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Dispute Resolution Mechanisms in the Philippines

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PREFACE

The evolution of the market-oriented economy and the increase in cross-border transactions have brought an urgent need for research and comparisons of judicial systems and the role of law in the development of Asian countries. Last year, in FY 2000, the Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) conducted legal researches in Asian countries with two main themes. The first theme was to figure out the role of law in social and economic development and the second was to survey the judicial systems and the ongoing reform process thereof. We organized joint research projects with research institutions in Asia and had a roundtable meeting entitled “Law, Development and Socio-Economic Change in Asia” in Manila. The outcomes of the joint researches and the meeting were published in March 2001 as *IDE Asian Law Series No. 1-10*.

This year, in FY 2001, based on the last year’s achievement, we established two research committees: the Committee on “Law and Political Development in Asia” and the Committee on “Dispute Resolution Process in Asia”. The former committee focused on legal and institutional reforms following democratic movements in several Asian countries. Since late 1980s many Asian countries have experienced drastic political changes by the democratic movements with mass action, which have resulted in the reforms of political and administrative system for ensuring the transparency and accountability of the political and administrative process, human rights protection, and the participation of the people to those process. Such reforms are essential to create the stability of the democratic polity while law and legal institutions need to function effectively as designed for democracy. The latter committee conducted a comparative study on availability of the court system and out-of-court systems (namely Alternative Dispute Resolutions), with the purpose of determining underlying problems in the courts. As social and economic conditions drastically change, Asian countries face challenges to establish systems for fairly and effectively resolving the variety of disputes that arise increasingly in our societies. For dispute resolution, litigation in the court is not the only option. Mediation and arbitration proceedings outside the courts are important facilities as well. In order to capture the entire picture of dispute resolution systems, a comprehensive analysis of both the in- and out-of-court dispute resolution processes is essential.

In order to facilitate the committees' activities, IDE organized joint research projects with research institutions in seven Asian countries. This publication, titled *IDE Asian Law Series*, is the outcome of research conducted by the respective counterparts. This series is composed of papers corresponding to the research themes of the abovementioned committees, i.e. studies on law and political development in Indonesia, the Philippines and Thailand, and studies on the dispute resolution process in China, India, Malaysia, the Philippines, Thailand and Vietnam. The former papers include constitutional issues that relate to the recent democratization process in Asia. Studies conducted by member researchers investigated the role of law under those conditions while taking up such subjects as rule of law, impeachment, Ombudsman activities, human rights commissions, and so on. The latter papers include an overview of dispute resolution mechanisms for comparative study, such as court systems and various ADRs, as well as case studies on the dispute resolution process in consumer, labor and environmental disputes.

We believe that this work is unprecedented in its scope, and we hope that this publication will make a contribution as research material and for the further understanding of the legal issues we share.

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Introduction

Dispute resolution in the Philippines evolved from both indigenous traditions and legal systems adopted from western models. Courts are organized in a hierarchical structure, which provide the primary forum for settlement of controversies involving rights, which are legally demandable and enforceable. Outside of the court system, and in specific instances through institutions and mechanisms established by legislation, parties may also seek adjudication of their rights and interests.

The first part of this study presents an overview of in-court and out-of-court systems in the Philippines by describing the current situation regarding the use of the courts as a dispute resolution mechanism, determining the factors which influence the parties' choice between court litigation and other methods of alternative dispute resolution (*e.g.*, arbitration, negotiation, conciliation and mediation), identifying the major problems and difficulties which discourage resort to the courts, and direction of reforms to improve the judiciary and enhance its effectiveness as a dispute resolution mechanism. Upon the other hand, alternative dispute resolution (ADR) as developed and practiced in the Philippines is depicted through the twelve agencies that use ADR today. These ADR institutions are discussed in detail including the disputes within their jurisdiction, rules of procedure and incidence of cases. However, an inherent limitation has been noted arising from the lack of monitoring and data recording in almost all these ADR institutions. Detailed monitoring, evaluation and documentation of ADR experience are not widely practiced--a problem, which has been recognized by the Supreme Court Judicial Reform Project, team itself.

The second part tackles the dispute resolution process in specific cases. Three fields of disputes are chosen for this study -- consumers, labor and environment.

In the area of consumer protection, the concept of ADR is applied and operationalized through particular departments of the Government, which have been vested with basic authority over mandatory safety standards and consumer education and the power to sanction and impose civil or criminal penalties for safety violations. The National Consumers Affairs Council was established by R.A. 7394 to improve the management, coordination and effectiveness of consumer programs nationwide. Aside from government controls, local consumer groups linked to an international

group also help promote and enhance consumer rights and responsibility, while initiatives from private business establishments to resolve consumer complaints and queries are encouraged.

As to labor dispute settlement, discussion focuses on the two distinct and contrasting methods employed in the Philippines, namely (a) the preferred method of collective bargaining and voluntary arbitration, and (b) compulsory arbitration of labor disputes in industries indispensable to the national interest when invoked by the State or by government agencies exercising quasi-judicial functions when invoked by either, or both, labor and management. Statistical data is presented to show that most labor disputes are settled through the process of compulsory arbitration while major factors are cited to explain the lesser acceptability of collective bargaining and voluntary arbitration as modes of dispute settlement.

The last topic concerns environmental issues in which ADR seems to have very limited application. Environmental laws recently enacted in the Philippines are discussed to highlight the link between resource protection and community or user access to these resources. Provisions for dispute resolution mechanism in each of these laws relate to such access to the particular resource. Aside from such legal framework for ADR and assessment of its application, a variety of examples of dispute resolution systems that may not be contemplated under modern international trends is also presented.

Chapter One

Overview of the Dispute Resolution Mechanisms

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

Concepcion L. Jardeleza

I. Current Situation Regarding the Use of Courts

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

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

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

II. Parties' Viewpoints with Regard to the Court System

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

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

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

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

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

III. Problems of the Court System

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

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

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

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

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

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

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

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

IV. Direction of Judicial Reforms

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

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

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

The Philippine Mediation Center is tasked to:

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

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

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

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

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

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

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

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

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

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

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

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

V. Conclusion

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

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

Rowena Daroy Morales

I. Overview of ADR: Types and Functions

1. Brief History

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

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

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

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

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

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

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

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

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

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

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

2. Types of ADR

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

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

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

II. Current Situation Regarding the Use of ADR

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

1. The Katarungang Pambarangay

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

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

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

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

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

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

Pangkat Tagapagkasundo (Pangkat).

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

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

2. The Cooperative Development Authority

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

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

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

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

3. The Philippine Construction Industry Arbitration Commission

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

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

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

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

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

4. The Department of Agrarian Reform Adjudication Board

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

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

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

5. The Philippine Dispute Resolution Center, Inc.

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

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

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

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

6. The National Conciliation and Mediation Board

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

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

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

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

7. The National Labor Relations Commission

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

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

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

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

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

8. Bureau of Labor Relations

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

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

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

9. The Commission on the Settlement of Land Problems

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

Commission such that the government decided not to dissolve it.

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

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

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

10. The Insurance Commission

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

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

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

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

11. The Bureau of Trade regulation and Consumer Protection

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

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

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

12. The Court-Annexed Pilot Mediation Project

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

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

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

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

III. Incidence of Cases before ADR Institutions

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

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

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

1. The Katarungang Pambarangay (KP)

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

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

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

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

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

2. The Cooperative Development Authority

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

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

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

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

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

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

3. Philippine Construction Industry Arbitration Commission

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

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

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

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

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

4. Department of Agrarian Reform Adjudication Board (DARAB)

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

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

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

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

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

5. The Philippine Dispute Resolution Center Inc (PDRCI)

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

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

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

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

6. The National Conciliation and Mediation Board (NCMB)

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

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

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

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

7. The National Labor Relations Commission

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

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

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

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

8. Bureau of Labor Relations (BLR)

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

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

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

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

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

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

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

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

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

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

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

10. The Insurance Commission

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

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

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

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

11. Bureau of Trade Regulation and Consumer Protection

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

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

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

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

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

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

12. The Court Annexed Pilot Mediation Project

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

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

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

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

IV. Conclusion

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

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

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

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

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

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

Chapter Two

Study on Dispute Resolution Process in Specific Cases

Part I: The Consumer's Alternative: Dispute Resolution Process in Consumer Protection

Elizabeth Aguilin-Pangalnagan

I. Introduction

Individual consumers have faced an increasingly formidable challenge since they began transacting with institutional sellers for purchase of products or provision of services. Aggressive marketing by companies has made it difficult for consumers to adequately judge the products' quality. Quite apart from questions of judgment, style and taste, expert knowledge has become a tool essential to discern the technical aspects of many modern products, a skill that ordinary consumers may not possess. To overcome this predicament, consumer protection laws have been enacted to aid the buyer grapple with the overweening advantage enjoyed by the seller. In the Philippines, while legislation has been extensive, the administrative infrastructures for their implementation and enforcement have remained rudimentary.

Administrative adjudication in the Philippines is adversarial in nature. The litigants prove their conflicting claims before the judge who, after clarifying the issues and receiving evidence, renders a decision in favor of one of the disputing parties. Even if the case is settled before the conclusion of the trial, finding redress for grievances and equitable remedies for the aggrieved party remain the predominant objectives for filing a case. Reliance on the adversarial process is based on the premise that the rightness and "wrongness" or truth or falsity of the claims will be eventually established. In the end, the court or tribunal will arrive at a just and functionally sound decision. It is anchored on the belief that in any dispute the truth will surface through the adversarial process and justice will be served. The reality, however, is that litigation does not always lead to a fair result. Furthermore, it unduly demands much of one's time and money as delay ensues and cases are prolonged by appeals procedures. Granting *arguendo* that the process does work and the truth

emerges, there is a high price to pay since the adversarial system precludes future cooperation, let alone a robust business relationship.

Alternative Dispute Resolution (ADR) then, is an option thoughtfully being considered by the government to blunt this litigious edge and encourage more openness and communication between the disputing parties. This leads to earlier settlement in appropriate cases with a saving in managerial and legal time, expense and anxiety. ADR methods are varied, but in the end, they all strive to view the problem from the perspective of interests rather than rights.

The Department of Trade and Industry through the Bureau of Trade Regulation and Consumer Protection, the Department of Health through the Bureau of Food and Drugs and the Department of Agriculture chiefly employ the adversarial method even in its mediation and arbitration proceedings. In the Philippines, the concept of ADR in Consumer Protection is still undergoing careful scrutiny and serious consideration. The principal intention is to duplicate the conciliation process in our Barangay System. To date, the Department of Trade and Industry is conducting a research on the operation and effectiveness of this mode of dispute settlement and have yet to make a detailed proposal to implement it. Nonetheless, a close perusal of the practices employed by the seller-buyer in settling their disputes vividly evinces ADR in action.

At length, this paper aims to discuss the concept of ADR, its applicability in consumer transactions and its operation in the Philippines. It seeks to explore an alternative to litigation to resolve the dilemma of the burdened Filipino consumer.

II. Consumer Protection

1. Consumer Transactions

A consumer is defined in R.A. 7394 (1991), as “a natural person who is a purchaser, lessee, recipient or prospective purchaser, lesser or recipient of consumer products, services or credit. “ He/she enters into consumer transactions either through (1) (i) a sale, lease, assignment, award by chance, or other disposition of consumer products or (ii) the grant of provision of credit to a consumer for purposes of credit to a consumer for purposes that are primarily personal, family, household or agricultural;

or (2) a solicitation or promotion by a supplier with respect to transactions described in clause (1).

When consumers have cause to complain about a product or service there is no guarantee that they will obtain satisfaction. On one hand, many businesses adopt a positive attitude to consumer grievances, particularly with the increasing number of consumer groups. Some large businesses have created customer relations departments to supervise the handling of grievances and incorporate a consumer orientation into company decisions. However, other commercial establishments are less responsive as a matter of policy, engendered by a myopic view that once they have the buyers' money, they would not part with it or care whether the consumer is happy about the purchase. Others do it out of sheer inefficiency.

There is an obvious imbalance of power when consumers challenge a company with a complaint, even in cases where the company is favorably disposed to accommodating its patrons. Typically, purchasers have a weak bargaining position because of the gross disparity between the buyer and the seller as regards knowledge of the product and the availability of resources, both legal and financial. This constricts the consumer's access to expeditious and equitable remedies (Ross Cranton, CONSUMERS AND THE LAW, 1984, p.3). Legal remedies are likewise available, but on the whole, many consumers are still ignorant of their legal rights or are unwilling or unable to assert them. Inflationary prices, food shortages, unsafe products -- all clearly demonstrate that despite people's steadily mounting concern with consumer protection, the battle is far from won.

The comprehensive consumer laws enacted provide consumers with tremendous power, much of which remain untapped. Consequently, buyers are harassed and encumbered by the invariably rising prices of basic commodities on one hand and their increasing exposure to inferior merchandise, deceptive advertising and fraudulent marketing practices, on the other (Ross Cranton, CONSUMERS AND THE LAW, 1984, p.3).

2. Settling Consumer Disputes

Law is a method of resolving disputes. It is a set of rules that are frequently changing. Since ideas of what is fair change, so do the rules. At one time, if a customer bought some pots and pans from a door-to-door salesman on Monday night and realized the following day that she had entered into a bad bargain, there was no

way that she could cancel that sale. Since, a contract of sale had already been perfected, parties were left in the position they found themselves. More recently, consumers have questioned the fairness of this practice because many felt that they had been cheated by salesmen who exaggerated the features of their products. Laws were then amended to allow customers to cancel sales within a limited period.

This was also accompanied by a growing realization that product safety -- or more precisely, the prevention of product liability -- originates not with the company's legal department, but with the personnel involved in product design, engineering, quality control, production, packaging, labeling, and distribution of the product.

This change of attitude in this era of consumerism has now crystallized in various Consumer Protection Laws. Particular departments of the Government have been vested with basic authority over mandatory safety standards and consumer education and the power to sanction and impose civil or criminal penalties for safety violations (Editorial Staff of The Bureau of National Affairs Inc., *THE CONSUMER PRODUCT SAFETY ACT: TEXT, ANALYSIS, LEGISLATIVE HISTORY*, 1973). Government controls are the best protection for consumers and other techniques like the free operation of market forces, business self-regulation and private law only come into play at a much later stage. It is unrealistic to expect businesses to introduce measures antagonistic to their interests. Hence, It is not surprising that self-regulation has only been practiced against the background of threatened legal action should there be failure to meet the established standards.

Despite this, consumer protection is still seen largely as a collection of individual problems which particular consumers must attempt to solve by taking definite but independent action. Consumers who receive a faulty product or sub-standard service, for example -- the most common consumer complaints -- must seek redress on their own, and if a business establishment should refuse a reasonable settlement, consumers are expected to enforce their private law remedies by taking court action. But in such instance, many consumers fail to complain, and those who do are ignored and stonewalled. Only the most resolute customers will stick it out until a settlement is reached. Even in this instance, such protracted negotiated settlement could yield less than the amount shelled out by the consumer when she purchased the product years ago. The problem is especially acute with poorer consumers, who may have an overwhelming sense of helplessness.

III. The Philippine Context

1. Law and Jurisprudence

Article II of the 1987 Constitution acknowledges the power of the Filipino people, maintaining that sovereignty resides in the people and all government authority emanates from them. It mandates the State “to promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of life and an improved quality of life for all” (CONST., Art II, Sec 9). It likewise “recognizes the vital role of communication and information in nation-building” (CONST., Art II, Sec 24). And in all these designs, “the State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation” (CONST., Art. XI, Sec. 23).

In the domain of consumer rights, it was explicitly provided in Art XVI Sec. 9 of the 1987 Constitution that “the State shall protect the consumers from trade malpractices and from substandard or hazardous products.” In sec. 11(2), it was further stated “the advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of general welfare.” It was clearly within this ambit that several consumer protection laws were legislated by Congress.

Republic Act No. 7394 is the most recent enactment on consumer protection. Aptly termed *The Consumer Act of the Philippines*, it was decreed to protect the interests of the consumer, promote his general welfare and establish standards of conduct for business and industry. As such, its specific objectives focus on protection against hazards to health and safety and against deceptive, unfair and unconscionable sales acts and practices; on the necessity of information and education and of adequate rights and means of redress; and on the involvement of consumer representatives. The law is divided into several titles that clearly and specifically cater to the needs of the consumers. Title II centers on Consumer Product Quality and Safety, Title III focuses on Protection Against Deceptive, Unfair and Unconscionable Sales Acts or Practices, and Title V more importantly creates the National Consumer Affairs Council. The Council is charged with the power to monitor and evaluate implementation of consumer programs and ensure that concerned agencies take appropriate steps to

comply with the established standards and priorities. Every Department, which is part of the Council, should appoint arbitration officers who will have original and exclusive jurisdiction to mediate, conciliate, hear and adjudicate all consumer complaints.

