory of law deans and academicians who may facilitate the introduction and teaching of law and economics as a course of study.</p> <p>Activity 3.1.6 Based on the results of the conference/consultation, draft proposed revisions of the Rules of Court.</p> <p>Activity 3.1.7 Present the proposed curriculum/revisions of the Rules of Court to the Supreme Court for approval.</p> <p>3.2.1 Activity 3.2.1 Solicit articles from participants of the national conferences and regional consultations.</p> <p>Activity 3.2.2 Hire writers, editors, lay-out artists, and contract with printing companies.</p>
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Courts and Costs: Utilizing Economic Tools in the Administration of Justice

A Proposed
Supreme Court - UNDP Project

Discussion Points (23/8/96)

- Part I Status Report
- Part II Draft Project Document
- Part III Project Design
- Part IV Requested Action

Part I Status Report

- Meetings after the UNDP call on the Chief Justice
- The proposed project document will be submitted to the UNDP by 15 September 1996
- The target date of implementation is 1 January 1997
- The principal purpose of this meeting is to ensure that the documents conform with the ongoing programs of the Supreme Court and ensure its greater acceptability

Part II. Draft Project Document

- Description of the Economy and the Judiciary's Role
 - ❖ Governance as the issue
 - ❖ The institutional context of the Judiciary: Offices, officers, burdens and powers
 - ❖ Major Problems Identified:
 - Docket Congestion and Delay
 - Judicial Review and Economic Reform
 - Financial Costs of Litigation
 - Perception of Corruption
 - Increasing contextual complexities

Project Document (continued)

- Host Country Strategy:
 - ❖ Chief Justice Andres Narvasa identified economics as a valuable intellectual tool:

“The work of the judge today has become quite complex: apart from familiarity with statutes, rules and jurisprudence, it is required that they have a grasp as well of those economic and other non-legal developments and issues which in some substantial manner affect the lives and activities of a significant number of people. Lectures xxxx involving the intricacies of economic principles and precepts, are therefore invaluable to judges whose court decisions may not improbably produce some impact on the social and economic life of the nation.”

Project Document (continued)

– Chief Justice Narvosa (continued):

✦ Quoting Justice Oliver Wendell Holmes:

“It is only by divesting our minds of questions of ownership and other machinery of distribution, by looking at the question of consumption - asking ourselves what is the annual product, who consumes it and what changes would or could be made, that we can keep ourselves in the world of realities.”

Project Document (continued)

- Economics deals with:
 - ❖ unlimited wants and limited resources
 - ❖ redistribution and cost allocation
 - ❖ cost and benefit analysis
 - ❖ incentives and deterrents
 - ❖ market forces, prices, monopolies and competitiveness

Project Document (continued)

- Law and Economics have been used to resolve issues in:
 - ❖ traditional areas: e.g. antitrust, competition law
 - ❖ new mainstream areas: contract, tort, property
 - ❖ pioneer areas: criminal behavior, constitutional law, civil and criminal procedure, statutory construction
- Theories in economic development permeate all economic laws, and is the principal area of research in:
 - ❖ Law and Development
 - ❖ Law and Poverty

Project Document (continued)

- Three Approaches which can use Law and Economics:
 - Judicial Training and Education
 - Research on the Costs of Justice
 - Modernizing Legal Education

- These will basically form the three components of the project

Project Document (continued)

- Prior or ongoing assistance
- Institutional Framework
- Project Justification
 - Problem to be addressed
 - End-of-project situation
 - Target beneficiaries
 - Strategy and implementation arrangements
 - Reasons for UNDP assistance
 - Special considerations
 - Coordination arrangements
 - Counterpart support activity

Project Document (continued)

- Development Objectives
- Immediate Objectives, outputs and activities
- Inputs
- Risks
- Prior obligations and prerequisites
- Project review, reporting and evaluation
- Legal context
- Budgets
- Annexes

Part III. Project Design

COMPONENT I. TRAINING AND EDUCATION:

■ MODULE A: THE ECONOMICS OF A CASE

- (a) What Goes On In a Case: Identifying Inputs, Actors, Decisions
- (b) Understanding Cost-Benefit Analysis
- (c) Understanding Efficiency Criteria
- (d) Direct and Indirect Costs of Judicial Proceedings
- (e) Judicial Functions and Welfare Maximization
- (f) The Costs of Justice and Enforcement of Decisions

Project Design: Training (continued)

- MODULE B: THE JUDICIARY AND ECONOMIC DEVELOPMENT
 - (a) Various Concepts and Measures of Development
 - (b) The Constitutional Provisions on Economic Development
 - (c) Economic development and other Constitutional Values
 - (d) Basic concepts of government policy formulation, planning, finance, budget and project implementation
 - (e) Trade, investment, infrastructure and capital market policies
 - (f) The judiciary and economic development

Project Design: Training (continued)

- MODULE C: MAJOR LAWS AFFECTING BUSINESS
 - (a) Competition Laws
 - (b) Investment Laws
 - (c) Trade and Tariff Laws
 - (d) Taxation and government financing
 - (e) Privatization, build-operate-transfer, etc.
 - (f) Intellectual Property Rights

Project Design: Training (continued)

- MODULE D: Legal Analysis and Economic Tools
 - (a) The Concept of Externalities
 - (b) Approaches to Tort and Contract Law Issues
 - (c) Approaches to Criminal Behavior
 - (d) Markets, Prices and Monopolies

Project Design: Research (continued)

Component II. Research on the Costs of Justice

- Comparative Models Exist on Research Programs on the Costs of Civil Litigation
- Will involve taking sample courts and sample cases
- Objective is to identify all cost inputs
- Cost inputs are not only direct financial outlays of participants but also government and social costs, as well as time and shoe-leather costs



Project Design: Research (continued)

- Questions the research may seek to answer:
 - What are the factors and processes which determine the decision to litigate?
 - Who are the principal actors (lawyers/nonlawyers) which will guide the decision to litigate?
 - What are the expectations of the parties in the decision to litigate?
 - What is the value to them of these expectations?
 - Who will they hire (lawyers) and why?
 - What are the costs involved in this pre-filing stage?

Project Design: Research (continued)

■ Sample Questions:

- What will be the costs if they explore alternative means of dispute settlement?
- What will be the items of costs at the filing stage (direct and indirect)?
- What are the principal cost determinants of the pretrial?
- What are the costs of a motion for postponement?
- What are the costs of delay?
- What are the costs of interlocutory orders?

Project Design: Research (continued)

- Sample Questions:
 - How much does a decision cost the government?
 - What does an appeal do to the cost picture?
 - What is an estimated cost of a final judgment?
 - How much value does a research lawyer add to the process?
 - What is a cost-effective judge?
 - What are the ways to bring down costs?
 - Is litigation worth it?

Project Design: Research (continued)

Ultimately, the objective is
to generate concrete suggestions
for swifter, fairer, more predictable
judicial processes

Project Design: Legal Education

Component III. Modernizing Legal Education

- The Supreme Court gives the direction on the future of legal education
- The Chief Justice has expressed enthusiasm for collaborative efforts in this area with the academe
- A series of national conferences and workshops among law professors, practitioners and judges will bring into fore the areas for reform



Project Design: Legal Education (continued)

- Some factors which make modernization of legal education imperative:
 - Globalization of the world economy, including trade in services
 - Research in human, animal and plant genetics, issues in bioethics
 - Advances in information technology and Bill Gates' predictions of the future
 - Shrinking world resources: land, water, nonrenewable energy
 - Exploding population and faster rate of migration

Project Design: Legal Education (continued)

- Some factors:
 - Changing configuration of war and espionage
 - Global effects of certain natural phenomena and climate change
 - Philippine's peculiar position as an archipelago
 - SPCPD, SEZ's, and other special zones
 - Changing profile of domestic arrangements
 - New forms of entertainment
 - Changing social and sexual mores
 - Generation X: The Age of Indifference?