Under Philippine law, an arbitration agreement is valid, enforceable and irrevocable like any other contract. It applies to both domestic and international arbitration and the rules apply equally to both of them. An award by a majority of arbitrators is valid unless the concurrence of all of them is required by the terms of the arbitration agreement. The arbitration award must be in writing and signed and acknowledged by a majority of the arbitrators, if more than one and by the sole arbitrator if there is only one. But based on admissible grounds affirmatively shown as enumerated in the law, the court can vacate the award upon petition of any party to the dispute. The court may then at its discretion, direct a new hearing either before the same arbitrators or before a new set of arbitrators. At any time within one month after the award is made, any party to the dispute may apply to the court having jurisdiction, for an order confirming the award. The court must grant such order, unless the award is vacated, modified or corrected. Notice will then be served to the adverse party to comply with the arbitrator's decision.

Jurisprudence, though, shows a very thin body of cases specifically dealing with consumer protection. Most probably because the cases are lodged and litigated in the different departments of the government acting as quasi-judicial agencies, and appealed to the Office of the Secretary then to the Office of the President. It reaches the Court of Appeals or the Supreme Court only through certiorari proceedings, claiming grave abuse of discretion in the decision rendered by the administrative body. Ironically, the first issue often raised in court is whether or not the arbitration clause provided in the contract should be recognized by the parties and the courts. Initially, the Philippines refused to give validity to arbitration because it ousted the courts of their jurisdiction to decide disputes. In the case of *Compagnie de Commerce v. Hamburg Amerika* (36 Phil 590 (1917)), the Philippine Supreme Court disregarded the provision in a charter party contract for the settlement of disputes by reference to arbitration in London. The court also cited the previous cases of *Wahl v. Donaldson, Sims & Co* (2 Phil 301 [1903]) and *Cordoba v. Conde* (2 Phil 445 [1903]) where it held that a contractual stipulation for general arbitration cannot be invoked to oust our courts of jurisdiction.

This policy changed with the enactment of the Civil Code of the Philippines in 1950. The Civil Code in Arts. 2028-2048 treats arbitration agreements as a special contract akin to compromise, which is defined as “a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced” (Victor P. Lazatin, *Dispute Resolution in the Philippines*, 16). This policy was amplified by Republic Act 876 (Arbitration Law) made in reference with the Civil Code of the Philippines, Presidential Decree No. 1746 and Executive Order 1008. This law applies to all normal commercial disputes but not to labor disputes that are governed by a different set of rules. Nor may parties arbitrate questions, which, by reason of public policy, cannot be the subject of compromise. The rules for arbitration are found in the law itself, but the scope of procedural rules is derived from the contractual relationship of the parties. Courts may intervene during the arbitration, but the extent of its relief is not defined.

One of the recent cases of significance is *Puromines, Inc v. Court of Appeals*. (220 SCRA 281 (1993) In this case, Puromines entered into a contract with Philip Brothers Oceanic, Inc. for the sale of prilled urea in bulk. The contract provided that disputes arising therefrom should be submitted to arbitration in London. The shipment arrived in Manila in bad order, caked, lumpy and contaminated with rust. Puromines filed a suit for breach of contract. Philip Brothers filed a motion to dismiss asserting application of the arbitration clause. In unequivocal terms, the court pronounced, “arbitration has been held to be valid and constitutional.” It went on to say that “unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable arrangements and will only interfere with great reluctance to anticipate or nullify the action of the arbitrator.”

1.1 Barangay System

In the Philippines, the government structured the barangays and the other sectors of the community so that they may serve the Criminal Justice System more comprehensively and effectively. Secs. 399-422 of the Local Government Code of 1991 (R.A. 7160) is a recognized example of ADR, which the DTI is employing as a model to pattern its dispute resolutions in consumer transactions. In this scenario, there is a *lupong tagapamayapa* in each barangay, which serves, among other things, as an organ for alternative dispute resolution. The members are appointed by the

Punong Barangay from among persons residing or working in the barangay, possessing integrity, impartiality, independence of mind, sense of fairness, and reputation of probity, and not otherwise disqualified by law. In all katarungang pambarangay proceedings, the parties must appear in person without the assistance of counsel or representative, except for minors or incompetents.

Unless accepted from the process by law, no dispute involving individuals actually residing in the same city or municipality may be brought to court without first going through the conciliation procedure under the lupon tagapamayapa. It is a condition precedent imposed by Sec. 412. The mediation process as aptly described in Sec. 410, proceeds with a complaint with the Lupon Chairman who immediately calls the parties and their witnesses to a meeting for mediation of their conflicting interests. If he fails to bring about an amicable settlement within 15 days from first meeting, he shall forthwith constitute a conciliation panel known as pangkat ng tagapagkasundo, consisting of three members chosen by the parties from the list of members of the lupon. The pangkat shall hear both parties and their witnesses, simplify issues and explore all possibilities of amicable settlement. The pangkat shall arrive at a settlement or resolution of the dispute within 15 days from the day it convenes, extendible for another period not exceeding 15 days except in clearly meritorious cases. The amicable settlement shall be in writing, in a language or dialect known to the parties, signed by them, and attested to by the lupon chairman or the pangkat chairman as the case may be.

At any stage of the proceedings, the parties may agree in writing to submit their dispute to arbitration and abide by the award of the lupon chairman or the pangkat. Such agreement to arbitrate may be repudiated within five (5) days. The arbitration award, nonetheless, shall be made after the lapse of the period for repudiation and within ten (10) days thereafter.

The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date thereof, unless repudiated or nullified. It may be enforced by execution by the lupon within six (6) months from the date of settlement. If the pangkat fails to achieve an amicable settlement within 15 days from the day that it convenes, the lupon or pangkat secretary (attested by the lupon or pangkat chairman) issues a certificate that no conciliation or settlement has been reached. Then, and only then, may the parties go to court.

Although not explicit in the law, consumer complaints filed by a resident of the barangay against a seller who is likewise a resident in the same place does not go through this process. This is deduced from the coverage of the Consumer Act of the Philippines, which governs all consumer disputes.

1.2 Disposition of Consumer Cases

Consumer Cases mediated or arbitrated or adjudicated by the Department of Trade and Industry through the Bureau of Trade Regulations and Consumer Protection (BTRCP), are explicitly outlined in Republic Act 7394 (Consumer Act) and Executive Order 913.

A 1995 Case Digest was furnished by BTRCP illustrating the expeditious and inexpensive mechanism made available to the Filipino buyer seeking redress of grievances. Mediation approach was emphasized, where the parties in a suit are brought to an amicable settlement without the necessity of going to Court. One case elucidated in the Case Digest narrated the complaint lodged by a certain consumer (Mr. X) on October 1993 involving a defective typewriter ribbon. Mr. X wrote a letter of complaint addressed to the manufacturer, but this was unanswered. As a result, Mr. X went to DTI-NCR for help. A mediation conference was held on February 5, 1994 and the manufacturer was compelled to attend. He apologized to Mr. X and replaced the ribbon with two good ones. The case was considered closed after just one meeting.

Another case cited in the DTI files concern a consumer who purchases a refrigerator from an appliance center. When he gets home he discovers that it does not function. The next day he returns to the store to speak to the manager. He is assured that store personnel will be sent over the following day to check on the refrigerator. The consumer cancels his entire appointments and stays home but the store representative does not show up. After three other follow-ups, the appliance store manager tells him that he should go instead to the manufacturer to complain. He does what he is told and after a service man inspects the refrigerator, he learns that its motor has a leak. He was promised a replacement after three weeks. Finally at his rope's end, he brings his case to the DTI who summons the manufacturer. By the scheduled mediation conference, only the consumer shows up. He tells his good news that in the meantime; his refrigerator has been replaced without him having to pay extra! Cases of the same tenor are recorded in DTI's Case Digest, which are reported as successful cases with happy endings. However, BTRCP discloses that there are

numerous cases filed and pending in their office subject to litigious proceedings. The majority of the cases instituted are Consumer Products and Service, and Product Quality and Safety under RA 7394 and such other cases falling under EO 913.

1.3 Handling Consumer Complaints

A joint DTI-DOH-DA Administrative Order No. I Series of 1993 outline the procedure for consumer complaints. It was specifically contrived to effectively implement the Consumer Act of the Philippines. In consumer complaints, the complainant must be a natural person and the subject of the complaint is a consumer product or service as defined under the Consumer Act. The concerned department may commence an investigation upon petition or upon letter complaint under oath from any consumer for violation of R.A. 7394, within their respective jurisdiction. The complaint should follow the form prescribed by law and filed in duplicate with the Provincial Office or Regional Office of the department having jurisdiction over the subject of the complaint. As soon as the complaint is instituted, the Arbitration Officer shall notify the parties to appear before him for purposes of mediating/ conciliating the controversy. The complaint must be filed within two years from the time the consumer transaction was consummated or the deceptive or unfair and unconscionable act or practice was committed and in the case of hidden defects, from discovery thereof. Rule II describes the Jurisdiction/ Powers and Duties of Consumer Arbitration Officers, who shall have original and exclusive jurisdiction to mediate, conciliate, hear and adjudicate all consumer complaints, provided however that this does not preclude the parties from pursuing the proper judicial action. Rule III detailed the Mediation/ Conciliation Process while Rule IV focused on the Arbitration Process. Appended herein is a flow chart illustrating these procedures. Depending on the ground cited by the consumer in his/her case, the methodology in resolving their disputes may differ (See Annex “A”).

As soon as a decision becomes final and executory, the Arbitration Officer shall, on motion of the interested party issue an Order of Execution and the Corresponding Writ of Execution deputizing and requiring the Philippine National Police, the National Bureau of Investigation or any other law enforcement or investigation agency of the government, or any public officer, in the enforcement of any of his decision or orders. Notwithstanding however the provisions of this Joint

Administrative Order, each concerned department may issue separate rules to govern the Arbitration of Consumer Complaint within their respective jurisdiction.

A CONSUMERNET was created in the Philippines to facilitate consumer transactions. It is comprised of the following agencies:

AGENCY INVOLVED	COVERAGE
Department of Trade and Industry	Manufactured products (milk, sugar, coffee, laundry soap, detergent bars, school supplies)
Department of Health - Bureau of Food and Drugs	Processed Food, Drugs, Cosmetics, Medical Devices/ Household products with hazardous substances
Department of Health	Hospital/ doctor's service
Department of Agriculture	Fish and fishery products (BFAR); Rice and corn (NFA); Sugar (SRA); Processed and unprocessed meat, dressed chicken (NMIC); and other agricultural products
Energy Regulations Board	Electric service
Department of Interior and Local Government	Food and restaurant, eateries, sidewalk and regulation of practice relative to weights and measure
Bangko Sentral ng Pilipinas	Banks, pawnshops
National Telecommunications	Telephone rates, cellular, TV & radio broadcast, complaints on paging, leased data (facsimile/ telex, telegram), coastal services (ship to shore, shore to ship)
Insurance Commission	Insurance claims (except health insurance)
Housing and Land Use Regulatory Board	Subdivisions and condominium
Bureau of Internal Revenue	Registration requirements, non-issuance/ fraudulent receipts, complaints regarding new modes of payment
Land Transportation Franchising Regulatory Board	Erring taxi drivers, tampered taxi meters, fare regulation
Metro Manila Development Authority	Traffic, solid waste management, public safety environment management, zoning, flood control
Department of Justice	Legal services to qualified indigents
Metropolitan Waterworks Sewerage System	Water and sewage related problems
Local Water Utilities Administration	Provincial urban water supply
Energy Regulations Board	Fuel/ petroleum products
Department of Environment and Natural Resources	Wildlife/ wildlife products, forest-based products

A consumer is advised to follow this procedure if there is a problem regarding the product that he/she bought:

- (i) *Identify the problem.* Identify the problem and what he/she believes would be a fair settlement. Is it return of his/her money or repair or even replacement of the product?

- (ii) *Gather documentation.* Gather documentation regarding the complaint -- sales receipts, repair orders, warranties, canceled checks, or contract which will support the complaint and help the company solve the problem. The provisions of the warranty should also be studied carefully.
- (iii) *Go back to where you made the purchase.* Contact the person who sold the item or performed the service. The consumer should as much as possible, calmly and accurately explain the problem. If that person is not helpful, the consumer should at that point ask to see the supervisor or manager and repeat the complaint. A large percentage of consumer problems are resolved at this level. Otherwise, he/she may go to the Consumer Welfare Desk of the business, or contact CONSUMERNET Members.
- (iv) *Write a formal letter.* If he/she is not satisfied with the remedies offered by the CWD, go to the consumer protection agency concerned and make the necessary complaint in accordance with the procedure prescribed by law.

2. Government and Private Initiatives

2.1 Institutions for Dispute Resolution

Government controls are the best protection for consumers. It is futile to think that businesses will introduce self-regulatory measures, which are adverse to their interests. Public regulation in consumer protection is significant because the courts are not a suitable vehicle for consumer protection measures.

R.A. 7394 established *The National Consumer Affairs Council* to improve the management, coordination and effectiveness of consumer programs. It is composed of representatives from the Department of Trade and Industry, the Department of Education, Culture and Sports, the Department of Health and the Department of Agriculture, four (4) representatives from consumer organizations nationwide to be chosen by the President from among the nominees submitted by the various consumer groups in the Philippines and two (2) representatives from business/ industry sector to be chosen by the President from among the nominees submitted by the various business organizations. Art. 153 enumerates the powers and functions of the Council:

- to rationalize and coordinate the functions of the agencies charged with consumer programs and enforcement of consumer related laws;
- to recommend new policies and legislation or amendments to existing ones;
- to monitor and evaluate implementation of consumer programs and projects and to take appropriate steps to comply with the established priorities, standards and guidelines;
- to seek the assistance of government instrumentalities in the form of augmenting the need for personnel facilities and other resources;
- to undertake a continuing education and information campaign to provide consumers with: (a) facts about consumer products and services; (b) consumer rights and the mechanism for redress available to him; (c) information on new concepts and developments on consumer protection; (d) general knowledge and awareness necessary for a critical and better judgment on consumption; and (e) such other matters of importance to the consumer's general well-being.

The Department of Trade and Industry through the Bureau of Trade Regulation and Consumer Protection was mandated by law (P.D. 721, E.Os 913, 133, 145, 242, 292 and 386) to act as the primary coordinative and regulatory arm of government for the country's trade, industry and investment activities. It is committed to develop an environment where there exists an "empowered and responsible consumer sector". It shall also formulate and monitor the implementation of programs for the effective enforcement of laws, correct interpretation and adoption of policies on monopolies and restraint of trade, mislabeling, product misrepresentation and other unfair trade practices; monitor the registration of business names and the licensing and accreditation of establishments and practitioners; protect and safeguard the interest of consumers and the public, particularly the health and safety implications of intrinsic product features, product representation and the like; and establish the basis for evaluating consumer complaints and product utility failures. In the pursuit of these goals, the bureau adopts a proactive approach in linking consumers, business and other government agencies, wherein a coordinated education and information program to ensure consumer welfare as the entity join the new world trade order is established,

sound policies and guidelines to effectively enforce fair trade laws and ensure its compliance are formulated, and a timely relevant and expedient support services in the field of consumer complaints, protection of intellectual property rights, business regulation and information is provided to clients.

To facilitate consumer complaints, BTRCP installed the Consumer Welfare Division. The object of the project is to encourage consumers to seek redress for their complaints directly with the concerned establishment, in cooperation with the Philippine Retailers Association (PRA), Philippine Association of Supermarkets Inc (PASI) and Philippine Amalgamated Super-markets Association (PAGASA). The division operates on the credo that a “Well-informed and Vigilant Consumer is the Best Protected Consumer.” Its functions are to:

- provide ample protection to the consuming public through a massive tri-media consumer education and information dissemination program;
- release information materials such as consumer alerts and consumer tips;
- promote consumer awareness on basic issues and concerns;
- provide mechanisms for the speedy resolution of consumer complaints;
- prepare guidelines in the development and strengthening of consumer organizations.

The other divisions of BTRCP towards this end are the Fair Trade Division and the Business Regulation Division. To facilitate the Consumer Protection Program of the Department, there were significant Administrative Orders released, which simplified the procedure in filing consumer complaints as regards venue and jurisdiction (Administrative Order. 004-97), appointed acting consumer arbitration officer for the hearing and adjudication of consumer complaints (Department Order 124-92) and set up a standard/ schedule for the imposition of fines for violators of the law (Administrative Order 007-99).

The Department of Agriculture (DA) through Administrative Order No. 9 outlined its course of action on Consumer Protection. Several attached Implementing Agencies were given jurisdiction by the Department over complaints on particular agricultural commodities. These implementing agencies as enumerated in Rule II Sec 2 are:

- National Food Authority: rice and corn
- Bureau of Animal Industry: animal by-products, animal effects, eggs, live animals and fowls, animal feeds, veterinary drugs and products
- Bureau of Plant Industry: fresh fruit in their natural state of form except coconut, fresh vegetables in their natural state or form, root crops and similar products in their natural state or form, legumes and other stored plant products, spices, seeds and nuts for planting, nursery stocks, medical plants, ornamental plants
- Bureau of Fisheries and Aquatic Resources: fish and fishery products
- Fertilizer and Pesticide Authority: fertilizers and pesticides
- Sugar Regulatory Administration: raw and refined sugar
- Philippine Coconut Authority: coconut-based consumer products
- National Meat Inspection Commission: processed and unprocessed meats, dressed chicken, processed hides and casings

Sec. 3 established additional powers, functions and duties of these implementing agencies to further the cause of Consumer Protection. These include:

- undertake researches, develop and establish quality and safety standards for agricultural products in coordination with other government and private agencies closely associated with these products;
- inspect and analyze agricultural products for purposes of determining conformity to established quality and safety standards;
- levy, assess, collect and retain fees as are necessary to cover the cost of inspection, certification, analysis and tests of samples of agricultural products and materials submitted in compliance with the provisions of the Act;
- investigate the cause of and maintain a record of product related deaths, illnesses and injuries for use in researches or studies on prevention of such product related deaths, illnesses and injuries;
- accredit independent, competent non-government bodies to assist in: (1) monitoring the market for the presence of hazardous or non-certified products and other forms of violations, and (2) other

appropriate means to expand the monitoring and enforcement outreach of the agencies in relation to its manpower, testing and certification resources at a given time;

- accredit independent, competent testing laboratories.

In Rule 3, a DA Technical Committee was specially created as the central body of the DA for overseeing and monitoring the implementation of the Consumer Act with respect to agricultural products as carried out by the concerned attached agencies including National Consumer Affairs Council (NCAC) and the Bureau of Food and Drugs (BFAD). Consumer Participation, Advisory Services and Consumer Program Reforms were likewise encouraged in the Implementing Rules and Regulations. It acknowledges the fact that cooperation and awareness are important implements in the success of the Consumer Protection Law.

Indeed, the main thrust of DA is on strengthening these attached agencies with specialized skills and knowledge to specifically answer the queries of consumers. Unfortunately, the difficulty with this system is that these agencies tend to work individually and independently, such that it is difficult to monitor the development of Consumer Complaints in each agency. When inquiring about the frequency and nature of the complaints DA handles, each agency has a list of its own which is not closely monitored and summarized considering the work load of each. This is probably the reason behind the creation of a separate DA Technical Committee in Rule 3.

The Department of Health through the Bureau of Food and Drugs (Legal Division) is mandated to provide legal advice in the enforcement of food and drug laws and regulation. It likewise conducts administrative proceedings and quasi-judicial hearings on cases related to food and drug laws and regulations and prepares recommendations, resolutions and other administrative issuances pertaining to regulation of processed foods, drugs and other related products. This office conducts investigation of consumer complaints on products regulated by the Bureau; and monitor product advertisements and promotions to check compliance with existing guidelines on medical and nutritional claims. BFAD has been very visible in its campaign on food, cosmetics and other drug products (Bureau Circular 3-95 and Bureau Circular 8A-99) and on labeling and advertisement of substances hazardous to health such as cigarettes (A.O. 10-93).

The Department of Education, Culture and Sports is directed to develop and adopt a consumer education program which shall be integrated into existing curricula of all public and private schools from primary to secondary level. A continuing consumer education program for out-of-school youth and adults shall likewise be developed and undertaken. The consumer education program shall include information regarding:

- The consumer as a responsible member of society and his responsibility to develop: (a) critical awareness which is the responsibility to be alert questioning about the use of and price and quality of goods he uses; (b) assertiveness which is the responsibility to act so he is assured of a fair deal, aware that for as long as he remains to be a passive consumer he will continue to be exploited; (c) social concern which is the responsibility to be aware of the impact of his consumption on other citizens; and (d) environmental awareness which is the responsibility to understand the environmental consequences of his consumption;”
- Consumer rights; and
- Practical problems the consumer faces in daily life.

2.2 Consumer Groups

Consumers can exercise a good deal of influence by banding together into pressure groups. They have a number of identifiable interests in common: economic efficiency, diversity of purchasing choice, avoidance of monopoly profits and consumer fraud, optimal purchasing information and good quality products and services in relation to price. Individual consumers could aggregate their complaints to more effectively pursue their interests like other pressure groups. Consumers should be educated about their rights and more support could be given to pressure “repeat players” like large manufacturers to incorporate consumer-friendly provisions in their contracts, such as a longer warranty period.

In the Philippines, safeguarding of consumer rights is essentially entrusted to the government. But there are local consumer groups linked to an international group with a membership of more than 260 organizations in almost 120 countries. *Consumers International* is an independent, non-profit organization which strives to promote a fair society through defending the rights of all the consumers, including

poor, marginalized and disadvantaged people by supporting and strengthening member organizations and the consumer movement in general, and campaigning at the international level for policies which respect consumer concerns. It was founded in 1960 as the International Organization of Consumer Unions (IOCU) by a group of national consumer organizations that acknowledged that they could build upon their individual strengths by working across national borders. Now the organization is acclaimed as the voice of the international consumer movement on issues such as product and food standards, health and patients' rights, the environment and sustainable consumption, and the regulation of international trade and public utilities. Consumers International successfully campaigned for the adoption by the United Nations of the 1985 Guidelines for Consumer Protection, which is still the single most important document about consumer protection, serving as a vital lobbying tool both nationally and internationally. Likewise, it strives to educate consumers through research and training, and the development of resource materials. Institution and capacity building is also a major concern, aiming to develop knowledge and skills in its member's organizations through training programs, seed grants, technical assistance, information networks, exchange programs and joint projects.

In the end, what the organization seeks is to promote and enhance the rights of the consumers and to infuse the responsibility corollary to the enjoyment of these rights. These rights are: the right to satisfaction of basic needs, the right to safety, the right to be informed, the right to choose, the right to be heard, the right to redress, the right to consumer education and the right to a healthy environment. Nonetheless, consumers have the responsibility to use their power in the market to drive out abuses, encourage ethical practices and support sustainable consumption and production. The development and protection of consumers' rights and awareness of their responsibilities are integral to the organization's ideals -- eradication of poverty, good governance, social justice and respect for human rights, fair and effective market economies, and protection of the environment.

The recognized members of this organization in the Philippines are: Citizens' Alliance for Consumer Protection (CACAP), Consumers Federated Groups of the Philippines Inc. (CFGF), Konsumo Dabaw, and Philippine Consumers Movement Inc (KMPI). These groups however have yet to make a significant effect in the Philippines, primarily because the concept of "consumer protection" has yet to be ingrained in the Filipino mentality.

2.3 Private Business Establishments

The Government encourages all the business establishments to create a Consumers Welfare Desk to assist consumers in their queries. Department stores need little reminding of this endeavor, considering that they value quality and customer satisfaction to thrive in business. In Rustan's, one of the largest up-scale department store chains in the Philippines, the Legal Office (Atty. Noli Rayos del Sol, Assistant General Counsel, was interviewed in August 2001) disclosed that they are aware of the RA 7394 policy that the "best interest of the consumer shall be considered in the interpretation and implementation" of the rules (this policy is adopted in departmental rules and regulations specifically, the Bureau Food and Industry A.O. No. 10-93 on labeling and advertisements of cigarettes, passed March 22, 1993). Hence, they make sure that the customers are given priority. A consumer dissatisfied with a certain product can go to the Customer Service and speak with the manager. The manager will try to assist the consumer and make the necessary apologies or refund or exchange if necessary. The managers are trained well to deal with the consumers because they give a human face to the otherwise impersonal business enterprise. Rustan's Grocery is at times confronted with complaints regarding adulterated canned and dairy products. Rustan's Department Store on the other hand encounters questions on product quality.

Most consumer complaints are resolved within the managerial level. Otherwise, it is elevated to the Legal Department and meetings with clients who are accompanied by their lawyers are held. On the average, it takes only three to four meetings before they reach an amicable settlement and the client eventually drops the case. In these meetings, the suppliers are ordered to appear to explain their side. If the suppliers are remiss in their duties, Rustan's sanctions them for a month or two by removing their products from the racks until they have secured the necessary changes. Only a few cases are raised to the Department of Health (BFAD) or the Department of Trade and Industry (BTRCP). In fact, Rustan's boasts of having less than 10 cases pending in these departments. The secret lies in what they call the *ligaw* system, which is the Pilipino word for "courting." This way they appease the complaining consumer and personally deliver goodies and tokens to placate them. They even shoulder medical expenses and visit the sick consumer in the hospital to directly check on the patient and assuage his worries. Management is convinced that this is the surest way by which the cases are discontinued and customer satisfaction is attained.

IV. Conclusion

The essence of ADR lies in a trellis of interests. There is the overwhelming hope for a peaceful settlement of disputes; a recognition of the inherent limits of conventional judicial structures in responding to new challenges; an enlivened emphasis on the active role the community plays in the lives of their members; the re-thinking of what it considers to be fair and reasonable; the wearing away of the over-dependence on professionals to solve our problems; and empowering the individual consumer with knowledge and decision-making skills.

There is no catalogue of essential ingredients necessary to build the ideal mechanism for consumer disputes. It is clear though that whatever this is, it should: (1) relieve the courts of congested dockets; (2) enhance community involvement in the dispute resolution process; (3) make the process accessible to the ordinary consumer by, *inter alia*, reducing improper cost and delay and (4) to provide more effective dispute resolution that would correct the gross power imbalance between the individual consumer and the institutional seller (Karl J. Mackie, A HANDBOOK OF DISPUTE RESOLUTION: ADR IN ACTION, 1991, p 2-3).

ADR consists of dispute resolution processes outside of or contiguous to the traditional judicial framework. It is used to overcome the infirmities in litigation where the usual remedy for breach of contract or tort is payment of damages. As such, it is primarily concerned with compensating individuals who have been harmed rather than with preventing a wrongdoing. Despite civil sanctions on commercial establishments, they can still profit by wrongdoing after paying damages to the few dissatisfied consumers. Damages, as deterrence is effective only if it is less expensive for a business to alter its behavior than to give relief to disgruntled consumers. Consequentially, there remains doubt as regards the competence of the courts to give judgment, with a view to upholding consumer rights. A legitimate concern is that the courts have neither the knowledge, time nor judicial manpower to investigate and evaluate evidence of a scientific or technical nature. Hence, should consider the viability of establishing a separate, specialized tribunal for considering consumer protection offenses. The establishment of a consumer tribunal is only the first step, however, and there needs to be an urgent reshaping of the community's perception of consumer law violations.

Notwithstanding the inherent weaknesses of the traditional court system, the power of courts to impose civil liabilities in the form of damages is still better than ADR where as a rule, the arbiters cannot grant damages. For instance, Art. 164 of the Consumer Act of the Philippines enumerate the administrative penalties that could be imposed by the Arbitration Officers. Among these is the issuance of a cease and desist order, the acceptance of voluntary assurance of compliance or discontinuance from the respondent that it will refrain from engaging in unlawful or unethical trade practices. Another sanction is reimbursement of any money or property in connection with the complaint or the duty to replace, recall or refund the defective products. The only administrative fines allowed should not be neither less than P500.00 nor more than P300, 000.00 “depending on the gravity of the offense.” The law does not speak of consequential or punitive damages. In the DTI cases earlier discussed, the cases were deemed close upon replacement of the product. No importance was given to the fact that the consumer had to miss his appointments or take time off from work. Neither was any pecuniary value given to the apprehension and inconvenience suffered by the customer who had to repeatedly follow-up his complaint and spend weeks without a refrigerator or typewriter.

Likewise, the Department of Trade and Industry Order No. 124-92 (Adopted October 28, 1992) provides that one of the administrative penalties the consumer arbitration officer may impose is “restitution or rescission of the contract without damages.” Another illustration is Rule VI of the Rules and Regulations implementing the Consumer Act, which applies to service quality imperfections. The remedies of consumers of service quality imperfections or improper service have the following alternative options: 1) proper performance of the service without additional cost to the consumer; 2) immediate reimbursement of the amount paid, with monetary updating, without prejudice to losses or damages; or 3) proportionate reduction of price. In contract law enforceable in courts, specific performance and money damages are not mutually exclusive remedies. Courts have the discretion to award both especially if the breach has already resulted in interim consequential damages.

Another drawback of ADR is the difficulty of enforcement. Enforcement agencies tend to rely on public outcry before it acts. As a result, objectionable behavior which adverse effects are not immediately felt by ordinary consumers may be overlooked. An individual who is discontented with a product could very well be ignored by the merchant. Until he organizes with other consumers to present

collective complaints, neither the company guilty of mass violations nor the enforcement agencies would feel compelled to act.

One immediate way in which enforcement agencies can be reinvigorated is by greater participation by consumers, and a more powerful government consumer council is one way of ensuring that the consumer voice is heard when government policies affecting consumers are made and implemented. In the Department of Agriculture A.O No. 9, which adopted the implementing rules and regulations of the Consumer Act, the National Consumers Affairs Council is proscribed to “establish procedures for meaningful participation by consumers or consumer organizations in the development and review of department rules, policies, and programs” (Rule VII, Sec. 16). Such procedures should include holding of forums where consumers can articulate their concerns and recommendations to decision-makers.

Moreover, there is always a danger that consumer advocacy bodies will take on the easy or controversial issues that will gain wide publicity and acclaim in mass media. Another related problem pertains to community perception that consumer rights transgressions are not as morally offensive or vicious as petty criminal malfeasance. Many Filipinos are fatalistic and would passively accept this simply as “bad luck” befalling them. Consumer groups and the enforcement agencies themselves have a role here in changing perceptions.

Even in the U.S., only very few dissatisfied consumers use any third-party complaint mechanism. Close to a third complain directly to sellers or more often, return goods for refunds. In slightly more than six percent of the cases, they simply changed brands or dealers in the future (*Id*, Singer at 89). Filipinos, who like other Asians are less confrontational than Westerners, would balk at entering a long-drawn legal process exacerbated by the existing serious power imbalance.

The other possible weaknesses of ADR, however, involve the time and energy, which is needed to establish and improve internal ADR processes that may deflect focus from the more urgent tasks of judicial reform. Specific drawbacks of private schemes relate to their limited jurisdiction, their dependence upon private company support and their degree of independence. The financial relationship could mean that the private redress mechanism’s independence is immediately suspected, especially if the business establishment and not the neutral party choose the arbiter. In contrast, the independence of courts from the contending parties is not a major issue.

In the end, an effective alternative system of dispute resolution must enjoy the confidence of both parties; be expeditious and accessible; involve minimum expense to the parties; be procedurally fair and achieve just results; be actually and visibly impartial and independent; and financially secure (Id, Mackie at 171). Central to these is the trustworthiness of the arbitration officers. Art. 161 of the Consumer Act specify only two qualifications of consumer arbitration officers. They must be a college graduate with three years experience in the field of consumer protection and must be of good moral character. We earlier identified one advantage of ADR as bringing back to the community a deeper involvement in the life of their members and reducing the monopoly of power and wisdom in the hands of lawyers and judges. This inheres in the various modes of alternative dispute settlement. Mediation is the use of an impartial third party who is an outsider to the dispute. Conciliation connotes the preliminary involvement of this disinterested third party while arbitration allows disputants to choose their arbiter. Hence, technical expertise is not as important as probity and integrity. However, this does not preclude the necessity for a group of trained and qualified voluntary arbiters who can be relied on for their objectivity.

There is also a need to reconcile in express and unambiguous terms the Consumers Act and the compulsory conciliation and mediation in the barangay level. Negotiation, mediation, arbitration and its hybrids should evolve into mainstream consumer dispute resolution. The existence of an alternative means of pursuing a complaint and resolving a controversy provides the consumer with an additional choice or in many cases, one real choice, especially where the preferred approach is presentation of documents without oral arguments.

One clear advantage that ADR has over the courts is its versatility. It is unhampered by strict procedural requirements and evidentiary rules. This relative flexibility provides the opportunity to find a program, which is genuinely suitable for the needs of the small consumers. ADR offers speed, simplicity and the opportunity for all the parties to play a major part in the resolution of the problem at manageable expense. The participants act as problem-solvers, whose goal is towards a just result reached amicably and efficiently. The problems attendant to litigation such as financial exigency, laborious procedure and adversarial relationship would be eradicated, if not, minimized when opting for this alternative.

ADR is a remarkable process, filled with benefits and promises. In the Philippines, this system is very feasible and convenient considering the success of the

Barangay System and the Reported Case Digests and Incidents of Consumer Complaints in the different departments of government. And with the inherent amiable and convivial disposition of Filipinos in coping with problems, a non-contentious ADR meeting could resolve our consumer problems prior to resorting to judicial action. As it is, the laws and methods employed in the government are geared towards the arduous and lengthy litigation process. Art. 162 of The Consumer Act gives the arbitration officers original and exclusive jurisdiction to mediate, conciliate, hear and adjudicate all consumer complaints but such will not preclude the parties from pursuing judicial action. In the Department of Trade and Industry, the filing of an administrative case proceeds independently of any civil or criminal action pending before the regular courts (DTI Administrative Order No. 004-97 [1997]). Furthermore, although termed mediation or arbitration, the process yields to the adjudicatory nature of dispute resolution; reflective of the quasi-judicial powers reposed in the departments of governments.

This paper, nonetheless, shows that the government and the private sector are making significant contributions to protect the interests of the consumers and strengthen the grievance machinery. The laws and the rules are crafted well to suit the needs of consumers. Implementation, unfortunately, has been the major problem. There are a still a multitude of things to be done, but it is heartening to know that the foundation has been carefully laid out.