Project Design: Legal Education (continued)

The objective is to generate concrete suggestions which the Supreme Court may adopt in its exercise of the power to regulate admission to the bar, and which the law schools may incorporate in their curriculum

Part IV. Action Requested

- Comments and Suggestions
- Approval of the Basic Project Design
- Appointment of a Representative of the Chief Justice who will have the authority to make policy decisions as the project document is being finalized, and while the project is in the implementation stage
- Authority to identify, open talks and negotiate with an implementing agency

Action Requested (continued)

- Endorsement to the Supreme Court en banc
- Endorsement to Philja of the Project's Component I
- Endorsement to the Court Administrator of the Project's Component II
- Holding of consultation meetings with law deans for Component III

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Maraming Salamat!
Tapos na Poi



COURTS AND COSTS: UTILIZING
ECONOMIC TOOLS IN THE
ADMINISTRATION OF JUSTICE

Discussion Points

9/12/96



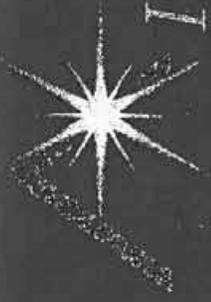
Component I. Training and Education

- ◆ 1. Local training
 - ◆ frequency: bi-annual training for three years
 - ◆ venue: Tagaytay, Philja Training Center or other regional centers;
 - ◆ duration: two weeks
 - ◆ contents: four modules, namely: a. economics of a case; b. the judiciary and economic development; c. major laws affecting business; d. legal analysis and economic tools
 - ◆ participants: 30 judges



1. Training and Education

- ◆ 2. Foreign training
 - ◆ frequency: annual training for three years
 - ◆ venue: Washington, New York
 - ◆ duration: two weeks
 - ◆ contents: exposure to trends in resolving disputes in the fields of environmental law, antitrust law, intellectual property rights, human rights and economic programs, international trade and investment and international financial transactions
 - ◆ participants: 14 judges and justices



I. Training and Education

- ◆ 3. Discussion series
- ◆ frequency: every two months for three years
- ◆ venue: Supreme Court
- ◆ duration: one-half day discussion
- ◆ contents: current socio-economic trends
- ◆ envisioned to involve retired government officials (e.g. executive, legislative and administrative) to discuss views or retrospection of issues related to the dynamics of economic reform
- ◆ participants: SC justices, CA justices, RTC judges



I. Training and Education

- ◆ 4. Publication of materials, books and a Journal for Continuing Judicial Education
- ◆ frequency: Journals- bi-annual, starting on the second half of the first year;
- ◆ contents: articles solicited from participants in local and foreign trainings and in the discussion series.
- ◆ other materials, as produced



Component II. Research on the Costs of Justice

- ◆ The study is envisioned to be undertaken within three years and will entail scientific study of the results of survey and observation of sampled courts and cases.
- ◆ Duration: 3 years
- ◆ Year 1- 1st 4 months- hiring of consultants, research team members; next 6 months - formulation of research design, methodology, framework, review of related literature
- ◆ Year II - data gathering, encoding and analysis



II. Research on the Costs of Justice

- ◆ Year III-
 - ◆ finalization of research report
 - ◆ presentation to the Supreme Court and other members of the Judiciary
 - ◆ holding of national conference to report research findings
 - ◆ drafting SC circulars, as needed
 - ◆ drafting bills and submission thereof for proper legislative action, as needed
 - ◆ written publication of results



Component III. Modernizing Legal Education

- ◆ 1. Review of the Law Curriculum-
- ◆ will include the holding of conferences and workshops to be participated in by law deans and professors for the purpose of studying the need for modernizing the law curriculum
- ◆ National Conference - once in the first year; another in the third year



III. Modernizing Legal Education

- ◆ regional consultation (Luzon, Visayas, Mindanao and NCR) - once every three months, only during the first year
- ◆ drafting of recommended revised law curriculum
- ◆ 2. Publication of Reports, Journal on Legal Education and Journal on Law and Economics
- ◆ frequency: journals- bi-annual publication, starting on the second half of the first year; publication of conference proceedings - at the end of each conferences