Government agencies have shown immense support for consumer protection. They have passed rules and regulations to assist consumers. But this is not enough. The onus of responsibility for consumer protection continues to rest upon the consumer himself. It is his duty to be judicious in his transactions and in ultimately choosing the appropriate grievance mechanism and remedy.

Part II: Labor Dispute Resolution in the Philippines

Domingo P. Disini, Jr.

I. Policy Statement

1. Introductory Statement

There are two distinct methods of labor dispute settlement in the Philippines, namely, the (a) preferred method of collective bargaining and voluntary arbitration, and (b) compulsory arbitration of labor disputes in industries indispensable to the national interest when invoked by the State or by government agencies exercising quasi-judicial functions when invoked by either, or both, labor and management.

2. Voluntarism: Preferred Method of Dispute Settlement

The Philippine Constitution specifically states that *voluntarism, i.e.*, collective bargaining and voluntary arbitration, are the preferred methods of dispute settlement.

ARTICLE XIII, Social Justice and Human Rights,

xxx

Labor

Section 3. x x x

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace (emphasis supplied).

The preferred methods of collective bargaining and voluntary arbitration are based on the widely accepted principle that real and lasting industrial peace must be firmly based on a free and voluntary agreement between labor and the employer and cannot be legislated or imposed by law. The role of law and government agencies is minimal, and limited only to providing a legal framework for the mechanics of the system, and assistance when requested by either or both labor and management.

3. Compulsory Arbitration as a Method of Labor Dispute Settlement

Compulsory arbitration as a mode of labor dispute settlement is used only in two instances: (a) involving labor disputes in industries indispensable to the national interest, and (b) where action or suit is brought by either party for alleged violation of the *Labor Code*.

3.1 Labor Disputes in Industries Indispensable to the National Interest

The pertinent provision of the Labor Code reads:

Article 263. *Strikes, Picketing and Lockouts* -

x x x

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration...

x x x

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over such labor dispute in order to settle or terminate the same.

This policy is based on the recognition that the state must settle a labor dispute in the national interest as soon as possible without resort to the use of economic weapons, either by labor or the employer and relieve the public from unwarranted inconvenience and the consequences of a prolonged industrial conflict.

3.2 Violations and Enforcement of the Provisions of Labor Code

Labor disputes alleging violations of the Labor Code, or labor law, implementation are remedied and enforced through a complaint procedure provided by the Code. While the enforcement and settlement procedures are not specifically denominated or characterized as *compulsory arbitration*, the same is in effect, and to all intents and purposes, compulsory arbitration, i.e., official adjudication of a labor dispute initially by a state agency exercising quasi-judicial function, and finally by the regular Courts of law, on appeal.

This procedure is based on the recognition that the use of economic weapons or sanctions, i.e., the withholding of labor by workers or work opportunity by an employer, cannot be sanctioned as the law itself provides for a peaceful method for enforcement of rights and obligations. The State plays an active and dominant role in this process, while that of either or both parties is virtually non-existent.

The provisions of law cited in this paper, specifically of Presidential Decree No. 442, *The Labor Code of the Philippines*, as amended (1974) are quoted verbatim as easy reference for the reader. Statistical data is cited in tabular form to indicate the extent of the use of collective bargaining, voluntary arbitration, and compulsory arbitration, as methods of dispute settlement, as well as to show the workload and accomplishment of the agencies of the Department of Labor and Employment.

II. Methods of Dispute Settlement: Compulsory Arbitration, Collective Bargaining, and Voluntary Arbitration

The two contrasting methods of dispute settlement will be described separately. The process of *Compulsory Arbitration* will first be described as background material, followed by the State preferred alternative method of voluntarism, i.e. Collective Bargaining and Voluntary Arbitration.

1. Compulsory Arbitration

1.1 Historical Background

Compulsory Arbitration as a method of labor dispute settlement has a long history in the Philippines, and was first adopted in 1936. The 1935 Constitution of the Philippines provided:

The promotion of social justice to insure the well being and economic security of all the people should be the concern of the State (Article II, Declaration of Principles, Section 5).

The State shall afford protection to labor, especially to workingwomen and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. *The State may provide for compulsory arbitration* (Article XIV, General Provisions, Section 6, Underscoring supplied).

Pursuant to the above Constitutional mandate, the Philippine legislature enacted in 1936, Commonwealth Act No. 103, “An Act to Afford Protection of Labor by Creating a Court of Industrial Relations ... and to Enforce Compulsory Arbitration Between Employers or LandLords, and Employers or Tenants, Respectively, and by Prescribing Penalties for the Violations of its Orders.”

The method, practice, and principles of *compulsory arbitration*, has withstood the test of time and up to this day remains the principal method of dispute settlement in industries indispensable to the national interest, and in labor law enforcement, i.e., putting into force the provisions of the Labor Code of the Philippines.

1.2 Arbitrable Issues

Disputes that are subject to compulsory arbitration under the Labor Code are:

- (i) Labor disputes in industries indispensable to the national interest, when the Secretary of Labor and Employment (a) assumes jurisdiction and decides the dispute, or (b) certifies the same to the National Labor Relations Commission for compulsory arbitration, or (c) when the President of the Philippines assumes jurisdiction and settles the dispute. (Article 263 (g) Labor Code)
- (ii) Labor disputes involving the enforcement of provisions of the Labor Code of the Philippines. Arbitrable issues would involve:
 - Training and Employment of Special Workers: (a) apprentices; (b) learners; (c) handicapped workers
 - Conditions of Employment:
 - Working conditions and rest periods: hours of work; weekly rest periods; holidays, service incentive leaves; and service charges.
 - Wages: minimum wage rates; payment of wages; prohibitions regarding wages.
 - Working conditions for special groups of employees: women; minors; house helpers; home-workers.
 - Labor Relations
 - Unfair Labor Practices

The wide range of arbitrable disputes indicates the all-encompassing active role of government in labor dispute settlement whenever the exercise of arbitral powers is invoked by either or both parties to the dispute.

Compulsory arbitration as a method of dispute settlement of labor issues enhances the role of lawyers who, historically, have played, and still continue to play, an active role in labor-management relations. Moreover, administrative agencies exercising quasi-judicial functions, and justices of the appellate courts are also lawyers. It is, then, true to say that compulsory arbitration is almost always a lawyer's affair.

1.3 Agencies of the Executive Department Exercising Quasi-Judicial Functions

A. Office of the President of the Philippines

Labor Disputes in Industries Indispensable to the National Interest - The Labor Code authorizes the President of the Philippines to determine which industries are indispensable to the national interest, and to adjudicate labor disputes in these industries through the process of compulsory arbitration.

The pertinent provision of the Labor Code of the Philippines reads:

Article 263. *Strikes, Picketing and Lockouts* –
x x x

(g) The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any labor dispute in such industries in order to settle or terminate the same.

B. Office of the Secretary of Labor and Employment

a. Labor Disputes in Industries Indispensable to the National Interest

The Secretary of Labor and Employment is authorized to assume jurisdiction and settle labor disputes in industries indispensable to the national interest by compulsory arbitration. The pertinent provision of the Labor Code, reads:

Article 263. *Strikes, Picketing, and Lockouts* –

x x x

(g)When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration.

xxx

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. xxx In such cases therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. xxx

b. Appellate Jurisdiction

(a) Decisions or Awards of Med-Arbiter

The Labor Code confers appellate jurisdiction on the Secretary of Labor and Employment over decisions of the Med-Arbiters of the Bureau of Labor Relations in Certification Election cases. The settlement of a *certification election* is an administrative–investigatory procedure for the (i) determination of an alleged claim of majority status in a defined appropriate bargaining unit and (ii) the designation of a union as the exclusive bargaining representative for the purpose of collective bargaining. The pertinent provision of the Labor Code, reads:

Article 259. Appeal from Certification Election Orders. - Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter, directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) days.

(b) Orders Issued by Duly Authorized Representative in Exercise of Visitorial Power

Art. 128. x x x

An order issued by a duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter.

c. Visitorial Powers of the Secretary of Labor and Employment

The Secretary of Labor and Employment or his duly authorized representative in the exercise of visitorial and enforcement power, has broad authority to enforce the provisions of the Labor Code and to issue compliance orders. The pertinent provision of the Labor Code reads:

Article 128. *Visitorial and Enforcement Power* - The Secretary of Labor or his duly authorized representatives ... shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Article 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation...

Cases involving violations of apprenticeship agreements (Article 65, Labor Code) will also be investigated under the visitorial and enforcement powers of the Secretary of Labor and Employment (Article 128).

In actual practice, there are two types of inspections: (a) routine inspection where there is no complaint; and (b) inspection when there is a complainant.

C. Regular Bureaus of the Department of Labor and Employment

a. Regional Director: Small Money Claims

The Regional Directors in the Regional Offices of the Department of Labor and Employment are authorized to adjudicate small money claims subject to certain conditions, namely: (a) basis of claim; (b) amount of each claim; and (c) absence of claim for reinstatement. The pertinent provision of the Labor Code reads:

Article 129. *Recovery of Wages, Simple Money Claims and Other Benefits*. - Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered,

through summary proceedings and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement: Provided, further, That the aggregate money claims of each employee or househelper does not exceed Five thousand pesos (P5,000.00)...

Any decision or resolution of the regional director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

b. Bureau of Labor Relations

(a) Inter-union and intra-union disputes

The Bureau of Labor Relations has original and exclusive jurisdiction over all inter-union and intra-union conflicts, and disputes affecting labor-management relations, subject to certain exceptions. An employer may be drawn into inter-union and intra-union conflicts when several unions claim remittances of union dues and other assessments. The pertinent provision of the Labor Code reads:

Article 226. *Bureau of Labor Relations* – The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.

x x x

Inter-union and intra-union conflicts are adjudicated by a *Med-Arbiter* who is an officer in the Regional Office or in the Bureau of Labor Relations (Rule I, Section 1 (qq), Department Order No. 09, Series of 1997, Department of Labor and Employment).

(b) Certification Elections and Appropriate Bargaining Unit

The Bureau of Labor Relations likewise has the authority to conduct

Certification Elections to determine claims of majority representation in an appropriate bargaining unit for the purpose of collective bargaining, and to determine the appropriateness of a bargaining unit.

The pertinent provision of the Labor Code reads:

Article 232. *Prohibition on Certification Election* – The Bureau shall not entertain any petition for certification elections or any action, which may disturb the administration of agreements affecting the parties . . .

The certification election function is performed by Election Officers assigned by the Bureau of Labor Relations or the regional offices, to conduct and supervise certification elections (Rule I, Section 1 (mm), Department Order No. 09, Series of 1997, Department of Labor and Employment).

Med-Arbiters are members of the Philippine Bar, with four (4) years of relevant experience (*See* also Letter of Chairman, Civil Service Commission to the Secretary, Department of Labor and Employment, November 25, 1994).

The workload of the Bureau of Labor Relations for the Years 1999 and 2000 is shown below.

Original and Appealed Med-Arbitration Cases

	1999	2000	2001
Original med-arbitration	696	844	67
Cases handled	72%	73%	31%
Disposition rate (%)			
Appealed med-arbitration	386	394	261
Cases handled	84%	83%	49%
Disposition rate (%)			
Money claims	5528	5591	
Cases handled	87%	96%	
Disposition rate (%)			

Source: Table 51. Current Labor Statistics, Second Quarter 2001. Bureau of Labor and Employment Statistics, Department of Labor and Employment.

The Disposition rate of med-arbitration cases is low (less than 75%). The number of decisions appealed is high (70%). It may be noted, however, that the disposition rate of appealed cases is also high (more than 80%).

D. Agencies Attached to the Department of Labor and Employment

a. National Labor Relations Commission

The National Labor Relations Commission is an agency attached to the Department of Labor and Employment for program and policy coordination only. The Commission has (a) original and exclusive jurisdiction in the first instance, and (b) appellate jurisdiction to hear and adjudicate cases as specified in the Labor Code.

(a) Original and Exclusive Jurisdiction

Issuance of Labor Injunction - The Commission has original and exclusive jurisdiction to issue an injunction in a labor dispute. The pertinent provision of the Labor Code reads:

Art. 218. *Powers of the Commission* – The Commission shall have the power and authority:

x x x

- (e) To enjoin or restrain any actual or threatened commission of all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:
- (i) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
 - (ii) That substantial and irreparable injury to complainant's property will follow;
 - (iii) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
 - (iv) That complainant has no adequate remedy at law; and
 - (v) That the public officers charged with the duty to protect complainant's

- property are unable or unwilling to furnish adequate protection.
- (vi) Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed - charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice. Such a temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days. No such temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

The undertaking herein mentioned shall be understood to constitute an agreement entered into by the complainant and the surety upon which an order may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages, of which hearing complainant and surety shall have reasonable notice, the said complainant and surety, submitting themselves to the jurisdiction of the Commission for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity...

Wage Distortion Disputes

The Labor Code confers original and exclusive jurisdiction on the Commission, over wage distortion cases where there is no collective bargaining agreement or a recognized labor union in an establishment. The pertinent provision of the Labor Code reads:

Article 124. Standard Criteria for Minimum Wage Fixing - x x x

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results

in distortions of the wage structure within an establishment...

In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

In practice, the initial complaint or action involving a wage distortion may be brought before a plant level labor-management grievance mechanism if the same exists; or if no such grievance mechanism is available then to the National Conciliation and Mediation Board for preventive mediation. If the wage distortion dispute remains unresolved, then the dispute is submitted to the National Labor Relations Commission for compulsory arbitration.

A wage distortion is defined by the same article.

Art. 126. ...a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical basis of differentiation.

(b) Appellate Jurisdiction

Decisions and Awards of Labor Arbiters - The Commission has exclusive appellate jurisdiction over cases decided by Labor Arbiters. The pertinent provision of the Labor Code reads:

Art. 217. Jurisdiction ... and the Commission. - xxx

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

Decisions and Awards of Regional Directors- The Commission has original and exclusive jurisdiction over all decisions of the Regional Director in small money claims cases. The pertinent provision of the Labor Code reads:

Article 129. Recovery of Wages, Simple Money Claims and Other Benefits - xxx

Any decision or resolution of the Regional Director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five calendar days from receipt of said decisions or resolutions, to the National Labor Relations Commission . . .

Delegated Jurisdiction - The Labor Code authorizes the Secretary of Labor and Employment to certify a labor dispute in an industry indispensable to the national interest for compulsory arbitration by the National Labor Relations Commission. The pertinent provision of the Labor Code reads:

Article 263. Strikes, Picketing and Lockouts - xxx
xxx

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may certify the same to the Commission for compulsory arbitration.

(c) Composition, and Qualification of NLRC Chairman and Commissioners

The composition and qualification of the Chairman and members of the Commission are provided by the Labor Code. The pertinent provisions of the Code read:

Article 213. *National Labor Relations Commission* - There shall be a National Labor Relations Commission which shall be attached to the Department of Labor and Employment for program and policy coordination only, composed of a Chairman and fourteen (14) Members.

Five (5) members each shall be chosen from among the nominees of the workers and employers organizations, respectively. The Chairman and the four (4) remaining members shall come from the public sector, with the latter to be chosen from among the recommendees of the Secretary of Labor and Employment.

Upon assumption into office, the members nominated by the workers and employers organizations shall divest themselves of any affiliation with or interest in the federation or association to which they belong.

The Commission may sit *en banc* or in five (5) divisions, each composed of three (3) members. Subject to the penultimate sentence of this paragraph, the Commission shall sit *en banc* only for purposes

of promulgating rules and regulations governing the hearing and disposition of cases before any of its divisions and regional branches and formulating policies affecting its administration and operations. The Commission shall exercise its adjudicatory and all other powers, functions and duties through its divisions.

X X X

Article 215. *Appointment and Qualifications* - The Chairman and other Commissioners shall be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least fifteen (15) years, with at least five (5) years experience or exposure in the field of labor-management relations and shall preferably be residents of the region where they are to hold office...

b. Labor Arbiters

The office of the Labor Arbiter is an integral part of the National Labor Relations Commission.

(a) Jurisdiction

The jurisdiction of the Labor Arbiter is provided by the Labor Code as follows:

Art. 217. *Jurisdiction of Labor Arbiters.* . . - (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;
2. Termination disputes;
3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
5. Cases arising from any violation of Article 264 (Prohibited Activities) of this Code, including questions involving the legality of strikes and lockouts; and
6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding Five thousand pesos (P5, 000.00), regardless of whether accompanied with a claim for reinstatement or not.

Labor Arbiters also have original and exclusive jurisdiction over money claims

of migrant workers.

Section 10. *Money Claims.* Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. (R.A. No. 8042, Migrant Workers and Overseas Filipinos Act of 1995)

It may be noted that while Article 217 provides for original and exclusive jurisdiction of the Labor Arbiter, the same may likewise be exercised by the President of the Philippines or the Secretary of the Labor and Employment in the exercise of their power of compulsory arbitration (Labor Code, Article 263 (g)), and by the Voluntary Arbitrator or Panel of Voluntary Arbitrators by joint and voluntary agreement of labor and employer (Labor Code, Article 262).

Decisions, awards, or orders of the Labor Arbiter may be appealed to the National Labor Relations Commission. The pertinent provisions of the Labor Code provides:

Article 223. *Appeal* - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders. Such appeal may be entertained only on any of the following grounds:

- (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the findings of facts were rose which would cause grave or irreparable damage or injury to the appellant.

(b) Delegated Function

The National Labor Relations Commission in labor injunction cases may delegate to the Labor Arbiter the authority to conduct hearings. The pertinent provision of the Labor Code reads:

Article 218. Powers of the Commission - xxx

(e) the reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission.

(c) Qualifications

The Labor Code states the qualifications of Labor Arbiters:

Art. 215. *Appointment and Qualifications* - ... The Executive Labor Arbiters and Labor Arbiters shall likewise be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least seven (7) years, with at least three (3) years experience or exposure in the field of labor-management relations: Provided, however, that incumbent Executive Labor Arbiters and Labor Arbiters who have been engaged in the practice of law for at least five (5) years may be considered as already qualified for purposes of reappointment as such under this Act.

The accomplishments of the National Labor Relations Commission and Labor Arbiters for the years 2000 – and First Semester 2001 are shown below.

NLRC Case Load 2000 - 2001

	Start of Yr. Balance	Cases Received w/in the Yr.	Total Cases	Disposed Cases	Unresolved Cases
2000	5,243	10,453	15,696	8,216	7,480
2001	7,480	4,782*	12,262*	4,173*	8,089*
% change	42.7%				

Source: National Labor Relations Commission, Budget Presentation FY 2002.

The above data shows the following:

1. In year 2000, the rate of accomplishment was 52%
2. In the First Semester of 2001, the rate of accomplishment was 34%.

**NLRC’s Accomplishment vs. Planned Target
Year 1999 and 2000**

Year	Actual	Target	% Accompl.
1999 and earlier	3,515	5,243	67%
2000	4,701	3,137	149.9%

Source: National Labor Relations Commission. Budget Presentation FY 2002

The above data shows:

1. The years prior to 2000 fell short by 33% of the targeted number of cases to be resolved
2. By year 2000, a dramatic improvement in the fast resolution of cases was evident due to a 150% accomplishment rate by year end
3. The amount awarded to workers reached P1.8B and the number of workers who benefited, totaled 13,990

First Semester 2001 vs. Previous Years

Year	Actual	Target	% Accompl.	Benefits
2000 & 2001 (1 st sem)	2,748	3,741	73.5%	
	1,425	1,374	103.7%	

Source: National Labor Relations Commission. Budget Presentation by 2002

The data shows:

1. The 1st semester performance fell short of the targeted number of cases to be resolved, by 26.5%
2. By 2001 (1st semester), the resolution of cases was expedited raising the accomplishment rate to 103.7%
3. As of June 2001, the amount awarded to workers reached P390.7M and the number of workers who benefited, totaled 5,376

The NLRC also reported that the Supreme Court of the Philippines affirmed 89% of its Decisions appealed to the Court. This is a high rate of affirmance.

Labor Arbitration (2000 – 2001) (5 Divisions)

Year	Start of Year Balance	Cases Received w/in the Year	Total Cases	Disposed Cases	Unresolved Cases
2000	14,063	28,438	42,501	28,599	13,902
2001	13,902	15,065*	28,967	13,203*	15,764*
% change	-1.14	*as of 1 st Semester			

Source: National Relations Commission. Budget Presentation FY 2002.

The data shows that:

1. In year 2000, the rate of disposed cases was 67% (28,599)
2. In the 1st semester of 2001, the rate of accomplishment was 46% (13,203).

**Regional Arbitration Branches
Performance vs. Planned Targets**

1)

Year	Actual	Target	% Accompl.
1999	11, 718	14, 063	83.3%
Early 2000	16, 881	17, 829	94.7%

Source: National Labor Relations Commission. Budget Presentation 2002.
Figures based on age of cases.

The data shows:

1. Prior to the year 2000, the number of cases resolved, reflected an 83.3% accomplishment rate compared with targets
2. By year end of 2000, the accomplishment rate improved and increased by 94.7%
3. In the year 2000, the conciliation and mediation efforts program resulted in the disposition of 10,114 cases through amicable settlement. This indicates a 10.9% improvement over the 994 cases settled on 1999.

2)

Year	Actual	Target	% Accompl.
2000	7,794	6,954	112.1%
2001	5,409	9,396	57.6%

Source: National Labor Relations Commission, Budget Presentation FY 2002. *Limitation – correcting inclusive dates

The data shows:

1. A high accomplishment rate of 112.1% in the 1st semester figures over years prior to 2001
2. For the first half of 2001, the accomplishment rate was at 57.6%

LABOR DISPUTE SETTLEMENT IN THE PHILIPPINES
 NATURE OF DISPUTE AND ADJUDICATING AGENCIES
 LABOR STANDARDS AND LABOR RELATIONS
 ISSUES: PRIVATE SECTOR

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Violation of apprentice agreement (65)	Regional Director – DOLE	DOLE Secretary Court of Appeals Supreme Court
Wage order promulgated by the Regional Tripartite Wages and Productivity Boards. (123)		National NLRC Court of Appeals Supreme Court Wages and Productivity Commission (123)
Violations which may aid in enforcement of the Labor Code, any Labor Law, Wage Order or Rules and Regulations issued by Agency (128)	No complaint. Violation discovered in course of Visitorial and Enforcement Power of Secretary (DOLE) or authorized representative, or upon complaint.	DOLE Secretary Court of Appeals Supreme Court
Recovery of wages, simple money claims and other benefits. Aggregate money claim of each complainant does not exceed P5,000.00. No claim for reinstatement (129)	Regional Director (DOLE)	National Labor Court of Appeals Supreme Court Relations Commission (129)
Disputes arising from inter-	Labor Management Committee of the	Court of Appeals Supreme Court

pretation or implementation of the Productivity Incentives Act of 1990 (Sec. 9, R.A. No. 6971)	establishment, with the assistance of the National Conciliation and Mediation Board (NCMB). <i>Voluntary Arbitration</i> (Sec. 9, R.A. No. 6971)	
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NOTE: *Labor dispute* refers to controversies where there exists an employer-employee relationship between the parties.

Numbers in () refer to Article Number of the Labor Code of the Philippines (P.D. No. 447 as amended). Article or Section numbers of other laws are indicated with the specific Act. DOLE = Department of Labor and Employment; NLRC = National Labor Relations Commission

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Violation of the Sexual Harassment Law. (R.A. No. 7877)	Employer-created Committee on Decorum to investigate complaint. (Sec. 4, R.A. No. 7877) Victim or complainant may institute separate and independent action for damages and other relief in Regional Trial Court (RTC) (Sec. 6, R.A. No. 7877)	Court of Appeals Supreme Court

	Criminal complaint in Regional Trial Court. (Sec. 7, R.A. No. 7877)	
Unfair labor practices (217(a)(1))	Labor Arbiter (217(a)(1))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Termination disputes (217(a)(2))	Labor Arbiter (217(a)(2))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Wages, rates of pay, hours of work and other terms and conditions of employment. Complaint accompanied with claim of reinstatement (217(a)(3))	Labor Arbiter (217(a)(3))	National Labor Relations Commission (217 (b)) Court of Appeals Supreme Court
Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations (217(a)(4))	Labor Arbiter (217(a)(4))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court

NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Cases arising from violation of prohibited activities in connection with strike or lockout and legality of strike and lockout (217(a)(5) and 264)	Labor Arbiter (217(a)(5))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Claims arising from employer-employee relations where amount of each claim exceeds P5,000.00, whether accompanied or not with a claim for reinstatement (217(a)(6))	Labor Arbiter (217(a)(6))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Claims arising out of an employer-employee relationship or any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary, and other forms of damages. (Sec. 10, R.A. No. 8042, Migrant Workers and Overseas Filipinos Act of 1995)	Labor Arbiter (217(b))	National Labor Relations Commission (217(b)) Court of Appeals Supreme Court
Intra-union and inter-union	Med-Arbiter of Bureau of Labor	Secretary of Labor Court of Appeals Supreme Court

conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations except implementation or interpretation of collective bargaining agreements (226)	Relations in Regional Offices of DOLE (226)	and Employment
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NATURE OF DISPUTE	WHERE COMPLAINT FILED - INITIAL ADJUDICATION	FLOW OF APPEALS
Petition for Certification Elections (232 and 259)	Med-Arbiter of Bureau of Labor Relations in Regional Offices of DOLE (232)	DOLE Secretary Court of Appeals Supreme Court (259)
1. Unresolved grievances arising from interpretation or implementation of collective bargaining agreement 2. Those arising from the interpretation or enforcement of company personnel policies	Original and exclusive jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators (261)	Court of Appeals Supreme Court

<p>3. Violations of collective bargaining agreement which are not flagrant</p> <p>4. Malicious refusal to comply with the economic provisions of collective bargaining agreement. (261)</p>		
<p>All other labor disputes including unfair labor practices and bargaining deadlocks.</p>	<p>Voluntary Arbitrator or Panel of Voluntary Arbitrators. By agreement of the parties (262)</p>	<p>Court of Appeals Supreme Court</p>
<p>Disputes in industries indispensable to national interest. (263(g))</p>	<p>Compulsory Arbitration by: President of the Philippines <u>or</u> Secretary of Labor and Employment <u>or</u> National Relations Commission if certified by Secretary of Labor and Employment for compulsory arbitration (263(g))</p>	<p>Court of Appeals Supreme Court</p>
<p>Disputes where notice of intent to declare strike or lockout is filed</p>	<p>No adjudicatory powers. National Conciliation and Mediation Board (NCMB) will conciliate and mediate the dispute or recommend voluntary arbitration. (Sec. 22, EO No. 251, July 25, 1987)</p>	

2. Voluntarism – Collective Bargaining, and Voluntary Arbitration as Alternative Methods of Dispute Settlement

2.1 Historical Background of Voluntary Modes of Dispute Settlement

Collective Bargaining and Voluntary Arbitration, aided by mediation and conciliation as alternative modes of dispute settlement began in the early 1950's. Prior to this, when Commonwealth Act No. 103 (earlier referred to as compulsory arbitration period) was the governing law, these methods were rarely used. To implement, and to encourage the practice of collective bargaining as an alternative methods of dispute settlement, the State enacted in 1953, Republic Act No. 875 - AN ACT TO PROVIDE INDUSTRIAL PEACE AND FOR OTHER PURPOSES. The Act declared:

Sec. 1. - *Declaration of Policy* - It is the policy of this Act:

x x x

(c) To advance the settlement of issues between employers and employees through *collective bargaining* by making available full and adequate governmental facilities for conciliation and mediation to aid and encourage employers and representatives of their employees in reaching and maintaining agreements concerning terms and conditions of employment and in making all reasonable efforts to settle their differences by mutual agreement. (Emphasis supplied)

The same Act also provided:

Sec. 16. *Administration of Agreement and Handling of Grievances.* The parties to collective bargaining shall endeavor to include in their agreement, provisions to insure mutual observance of the Agreement and to establish machinery for the adjustment of grievances, including any question that may arise from the application or interpretation of the agreement or from day-to-day relationships in the establishment.

2.2 Collective Bargaining as a Voluntary Mode of Dispute Settlement

The policy of *voluntarism* best illustrated in the process of Collective Bargaining as the method for setting wages, hours of work, and other terms and conditions of employment was specifically advocated by the Act. These are the subject matter that forms the core of labor and employer relationship.

The Constitution guarantees the right of all workers to collective bargaining and negotiations, and categorically and specifically states preference for a voluntary mode of settling issues in the employment relationship. (Article XIII, Section 3)

The constitutional policy of Collective Bargaining as a mode of setting conditions of employment is implemented systematically by the Labor Code (P.D. 442, as amended)

A. Policy Statement

The Labor Code, in its policy statement, clearly and unequivocally states that collective bargaining and negotiation is the preferred method of setting wages, hours of work, and other terms and conditions of employment.

Article 211. *Declaration of Policy* - It is the policy of the State:

(A) To promote and emphasize the primacy of free collective bargaining and negotiations . . .

x x x

(B) To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or terms and conditions of employment, except as otherwise provided in this Code.

The exceptions to this policy, provided in the Labor Code are: (a) Article 263 (g) on labor disputes causing or likely to cause a strike or lockout in an industry indispensable to the national interest when certified for compulsory arbitration; (b) Article 214 regarding Wage distortion disputes resulting from an implementation of a Wage Order in establishments where there is no Collective Bargaining Agreement or duly recognized labor union. A wage distortion is defined as a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates of employee groups within an establishment so as to effectively obliterate the distinctions embodied in such wage structure, based on skills, length of service, and other logical basis of differentiation; and (c) Articles 99, 121(d), 122(b), on minimum wage based on a geographic or industry classification.

B. Procedural Rules

To assure that the process of collective bargaining will work, the Labor Code further: (a) provides for bargaining procedures; (b) defines the meaning of the “duty to bargain in good faith”; and (c) provides enforcement procedures and sanctions in the event of non-compliance with procedures and the duty to bargain collectively.

The Labor Code encourages labor and management to provide their own expeditious procedure for collective bargaining (Article 251), but, in its absence, a procedure specified by law.

The pertinent provisions of the Labor Code read:

Article 250. *Procedure in Collective Bargaining* - The following procedures shall be observed in collective bargaining:

- (a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;
- (b) Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request;
- (c) If the dispute is not settled, the Board shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue *subpoenas* requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call;
- (d) During the conciliation proceedings in the Board, the parties are prohibited from doing any act which may disrupt or impede the early settlement of the disputes; and
- (e) The Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitration.

All matters discussed or disclosed in conciliation meetings are considered privileged communication. The pertinent provision of the Labor Code reads:

Article 233. *Privileged Communication* – Information and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them.

C. Duty to Bargain in Good Faith

The Labor Code defines the mutual duty to bargain in good faith by:

- (a) specifying the standard of conduct or behavior of the parties during the negotiation process;
- (b) enumerating the negotiable or bargain able issues; and
- (c) a prohibition to terminate a collective bargaining agreement during its lifetime, and providing for its continued enforceability even after its expiry date, in the absence of a new agreement.

The Labor Code provides:

Article 252. Meaning of Duty to Bargain Collectively - The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work, and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement if requested by either party but such duty does not compel any party to agree to a proposal or make any concession.

It must be emphasized that the spirit of voluntarism in collective bargaining is quite evident, in that neither party is obliged to agree to a proposal or grant a concession; albeit, there is a duty on either or both of the parties to fully explain the justification of their respective bargaining positions on a proposal or counter-proposal.

Article 253 of the Labor Code further defines the meaning of the duty to bargain in good faith. Thus –

*Article 253. Duty to bargain collectively when there exists a collective bargaining agreement - When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.*

D. Sanctions

To ensure the observance of the procedures and duty to bargain collectively, civil and criminal sanctions are provided by the Labor Code (Articles 248-249, 288-289, Labor Code).

Existing Labor Organizations and Collective Bargaining Agreements

	1999	2000	Average
No. of existing unions	9850	10296	10073
Average membership of active unions	3731	3788	3760
<i>Collective Bargaining Agreements:</i>			
Existing CBAs	2956	2687	2282
Workers covered by existing CBAs	529	484	507
Percentage of labor unions with CBAs	30%	26%	28%

Source: Table 46. Current Labor Statistics, Second Quarter 2001 Bureau of Labor and Employment, Statistics, Department of Labor and Employment.

The above data shows that only thirty percent (30%) of the number of unions had collective bargaining agreements. This is relatively low considering that there were, on the average, ten thousand unions existing during the years 1999 and 2000. In like manner, only a small fraction of the workforce was covered by Collective Bargaining Agreement.

E. Compulsory Arbitration: Effort to exert Voluntarism

The policy of voluntary settlement of labor disputes is manifest even in those instances where either or both of the parties have invoked the administrative machinery of government exercising quasi-judicial functions to settle their labor disputes. An effort must still be made by the adjudicating agency to amicably settle the dispute before formally hearing the case. The Labor Code, in Article 221, provides:

Article 221. Technical rules not binding...

x x x

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction.

The National Labor Relations Commission reported the implementation of the policy of exerting an amicable settlement before actually hearing the case:

With due emphasis given to conciliation and mediation as a result of the program thrust spearheaded by the new chairman, Ambassador Roy V. Señeres, the number of cases disposed through amicable settlement reached 10,114 in year 2000 which is greater by 994 cases settled in 1999 or an increase of 10.9 percent. For the first six months of this year, the number of cases amicably settled, reached 5,565, which is an increase by 659 cases (or 13.4 percent higher) than the same period last year of 4,906. This accounts for a 42.1 percent share of the total cases disposed of for the first half of the year 2001 (National Labor Relations Commission, Budget Presentation FY 2002).

The same policy of voluntarism also applies in compulsory arbitration of labor disputes in industries indispensable to the national interest. The Labor Code reads:

Article 263. Strikes, Picketing, and Lockouts.

x x x

(h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

2.3 Voluntary Arbitration as Mode of Dispute Settlement

The Labor Code was amended in 1989 by Republic Act No. 6715, through the addition of a new title, specifically, *Title VII - A – Grievance Machinery and Voluntary Arbitration*. The amendment was designed to emphasize and promote voluntary arbitration as a mode of settlement and as an alternative to the use of economic weapons in labor disputes. The salient features of the amendment are: (a) requiring all collective bargaining agreements to provide for a grievance procedure to resolve disputes arising from the interpretation or implementation of the agreement, with voluntary arbitration as the last step of the Grievance Procedure; (b) a procedure for the designation or selection of a voluntary arbitrator or panel of arbitrators; (c) original and exclusive jurisdiction, and jurisdiction that may be voluntarily conferred upon by the parties, on of a voluntary arbitrator or panel of voluntary arbitrators; (d) procedures for voluntary arbitration; and (e) costs of voluntary arbitration.

A. Jurisdiction of Voluntary Arbitrator

a. Original and Exclusive

The original and exclusive jurisdiction conferred by law, and that which may be conferred voluntarily by the disputants on an arbitrator or panel of arbitrators, are provided for in the Labor Code as follows:

Article 261. Jurisdiction of Voluntary Arbitrator or Panel of Voluntary Arbitrators - The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those, which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement.

b. By Agreement of Labor and Management.

Article 262. Jurisdiction over other Labor Disputes - The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

2.4 Minimum Wage Fixing

Arbitrators also have jurisdiction to adjudicate wage distortion disputes in organized establishments.

Article 124. Standards/Criteria for Minimum Wage Fixing -

x x x

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. xxx

x x x

A. Qualifications of Voluntary Arbitrator

The qualifications of a Voluntary Arbitrator are as follows:

Accreditation of an individual as voluntary arbitrator shall be subject to the condition that he/she meets all the qualifications prescribed by the National Conciliation and Mediation Board for accreditation. If found qualified, accreditation which is renewable every five (5) years, shall be granted.

Minimum Criteria

To qualify as an Accredited Voluntary Arbitrator, a person must possess the following minimum criteria:

- (a) He/she must be a Filipino citizen residing in the Philippines
- (b) He/she must be a holder of at least a Bachelor's Degree preferably relevant to Labor and Social Relations, Economics, and related fields of study
- (c) He/she must have at least five (5) years of experience in the field of Labor Management relations
- (d) He/she has no pending criminal case involving moral turpitude.

(Revised Guidelines in the Accreditation and De-listing of Voluntary Arbitrators, Department of Labor and Employment, November 15, 1999)

B. Voluntary Arbitration Subsidy

As an additional incentive for the encouragement of voluntary arbitration as a mode of dispute settlement, the State subsidizes the cost of voluntary arbitration.

5. x x x any party who has no capacity to pay arbitrator's fee and upon approval of the application for subsidy, shall be entitled to a maximum subsidy of fifteen thousand pesos (P15,000). Such subsidy shall be paid directly to the voluntary arbitrator upon submission of

the documentary requirements by the parties. (Resolution No. 1, series of 1999. Amending and consolidating the Guidelines on the Fees and in the Processing and Payment of Subsidy Entitlement for Voluntary Arbitration Cases)

The following is a summary of statistical data for the period January – September 2001, as reported in the *Voluntary Arbitration Situationer*, published by the National Conciliation and Mediation Board, Department of Labor and Employment. The report shows the extent of resort to *voluntary arbitration* as an alternative mode of dispute settlement.

1.	<i>Number of cases submitted</i>		
	For voluntary arbitration	160	
	Cases pending at start of year 2001	127	
	Number of cases handled as of September 2001	287	
2.	<i>Breakdown of cases submitted for voluntary arbitration January – September 2001</i>		
	Facilitated through National Conciliation and Mediation Board	97	
	Filed directly by the Parties	41	
	Referred by National Labor Relations Board	18	
	Submitted through free legal aid and volunteer services	<u>4</u>	
	Total	160	
3.	<i>Type of issues submitted</i>		
	Interpretation of collective bargaining agreement	67	
	Interpretation of company personnel policy	66	
	Wage distortion	10	
	Interpretation of Wage Order	7	
	Unfair Labor Practice	2	
	Wage and salary administration	2	
	Combined Issues	<u>6</u>	
	Total	160	
4.	<i>Cases Submitted by Unions</i>		
	Independent Unions	105	
	Unions affiliated with federations	51	
	Unorganized sector	<u>5</u>	
	Total	160	
5.	<i>Disposition Rate January – September</i>	141	49%
	Decided on Merits	124	
	Settled/Amnesty	12	
	Dropped/Withdrawals	<u>4</u>	
		140	
	Pending Resolution =	146	51%

6.	<i>Issues</i>		
	Interpretation of collective bargaining agreement		59
	Interpretation of Company personnel policy		57
	Wage distortion		9
	Interpretation of Wage Order		4
	Wage/salary administration		3
	Bargaining deadlocks		2
	Unfair labor practice		1
	Combined Issues		<u>6</u>
	Total		141
	Number of workers benefited		1,866
	Estimated monetary benefits	P35,329,940.17	
7.	<i>Duration of disposition</i>		
	Upon submission for resolution		
	Cases reviewed		58
	Calendar days		40
	From date of submission for voluntary arbitration		
	Cases reviewed		136
	Calendar days		177
8.	<i>Arbitration Subsidy</i>		
	Subsidized cases		109
	Unions		39
	Unions and Management		65
	Management		<u>5</u>
	Total		109
9.	<i>Free Legal Aid and Voluntary Arbitration Service for Unorganized Sector</i>		
	Number of Cases filed		276
	Number of Cases Pending		<u>24</u>
	Total		300
	Settlement		
	With aid of National Conciliation and Mediation Board		161
	Dropped/Withdrawal, referred to NLRC		107
	Referred to Voluntary Arbitration		<u>3</u>
	Total		271
	Number of Workers Referred		1,173
	Estimated Monetary Benefits	P2,318,082.76	

Cases Appealed to Court of Appeals:

The same *Situationer* also reported data on Court or Judicial Review of Decisions and Awards of Voluntary Arbitration.

Cases Reviewed by Court of Appeals: (January – September 2001)

Cases Pending at Start of 2001	Cases Received in 2001	Total Cases Reported (Jan–Sep)
102	15	117

Cases Resolved by Court of Appeals: (January – September 2001)

Affirmed/Dismissed for Lack of Merit	13
Reversed and Set Aside	1
Modified	1
Total Resolved	15

Source: Voluntary Arbitration Situationer, Voluntary Arbitration Case Situationer – January to September 2001. National Conciliation and Mediation Board, Department of Labor and employment, Originally in Essay Format, Re-arranged to table format

Voluntary Arbitration Cases (1988 – June 2001)

	VA Cases Decided From 1988 – Jun 2001	Elevated to Courts	Decided By Courts	%
	2,261	368		16%
Affirmed			229	85%
Reversed			30	11%
Annulled			1	0.4%
Modified			10	4%
Total	2,261	368	270	

Source: Voluntary Arbitration Situationer, Voluntary Arbitration Case Situationer – January to September 2001, National Conciliation and Mediation Board, Department of Labor and Employment, Originally presented in Essay Form, Re-arranged to Table Format.

The above data shows the slow but growing acceptability of Voluntary Arbitration as an alternative mode of dispute settlement.

The very high percentage of affirmed Decisions or Awards by the Courts, on appeal, and the continuing efforts of the Department of Labor and Employment to promote the process is expected to significantly boost the growth and acceptability of the voluntary arbitration process.

3. National Conciliation and Mediation Board

3.1 Nature of Office

The National Conciliation and Mediation Board, an agency attached to the Department of Labor and Employment, and administratively supervised by the Department Secretary, was created to assist parties to settle their disputes amicably, albeit, without adjudicatory powers unless voluntarily agreed upon by the parties.

The National Conciliation Mediation Board, in the exercise of its functions, also fully implements the policy of voluntarism. The pertinent provision of the Labor Code reads:

Article 250. *Procedure in collective bargaining* –
The following procedures shall be observed in collective bargaining:

x x x

(c) If the dispute is not settled, the [National Conciliation and Mediation] Board shall intervene upon request of either or both parties or on its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue *subpoenas* requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meeting the Board may call;

xxx

(e) the Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their cases to a voluntary arbitrator.

3.2 Functions of the NCMB

The functions of the Board are provided by the law creating the office (Executive Order No. 126, Reorganizing the Ministry of Labor and Employment, etc. January 30, 1987).

Section 22. *National Conciliation and Mediation Board* - x x x

The Board shall have the following functions:

- (a) Formulate policies, programs, standards, procedures, manual of operations and guidelines pertaining to effective mediation and conciliation of labor disputes;
- (b) Perform mediation and conciliation functions.

3.3 Composition and Qualifications

Sec. 22. ... there shall be as many Conciliators - Mediators as the needs of the public service require, who shall have at least three (3) years of experience in handling labor relations and who shall be appointed by the President upon recommendation of the Minister.

The qualifications of a Conciliator-Mediator are provided by the same Executive Order.

- (a) Bachelor's Degree relevant to the job;
- (b) Four (4) years relevant experience;
- (c) Twenty four (24) hours relevant training;
- (d) Civil Service eligibility for professionals or appropriate eligibility for second level position

(Source: National Conciliation and Mediation Board)

Preventive Mediation Cases and Voluntary Arbitration Cases

	1999	2000	Average
Preventive mediation cases			
Cases handled	859	827	843
Cases disposed	823	763	793
Settled	689	659	674
Jurisdiction assumed by the DOLE Secretary	2	2	2
Certified for compulsory arbitration	0	1	1
Referred to compulsory arbitration	15	16	16
Referred to voluntary arbitration	60	47	54
Materialized into notice of strike/lockout and actual strike/lockout	46	25	36
Other modes of disposition	11	13	12
Disposition Rate	96%	92%	94%
Settlement Rate	80%	80%	80%

Source: Table 50. Current Labor Statistics. Second Quarter 2001 Bureau of Labor and Employment Statistics, Department of Labor and Employment

The data shows:

1. Out of a total of over 800 cases filed for preventive mediation as well as for strike/lockout but treated as preventive mediation cases, DOLE was able to dispose of over 90% of the case load for both years. Moreover, 80% of the preventive mediation cases were settled.
2. In both years, DOLE facilitated/monitored over 300 cases of voluntary arbitration. However, there was a substantial decline in the number of cases they were able to dispose of.

Strike/Lockout Notices and Actual Strikes/Lockouts

	1999	2000	Average
Notices of strike/lockout			
Cases handled	918	808	863
Cases disposed	844	748	796
Settled	707	594	651
Jurisdiction assumed by DOLE Secretary	31	23	27
Certified for compulsory arbitration	11	29	20
Materialized into actual strikes/lockouts	46	51	49
Treated as preventive mediation case	33	35	34
Other modes of disposition	16	16	16
Disposition Rate	92%	93%	92%
Settlement Rate	77%	74%	75%
Actual strikes/lockouts			
Cases handled	59	65	62
Cases disposed	54	60	57
Settled	35	37	36
Jurisdiction assumed by DOLE Secretary	12	14	13
Certified for compulsory arbitration	7	7	7
Other modes of disposition	0	2	1
Disposition Rate	92%	92%	92%
Settlement Rate	59%	57%	58%

Source: Table 48. Current Labor Statistics, Second Quarter 2001, Bureau of Labor and Employment Statistics, Department of Labor and Employment.

The data shows:

1. There was a decrease in the number of strike/lockout notices filed by labor unions for the year 2000 when compared to the 1999 level. This could be due to (a) a decrease in the number of companies operating in the year 2000; or (b) an indication of the labor's apprehension of losing jobs in a shrinking job market.

2. Of the notices of strike/lockout filed by labor unions, DOLE was able to dispose of more than 90% of the cases. This value may be considered high and indicates that DOLE is efficient in resolving the notices of strikes/lockouts. DOLE was also able to settle about 75% of the cases and hence prevented the notices from resulting in actual strikes/lockouts.
3. The number of actual strikes/lockouts that occurred is around 60 with more than 90% disposed of by DOLE. Despite the failure of DOLE from preventing these strikes/lockouts from materializing, it was able to settle about 60% of the strikes/lockouts after it has started.

4. Courts of Law Performing Judicial Functions: Role in Labor Dispute Settlement

4.1 The Courts

The Decisions and Awards of administrative tribunals exercising quasi-judicial functions are appealed initially to the Court of Appeals and ultimately to the Supreme Court of the Philippines as the highest tribunal of the land. Both the Court of Appeals and the Supreme Court are regular and integral parts of the Philippine Judiciary as a separate and co-equal branch of government.

Under Labor Law, the agencies exercising quasi-judicial functions whose decisions and awards are appealed initially to the Court of Appeals, and finally to the Supreme Court are: (a) the Office of the President of the Philippines; (b) the Office of the Secretary of Labor and Employment; (c) National Labor Relations Commission; and (d) the Office of the Voluntary Arbitrator.

4.2 Court of Appeals

The composition of the Court of Appeals, jurisdiction, and qualifications of the Justices of the Court are provided for in Batas Pambansa Blg. 129, as amended, which reads as follows:

Sec. 3. Organization. - There is hereby created a Court of Appeals, which shall consist of a Presiding Justice, and sixty-eight (68) Associate Justices who shall be appointed by the President of the Philippines.

Section 7. Qualifications. - The Presiding Appellate Justice and the Associate Appellate Justices shall have the same qualifications as those provided in the Constitution for Justice of the Supreme Court.

Section 9. - The Intermediate Appellate Court shall exercise...

xxx Exclusive appellate jurisdiction over all judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1998.

A 1995 Decision of the Supreme Court, clarified the rule of appeal of a Decision and Award of a Voluntary Arbitrator.

...it follows that the voluntary arbitrator, whether acting solely or in a panel, enjoys in law the *status of a quasi-judicial agency* . . .

Section 9 of B.P. Blg. 129, as amended by Republic Act No. 7902, provides that the Court of Appeals shall exercise:

x x x

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of ... quasi-judicial agencies and *instrumentalities*...

Assuming *arguendo* that the voluntary arbitrator or panel of voluntary arbitrators may not strictly be considered as a quasi-judicial agency, board or commission, still both he and the panel are comprehended within the concept of a quasi-judicial instrumentality. (Luzon Development Bank v. Association of Luzon Development Bank Employees, 249 SCRA 162)

The Rules of Court of the Philippines, on the scope of the CA to decide on such appeals, reads:

Rule 43

Appeals from the Quasi-Judicial Agencies to the Court of Appeals

Section 1. *Scope* – This Rule shall apply to appeals from judgments or final orders of ... voluntary arbitrators authorized by law.

4.3 Supreme Court of the Philippines

The Supreme Court of the Philippines is the highest tribunal of land. The (a) composition of the Supreme Court, (b) qualifications of the Justices; and (c) its appellate function are all provided for in the Constitution of the Philippines. The pertinent provisions of Article VIII of the Constitution are as follows:

Sec. 4 (1) The Supreme Court shall be composed of a Chief Justice and Fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

Sec. 7 (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more, a judge of a lower court or engaged in the practice of law in the Philippines.

A 1998 decision of the Supreme Court of the Philippines clarified the mode of appeal and review of a decision of the National Labor Relations Commission initially, to the Court of Appeals, and finally the Supreme Court. The Court ruled as follows:

The Court is, therefore, of the considered opinion that ever since appeals from the NLRC to the Supreme Court were eliminated, the Legislative intendment was that the special civil action of *certiorari* was and still is the proper vehicle for judicial review of decisions of the NLRC...appeals by *certiorari* and the original action for *certiorari* are both modes of judicial review addressed to the appellate courts. The important distinction between them, however, ... is that the special civil action of *certiorari* is within the concurrent original jurisdiction of the Court and the Court of Appeals...

xxx

Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for *certiorari* under Rule 65. Consequently, all such petitions should henceforth be initially filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts as the appropriate forum for that relief derived (St. Martin Funeral Home v. NLRC, 295 SCRA 494.).

Rule 65 of the Rules of Court of the Philippines, referred to in the decision reads:

Section I. *Petition For Certiorari* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

5. Questions Raised in Project

The Joint Research Project Plan submitted to the country participant of the Project, asked the following questions:

What kinds of routes are available for dispute resolutions?

Choice of routes for dispute resolutions (dispute resolution patterns):

- (a) What kind of patterns do people choose in practice?
- (b) Any trend in people's choices?
- (c) Factors that influence choices.
- (d) What is the role of lawyers? How are they involved in the process?

Parties to a dispute – either labor or management – may choose one of the following routes to resolve a labor dispute:

- Compulsory Arbitration Process – compulsory arbitration as a method of labor dispute settlement is widely used and accepted. The following factors contribute to the choice:
 - The historical reliance – since 1986 – by workers on the State, through a government arbitral agency on the adjudication of their disputes.
 - A lack of awareness, experience, and reluctance to experiment with alternative methods, such as collective bargaining and voluntary arbitration.
 - The low level of unionizing among workers.

The statistical data earlier presented clearly shows that most labor disputes are settled through the process of compulsory arbitration.

The low level of unionizing is the major factor why collective bargaining as a mode of dispute settlement is not availed of. Coupled with the economic downturn since 1999, workers are not keen on unionizing for fear of economic consequences. The

ordinary worker lacks adequate awareness of how his terms and conditions of employment are determined, much less resolved, in cases of dispute. The omnipresence of labor law and government agencies are all that he is keenly aware of. The same can also be said of voluntary arbitration. It is on the adjudicative agencies of government that the worker relies on, for the settlement of disputes, even if at times, with misgivings.

What is the role of the legal profession in labor-management relations in the Philippines? Philippine society has placed lawyers in the forefront of many activities and they participate in government and the corporate sector in many capacities including non-judicial assignments. In the collective bargaining process, lawyers are either (a) contract negotiators; (b) contract drafters; and (c) personnel managers of establishments. Many lawyers are involved in any or all of these activities.

Lawyers also actively participate in the area of adjudication of labor disputes. The (a) adversarial nature of dispute resolution; (b) composition and officialdom of the adjudicatory agencies all are staffed by lawyers; and (c) belief by society in the role of lawyers as advocates of a cause of action by either the aggrieved and defending party, all contribute to the pervasive role of lawyers in labor-management relations.

6. Summary

Historical events (political, social and economic), experience, the impact of Conventions and Recommendations of the International Labor Organization, and methods of dispute settlement found in other industrialized countries, specifically, USA, have shaped the development and formulation of the Philippine system of labor dispute settlement, since 1935. It is safe to predict that in the foreseeable future the dual system of Compulsory Arbitration and Collective Bargaining and Voluntary Arbitration and the use of mediation and conciliation will continue to be the methods of dispute settlement. Compulsory Arbitration will continue to play a significant role. The experience over a long period of reliance on Government as the final arbiter of labor dispute is deeply rooted, and the faith of the parties in Government, although not without occasional misgiving, will assure the continued use of compulsory arbitration as a mode of dispute settlement. There is, however, optimism that, in the not too distant future, collective bargaining and voluntary arbitration will become more acceptable. This belief is based on the systematic and continuing program of the Department of Labor and Employment to emphasize and promote the method of collective bargaining and voluntary arbitration

as alternatives to compulsory arbitration, the growing maturity and confidence of the parties in labor-management relations towards each other, and the gradual acceptance of the process of collective bargaining and voluntary arbitration. The high rate of judicial affirmance of the awards or decisions in voluntary arbitration cases auger well for voluntary arbitration.

In conclusion, the two contrasting methods of labor dispute resolution will continue and it would be presumptuous to say that one or the other will vanish. Hopefully, the parties should learn to rely on their own labor-management mechanisms, but this ideal situation today is but a hope.

Part III: Environmental Disputes and Resolution

Techniques in the Philippines

Dante B. Gatmaytan

I. Introduction

Dispute resolution regarding environmental issues in the Philippines may seem to have very limited application. As a rule, it would seem that law places a premium on the role of the Judiciary as the venue for the resolution of all conflicts including issues pertaining to the environment. The Philippines' contribution to a 1999 symposium on sustainable development produced a list of Supreme Court decisions affecting the environment (Florida Ruth P. Romero, *The Role of the Judiciary in Promoting the Rule of Law in the Area of Environmental Protection*, THE COURT SYSTEMS JOURNAL 94-101 [Special Edition, April 1999]), and a discussion on the potential uses of ecological agreements with industry to preserve the environment—in essence voluntary negotiations with polluters as opposed to regulation by the State (Antonio A. Oposa, Jr., *A Socio-Cultural Approach to Environmental Law Compliance: A Philippine Scenario* THE COURT SYSTEMS JOURNAL 160-184 (Special Edition, April 1999)).

Alternative Dispute Resolution (ADR) was barely even mentioned, lending credence to the view that the concept has yet to gain a foothold in environmental disputes in the Philippines. Alternative dispute resolution is better entrenched in other areas like commercial transactions (*See* Custodio O. Parlade, *Search for Alternative Modes of Dispute Settlement*, 1 CONTINUING LEGAL EDUCATION JOURNAL 51-63 [2000]). Indeed, the representatives of the Judiciaries of Southeast Asia and the other participants of that symposium signed “The Manila Resolution on the Role of the Judiciary in the Promotion of Sustainable Development”, which, among other things, called for the promotion and enhancement of recent trends advancing environmental law concepts such as alternative dispute resolution (The Manila Resolution on the Role of the Judiciary in the Promotion of Sustainable Development, March 7, 1999, Manila, Philippines, reprinted in THE COURT SYSTEMS JOURNAL X-XIII, Special Edition, April 1999).

It would be inaccurate to say, however, that ADR is a completely alien concept in Philippine law. There are many laws that permit larger participation on the part of affected communities and other stakeholders in environmental matters. Another angle that one should consider is the fact that in legal pluralist society such as the Philippines, dispute resolution systems may exist outside the formal channels of the law. Indeed, environmental disputes that defined the environmental movement in the United States rarely provoke litigation in the Philippines. On the contrary, Philippine environmentalism is defined by a prominent link between resource protection and community or user access to these resources.

While this paper attempts to present the legal framework for ADR in Philippine environmental disputes and an assessment of its application, it will also present a variety of examples of dispute resolution systems that may not be contemplated under modern international trends—particularly those from the west. It will also attempt to synthesize some lessons that can be learned from these experiences.

II. Jurisprudence on Environmental Protection

Supreme Court decisions on the environment are few and far between. The most significant involved a provision in the Philippine Constitution, which provides that the State “shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature” (Const., Art. II, sec. 16). This provision was invoked by several minors in their attempt to stop the Secretary of the Environment and Natural Resources (DENR) to stop issuing Timber License Agreements and to cancel all existing ones, citing the consequences of continued exploitation of forest resources. The lower court dismissed the case on the ground that the minors did not cite any specific cause of action. In *Oposa v. Factoran* (224 SCRA 792 [1993]), the Supreme Court remanded the case to the lower court saying that the violation of the children’s right to a balanced environment did in fact constitute a sufficient cause of action. At best, the *Oposa* case is authority to the effect that the Constitutional provision gives rise to a cause of action against anyone who impairs the environment. It is unclear, however, if the decision means that the plaintiffs still have to exhaust all the administrative remedies before they may go to court.

Perhaps the more significant case decided by the Supreme Court is the case of *Tano v. Socrates* (278 SCRA 154 (1997)), where the Supreme Court upheld the power of the Province of Palawan and the City of Puerto Princesa to enact legislation to protect their marine resources, by citing among others, the general welfare clause of the Local Government Code (Rep. Act No. 7160 [1991], sec. 16). Otherwise, the Supreme Court's environmental docket is sparse.

III. Environmental Laws

At the onset, it should be pointed out that the Philippine environmental movement grew immensely in the 1990s (Francisco Magno, *The Growth of Philippine Environmentalism*, KASARINLAN, vol. 9, n. 1 (1993), pp. 7-18). At this time, Filipinos attempted to curb the ecological destruction engulfing the country. Filipino environmentalism, however, is unique in the sense that it unites environmental protection with democratic access to natural resources (*Id.*, at 7). Indeed, one study of Philippine forestry policy was inspired by the Department of Environment and Natural Resources' move to "give the forests back to the people" — a distinct practice compared to other countries in the region (*See* David M. Fairman, *Forest Policy Reform in the Philippines, 1986-1996*, 13 WORLD BULLETIN 175-185 (January-April 1997); *See also*, Gerhard Van den Top & Gerard Persoon, *Dissolving State Responsibilities for Forests in Northeastern Luzon*, in *Old Ties and New Solidarities: Studies on Philippine Communities* 158-176 (2000), expressing apprehensions regarding the "euphoria on community-based resource management").

The unique circumstances of the Philippines are responsible not only for the increase in laws pertaining to environmental protection, but also in the nature of these laws. In many cases, as this paper will show, the link between the protection of the environment and people's right to access to the environment seem inextricably intertwined.

It should be stressed that the enactment of environmental legislation is a recent development in the Philippines. These laws emerged only after the fall of the regime of Ferdinand Marcos in 1986. Common environmental issues are only now beginning to be addressed by Congress. Even common problems like water and noise pollution do not have specific legislation and the Philippine Clean Air Act was passed only in the late 1999. As such, there is barely any data available on the use of these laws.

Even these new laws do not have a comprehensive approach to ADR. Each law affecting the environment contains provisions on how disputes pertaining to that resource will be resolved. In most cases, the remedy available is still litigation. In many cases, the avenues for dispute resolution under these laws have never been tested.

1. The Clean Air Act

Republic Act No. 8749 or the Philippine Clean Air Act of 1999 was largely influenced by the United States' Clean Air Act. As such, it contains provisions on the settlement of disputes although it apparently encourages litigation or administrative resolution of these disputes. The following provisions are noteworthy:

SEC. 40. *Administrative Action.* — Without prejudice to the right of any affected person to file an administrative action, the Department shall, on its own instance or upon verified complaint by any person, institute administrative proceedings against any person who violates:

- (a) Standards or limitation provided under this Act; or
- (b) Any order, rule or regulation issued by the Department with respect to such standard or limitation.

SEC. 41. *Citizen Suits.* — For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

- (a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations; or
- (b) The Department or other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and/or
- (c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until thirty-day (30) notice has been taken thereon.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimations, and shall likewise, upon prima facie showing of the non-enforcement or

violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Within 30 days, the court shall make a determination if the complaint herein is malicious and/or baseless and shall accordingly dismiss the action and award attorney's fees and damages.

SEC. 42. *Independence of Action.* — The filing of an administrative suit against such person/entity does not preclude the right of any other person to file any criminal or civil action. Such civil action shall proceed independently.

SEC. 43. *Suits and Strategic Legal Actions Against Public Participation and the Enforcement of This Act.* — Where a suit is brought against a person who filed an action as provided in Sec. 41 of this Act, or against any person, institution or government agency that implements this Act, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination not exceeding thirty (30) days whether said legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining of or enforcing the provisions of this Act. Upon determination thereof, evidence warranting the same, the court shall dismiss the case and award attorney's fees and double damages.

This provision shall also apply and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act.

This is one case where Congress directly enacted legislation to address a specific environmental issue. The implementation of this law, however, has been hobbled by politics and budget constraints, and has not produced any noteworthy effects apart from a concerted effort by industries to amend the strictures of the law.

Instead, a variety of other laws are available for the settlement of disputes.

2. The Local Government Code

The Local Government Code provides other avenues that should help avoid litigation. The Code generated excitement as it presented an opportunity for non-government and peoples' organizations to directly participate in environmental protection (This could be done in other ways, such as representation in local legislative councils under Section 43(c); and by legislation through initiative and referendum under sections 120-127. One other way, "mandatory consultations" is discussed above). One of the features of the Code is the mandate for consultations. Section 2 of the Code, in particular, provides:

(c) it is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

Other pertinent provisions on consultations actually touch on the environment.

Sections 26 and 27 of the Code provide:

SECTION 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* — It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program *that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.*

SECTION 27. *Prior Consultations Required.* — No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the *Sanggunian* concerned is obtained: *Provided,* That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

We should note that section 26 of the Code lists a variety, if not all, possible environmental consequences resulting from the acts of the National Government of government-owned or –controlled corporations. Although a seemingly potent provision, there has only been one Supreme Court case where these provisions were invoked, unfortunately not to protect the environment. In *Lina v. Paño* (G.R. No. 129093, August 30, 2001), the Supreme Court held that these provisions couldn't be invoked against the Philippine Charity Sweepstakes Office to prevent it from operating lotto operations in the Province of Laguna.

3. Mining

Two laws on mining provide for clear ADR mechanisms. In 1991, Congress passed An Act Creating A People's Small-Scale Mining Program and for Other Purposes (Republic Act No. 7076 [1991]) to help address environmental and social issues arising from gold-rush situations. Section 24 of the law is pertinent:

SECTION 24. *Provincial/City Mining Regulatory Board.* — There is hereby created under the direct supervision and control of the Secretary a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, subject to review by the Secretary:

- (a) Declare and segregate existing gold-rush areas for small-scale mining;
- (b) Reserve future gold and other mining areas for small-scale mining;
- (c) Award contracts to small-scale miners;
- (d) Formulate and implement rules and regulations related to small-scale mining;
- (e) *Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining; and*
- (f) Perform such other functions as may be necessary to achieve the goals and objectives of this Act.

However, there is very little that has been reported regarding the application of this provision.

Then in 1995, Congress also passed An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation (Rep. Act No. 7942 (1995)). Perhaps in anticipation of the conflicts that this law would engender, Congress incorporated specific provisions providing for alternative modes of dispute. Particularly, the law provides that:

“SECTION 77 *Panel of Arbitrators.* — There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine

Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated, as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within 30 working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

- (a) Disputes involving rights to mining areas;
- (b) Disputes involving mineral agreements or permits;
- (c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
- (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act¹

¹ The law goes on to read:

SECTION 78. Appellate Jurisdiction. — The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

SECTION 79. Mines Adjudication Board. — The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

(a) To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;

(b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act;

(c) To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearing at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable;

Experiences under the Mining Act of 1995 will be discussed shortly.

4. Indigenous Peoples' Rights

Another law that provides for alternative modes of dispute involves the Indigenous Peoples' Rights Act (IPRA) (Rep. Act No. 8371 [1997]), which recognizes, among others, indigenous peoples ownership rights over lands they have held since time immemorial. This law was challenged as unconstitutional barely a year after it was enacted on the ground that it allegedly violated the Regalian Doctrine, which provides, in essence, that absent a showing of some form of state grant, all lands belong to the State. The Supreme Court upheld the constitutionality of the law some two years thereafter (*See Cruz v. Secretary*, G.R. No. 135385, December 6, 2000. The Motion for Reconsideration was denied on September 18, 2001). This law has a significant provision, which allows for the use indigenous dispute resolution mechanisms:

“SECTION 15. *Justice System, Conflict Resolution Institutions, and Peace Building Processes.* — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.”

Indeed, among the rights that are recognized are:

SECTION 7 *Rights to Ancestral Domains.* — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include...

(1) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefore; and

(2) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

A petition for review by certiorari and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

h) *Right to Resolve Conflict* — Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

The IPRA is significant in the sense that indigenous ownership practices are not accommodated under the western land laws that were introduced to this country by Spain and the United States (*See Rene Agbayani, Some Indigenous Cultural Traditions in the Philippines: Their Implications on Environmental Conservation*, KASARINLAN, vol. 9, n. 1 (1993), pp. 54-69), some of which have their own dispute settlement systems (*See Steve Olive, Competition and Dispute Settlement for Fishery Resources*, KASARINLAN, vol. 9, n. 1 (1993), pp. 71-95). The rule has clearly changed in light of the express provisions recognizing the ownership rights of indigenous Filipinos (Rep. Act No. 8371, secs. 7-8). Among other things, IPRA allows indigenous peoples to delineate their ancestral domains (Rep. Act No. 8371, secs. 51-52). Section 57 of the law further provides that indigenous peoples “shall have the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains” and that outsiders may only exploit resources with the consent of the community through a “formal and written agreement” or “pursuant to its own decision making processes.”

Furthermore, Section 59 of the law provides that:

“SECTION 59 *Certification Precondition.* — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: *Provided*, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: *Provided, further*, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: *Provided, finally*, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.”

Rule III, Part II of the implementing rules (NCIP Administrative Order No. 01-98, Rules and Regulations Implementing Republic Act No. 8371, Otherwise Known as "The Indigenous Peoples' Rights Act of 1997" [June 9, 1998]) of IPRA provide:

“SECTION 8 *Right to Resolve Conflicts According to Customary Laws.* — All conflicts pertaining to property rights, claims and ownership, hereditary succession and settlement of land disputes within ancestral domains/lands shall be resolved in accordance with the customary laws, traditions and practices of the ICCs/IPs in the area where the conflict arises.”

If the conflict between or among ICCs/IPs is not resolved, through such customary laws, traditions and practices, the Council of Elders/Leaders who participated in the attempt to settle the dispute shall certify that the same has not been resolved. Such certification shall be a condition precedent for the filing of the complaint with the NCIP, through its Regional Offices for adjudication.

Decisions of the NCIP may be brought on Appeal to the Court of Appeals by way of a Petition for Review.

In addition, the Rules also provide that the following:

“RULE IX”

Jurisdiction and Procedures for Enforcement of Rights

SECTION 1 *Primacy of Customary Law* — All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of customary laws in the area where the disputed ancestral domain or land is located.

All conflicts related to the ancestral domains or lands where one of the parties is a non-ICC/IP or where the dispute could not be resolved through customary law shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures before the NCIP to be adopted hereafter.

All decisions of the NCIP may be brought on Appeal by Petition for Review to the Court of Appeals within fifteen (15) days from receipt of the Order or Decision.

SECTION 2 *Rules of Interpretation* — In the interpretation of the provisions of the Act and these rules, the following shall apply:

- a. All doubts in the interpretation of the provisions of the Act, including its rules, or any ambiguity in their application shall be resolved in favor of the ICCs/IPs.

- b. In applying the provisions of the Act in relation to other national laws, the integrity of the ancestral domains, culture, values, practices, institutions, customary laws and traditions of the ICCs/IPs shall be considered and given due regard
- c. The primacy of customary laws shall be upheld in resolving disputes involving ICCs/Ips
- d. Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall first be applied with respect to property rights, claims and ownership, hereditary succession and settlement of land disputes
- e. Communal rights under the Act shall not be construed as co-ownership as defined in Republic Act No. 386, otherwise known as the New Civil Code of the Philippines;
- f. In the resolution of controversies arising under the Act, where no legal provisions or jurisprudence apply, the customs and traditions of the concerned ICCs/IPs shall be resorted to; and
- g. The interpretation and construction of any of the provisions of the Act shall not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, international treaties and instruments, national laws, awards, customary laws and agreements.

SECTION 3 Appeals to the Court of Appeals — Decisions of the NCIP is appeal able to the Court of Appeals by way of a petition for review within fifteen (15) days from receipt of a copy thereof.

SECTION 4 Execution of Decisions, Awards, and Orders — Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.”

Evidently, dispute resolution mechanisms are now built into laws that are likely to generate animosity between resource users. In the Philippine context, this usually pertains to communities that directly use the resources such as small-scale miners and fishing communities, and large-scale resource extractive industries like mining and logging. The provisions on the IPRA were included because ancestral domains are presently being eyed by large-scale miners from all over the world as a potential source of income.

Despite these measures, however, a recent law (Rep. Act No. 8975 [2000]) makes it extremely difficult for disputes to be resolved in court:

“SECTION 3 *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions* — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project; and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.”

In short, parties contesting resource rights will find it difficult to even temporarily stop projects pending resolution of a case. This is nothing new because two laws issued by former President Ferdinand Marcos similarly banned the issuance of injunctive relief by the courts. Presidential Decree No. 605 (1974) provided that:

“No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection

with the disposition, exploitation, utilization, and/or development of the natural resources of the Philippines.” (Pres. Decree No. 605 (1974), sec. 1)

On the other hand, Presidential Decree No. 1818 provided that:

“No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government...to prohibit any person or persons, entity or government official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation (Pres. Decree No. 1818 (1981), sec. 1).

Both laws have the effect of preventing even a temporary halt to these project or undertakings even while the issues are litigated. It should be of little surprise then why litigation is not the favored option for dispute settlement in the Philippines.

IV. Experiences in Dispute Resolution

The experiences in dispute resolution in the Philippines differ markedly from the experience in the United States where the regulatory framework of Federal laws is often invoked to compel compliance with environmental standards. The Philippine experiences in ADR rarely involve the issues of air, water, or noise pollution (except as tort cases where they can be abated by the proper authorities). Indeed, they rarely involve the law. Instead, the Philippine experience usually involves conflicts over the use of natural resources.

The cases are legion and only a few significant cases can be accommodated in this study. A few things should be emphasized. The circumstances in these cases differ from invariably. It is, therefore, dangerous to make generalizations as to the nature of the disputes, and the manner in which they are resolved. In many cases, these disputes rarely reach the courts. It will also become evident that the disputes are triggered by community initiatives.

1. The EIA System

The Philippines has an Environmental Impact Assessment System Pres. Decree No. 1586 (1977) that is virtually copied from the United States' National Environmental Policy Act (42 U.S.C. §§ 4321-4347 (1968)). Strangely, however, the Supreme Court has never interpreted it. In essence, the law requires project proponents to prepare an Environmental Impact Statement before they can proceed with a project (For a study of issues pertaining to the EIA system, *see* Research and Policy Development Team, Legal Rights and Natural Resources Center, Inc., *The More They Stay the Same: Recent Developments in the EIA System*, 8 PHIL. NAT. RES. L. J. 49-74 (1997)).

In its evolution new opportunities for community intervention have surfaced. The Implementing Rules of the EIA System under DENR Administrative Order No. 97-73 provide for “social acceptability” — the result of a process mutually agreed upon by the DENR, key stakeholders, and the project proponent “to ensure that the valid and relevant concerns of stakeholders, including affected communities, are fully considered and/or resolved in the decision-making process for granting or denying the issuance of an ECC (DENR Admin. Order No. 96-73, Art. III, sec. 6). Before the DENR issues an ECC, the proponent must secure proof of “social acceptability” of the project.

One case that is often cited as a successful use of alternative dispute resolution is the case of the proposed cement plant in the coastal town of Bolinao, Pangasinan. The DENR denied the application for an Environmental Compliance Certificate (ECC) in 1995, and again “with finality” in 1996. The DENR cited unacceptable environmental risks, serious land- and resource-use conflict, and problems of social acceptability as its reasons for denying the application.

This case was typical of energy-generating projects in the sense that it polarized the affected communities into opposing camps. On one hand, local officials, and segments of the business communities supported the proposed plant. Most of those who opposed the project were local residents whose livelihood depended heavily on the healthy condition of Bolinao's natural resources—later organized as the Movement of Bolinao Concerned Citizens, Inc. (MBCCI). Allied with the opposition were groups of educators, women, church and the academe (Marie Lourdes Baylon, *Dispute Management Within the Framework of the EIA System: The Case of the ECC*

Application of the Bolinao Cement Plant Complex, Tropical Coasts, vol. 6, no. 2 (December 1999), pp. 22-27).

After the initial denial of their application in 1995, the proponent submitted “new information,” which sought to address the issues by the project oppositors. DENR conducted a series of consultations with both sides of the controversy, and agreed to create an expanded EIA review committee. The new committee included experts in marine pollution, land use, and hydrology to evaluate the “new information.”

The Review Committee also gave both sides a chance to present arguments on the technical aspects of the proposed project. This avoided direct confrontations that normally ensued from public hearings. The points raised in these technical meetings were used in the Committee’s final decision to deny the application a second time.

Analysts argue that the success of this case rested heavily on the fact that the process was consultative and transparent. These factors contributed to the perception that decisions made by the DENR were not arbitrary. Also credited for the success in this case were the DENR officials’ ability to play the roles of facilitator and decision-maker responsibly. The highly controversial nature of the conflict and the publicity generated by the case “forced the DENR to act with great prudence and wisdom in the decisions that it made” (*Id.*, at 27).

Experience under the EIA system, however, has also been problematic. There is community distrust of the DENR, which requires the latter to engender trust by ensuring access to current and understandable information about the project. Others have demanded that the Environmental Impact Statement (EIS) prepared by project proponents must be in a language or dialect understood by majority of the residents that could be affected by the project. Experience shows that the EIS usually consists of volumes of technical data that do not convey a clear impact of the proposed project (*See* Research and Policy Team, LRC-KSK, *The More They Stay The Same: Recent Developments in the EIA System*, 8:1 PHIL. NAT. RES. L. J. 49 51 (1997), *citing* Ipat Luna, *The EIA System and the Rush for Philippines 2000: Insurance in a Runaway Train*, 25-28 (1994), n.3).

2. Mining

The initial attempts at introducing alternative modes of dispute resolution in the Philippines are not faring well. The experience of communities against the

incursion of large-scale mining activities under the Philippine Mining Act of 1995 presents a case against the proper use of these alternatives. Experience has shown that the MGB is always wary of releasing information regarding applicants of mining permits and contracts, in violation of the right of citizens to information (Edgar Bernal, *Engaging a Biased and Unjust Structure: The Case of the Mines and Geo-Sciences Bureau and the Panel of Arbitrators*, in *LAWYERING FOR THE PUBLIC INTEREST: 1ST ALTERNATIVE LAW CONFERENCE 45* [2000]).

Part of the problem is the manner in which the law is written. It will be recalled that the said Act created the Panel of Arbitrators under the Mining and Geo-sciences Bureau and vested it with jurisdiction over “mining disputes” at the regional level (Rep. Act No. 7942 (1995), sec. 77). The Panel of Arbitrators are designated by the Environment Secretary from the regular staff of the MGB. Most of the time, the designees are MGB Regional officials “whose primary task is to encourage and facilitate the entry of mining companies in their jurisdiction” (*Id.*, at 46). While it is true that their decision may be appealed to the Mines Adjudication Board, this Board is composed of the DENR Secretary, the Director of the MGB, and the DENR Undersecretary for Operations.

Historically, the functions of what is now the Panel of Arbitrators was precisely to “hasten the exploration and development of our mineral resources” (*Id.*, at 46-47). Even under the present law, the Panel simply performs an administrative function—to grant or reject applications. The panel is designed to provide a forum “for expressing and then eliminating oppositions and adverse claims that obstruct the entry and operation of mining companies” (*Id.* at 47).

In 1997, for example, a coalition of women, youth, religious, farmers, and indigenous peoples filed their opposition to some 30 applications for various forms of mining contracts and permits in the Province of Aurora. However, the Panel of Arbitrators, contrary to their own rules, refused to recognize the right of the coalition’s paralegal to represent the oppositors. The Panel then dismissed the opposition despite the failure of the applicants to consult them regarding their application. And suggested, instead, that the matter be taken up when the applicants apply for their Environmental Compliance Certificate (ECC). The ECC is not required for purposes of securing mining permits and contracts under the Mining Act (*Id.*, at 47).

Bernal also cites the case of Subanen farmers and women organizations who opposed the application of mining permits in Zamboanga del Sur. The opposition was

based on the fact that the application covered a watershed and old growth forests. They also pointed out that the application was written in English, and not generally understood by the local communities. The Panel dismissed the opposition, claiming simply that these matters were not under their jurisdiction. The Panel's decision was mailed to the oppositors six months after it was rendered. A Motion for Reconsideration of the decision was filed, but which the Panel claimed they never received—despite contrary evidence in their own records (*Id.*, at 47-48).

In both cases the local communities did not resort to legal assistance until after their own initiatives at participating in the application processes ran aground (*Id.*, at 48).

3. Initiative and Referendum

It should also be stressed that certain communities are testing other possible avenues to protect their environment from mining activities. Barangay Didipio, in Kasibu, Nueva Vizcaya is using the Local Government Code's provisions on initiative to override agreements signed by their local governments with Climax-Arimco Mining Company (Rep. Act No. 7160 (1991), secs. 120-127). The Supreme Court is presently deciding whether this was a proper exercise of the power of initiative.

4. Coastal Resources

One heavily documented case involves the depletion of fishery resources in Sarangani Bay in Mindanao. This is an interesting case in the sense that there are a variety of competing property regimes in operation over the bay—which, ironically, is the reason why fishery resources continue to be depleted. As one author pointed out:

“...one of the reasons behind the depletion of the fishery resources is the uncertainty in the way disputes over resources use are settled. Because a great deal of uncertainty exists over who actually has the right to the resources and who can be excluded, fishers compete with one another following favorable institutional arrangements, which justify their claims to the resources. This uncertainty leads to both resource depletion—because many fishers do not follow or accept the rules of other property regimes—and at the same time, the opening up of possibilities for fishers to change institutional arrangements. Each property regime competes with other property regimes in order to have their form of institutional arrangements recognized as the proper way to manage resource and allocate resource rights” (Steve Olive, *Competition*

and Dispute Settlement for Fishery Resources, KASARINLAN, vol. 9, n. 1 (1993), pp. 71, 73).

The major conflict in Sarangani Bay involved the incursion of commercial vessels in municipal waters. Since municipal fishers do not have power over the commercial fishers, local government intervention is usually required. Commercial fishers likewise have their own conflicts over their fellow fishers who deplete the spawning grounds of the fish. In this case, they asked for the help of the national government to determine which areas may not be used for fishing purposes. On the other hand, municipal fishers argue over the use of illegal fishing methods such as dynamite and poison. Most of these disputes are settled through the Katarungang Pambarangay system, now under the Local Government Code. Occasionally, Filipinos venture into Indonesian fishing grounds and are apprehended. In one such case, the local officials attempted to settle the dispute, which took longer than anyone had wanted. The political fallout of the mayor's adventure cost him the next election.

These cases illustrate how the plurality of dispute settlement mechanisms gives the contending groups an opportunity to shop for the forum that will likely favor their case. In some cases, parties sought the intervention of powerful political figures to rally their cause (*Id.*, at 91-93).

These cases also illustrate how parties to disputes opt to use competition and cooperation to win their cases. To stop illegal fishers, the national government started to arm fishing boats, which however, remain armed even when the threat of piracy and the incidence of illegal fishing declined. Sometimes, agreements are reached instead. Municipal fishers and local officials have set up checkpoints to curb dynamite fishing. Commercial and municipal fishers often fish in the same waters without the intervention of third parties (*Id.*, at 94).

The Sarangani Bay example showed that where dispute settlements are weak, the political arena becomes more competitive, which in turn, generates more uncertainty as to the outcome of the settlement, and that dispute settlements which maximize public participation and debate are likely to be more effective (*Id.*, at 96).

Similar effects of legal pluralism were observed in the North. Wiber's study of an Ibaloi community shows that "forum shopping" is used when residents have gold, water, or land disputes. She pointed out that wealthy parties often opt to use the official legal system, while poorer claimants are often intimidated by the notion of

going to court on the ground that “rights defined by the state legal system are in opposition to customary practice” (MELANIE G. WIBER, POLITICS, PROPERTY AND LAW IN THE PHILIPPINE UPLANDS 91 [1993]).

5. Consortium-Building

The NGOs for Integrated Protected Areas, Inc. is a consortium of 18 non-government and people’s networks, coalitions, and organizations that was created in 1993 to serve as the partner of the Philippine government and the World Bank in the implementation of Conservation of Priority Protected Areas Project. The project was conceived to curb the loss of biological diversity primarily through the depletion of forest resources. The idea, however, was not simply to protect biodiversity, but also to empower communities by devolving control and management of local resources to the communities that depend on them. The idea was to organize local communities and forge partnerships with other sectors such as the local governments, the church, and the academe to the end of developing concrete strategies for resource management and community development (See Ma. Teresa Ramos Melgar, *Shareholders in the Environment: A Case Study of the NGOs for Integrated Protected Areas (NIPA)*, in 3 PHILIPPINE DEMOCRACY AGENDA: CIVIL SOCIETY MAKING CIVIL SOCIETY 127-148 (Miriam Coronel-Ferrer ed., 1997).

The NIPAS, claims one study, succeeded in bringing together stakeholders with varying perspectives and persuasions:

In many ways, NIPAS’s experiences in the last three years have drawn a window into some of the many sources of conflict and tensions that often frustrate NGO-PO efforts to build consensus around specific issues or initiatives. These...include competition in accessing funds and in project implementation, a varying appreciation of the role and contribution of foreign or international NGOs to local development efforts, and even personality differences among development workers and leading figures in the NGO-PO community (*Id.*, at 143).

While consortium building is relatively new in the Philippines, the early years of the NIPAS indicated its willingness to conduct dialogues with all the sectors who have a stake in the project, and attempting to work out problems as it moves along.

6. Ancestral Domains

One important point needs to be stressed—communities threatened by the depletion of resources initiated many of these cases. One unique case of dispute settlement involved the depletion of coastal resources in Coron, Northern Palawan. In this case, the Tagbanwa, an indigenous fishing community faced serious environmental problems when dynamite and cyanide fishing threatened to deplete their resources. In the 1970s, local officials auctioned off caves from where the Tagbanwa traditionally harvested swiftlet nests and reduced them to hired hands for their new owners. Tourist resorts and cattle ranchers were slowly encroaching into their territories.

In response to these threats to their livelihood, the Tagbanwa met among themselves to determine the range of their ancestral domains. They laid their claim to their territories through DENR Administrative Order No. 2 (1993), which was the precursor of the IPRA. They agreed that the coral reefs formed the backbone of their traditional fishing grounds and then set out to map their claims using global positioning systems. They used the data they gathered to generate their own maps to explain the importance of recognizing their claims for their survival.

Despite the obstacles hurled at them by local officials, the government recognized the Tagbanwa's claim over the "ancestral waters" — a first in Philippine history (*See Philippine Association for Intercultural Development, Mapping the Ancestral Lands and Waters of the Calamian Tagbanwa of Coron, Northern Palawan, in, MAPPING THE EARTH, MAPPING LIFE 44-63 (Ponciano L. Bennagen & Antoinette G. Royo eds, 2001).*

V. Some Observations

As these cases show, disputes regarding the environment in the Philippines usually revolve around resource use. It should also be evident that in many cases, the law seldom figures into the equation. This is clear from the cases involving coastal resources. In fact, the use of the law often reduces the chances of successful resolution. In the mining cases, recourse to the mechanisms incorporated in the mining act proved futile, where the decision makers showed bias. The case involving the EIA system and the proposed cement plant in Bolinao is the exception. In fact, it is the only instance when the DENR denied an application for an ECC.

The profusion of dispute systems outside the official legal system also provides an opportunity for stakeholders to choose the forum that will hear their case. This is particularly evident in the manner in which indigenous peoples settle their disputes.

The Tagbanwa's successful attempt at securing recognition of their ancestral domains should not detract from the fact that the implementation of the IPRA is mired in politics. Other implementing rules are clearly skewed to favor mining ventures (*See* Legal Rights and Natural Resources Center-Kasama sa Kalikasan, The Indigenous Peoples' Rights Act and Community Mapping, *in* MAPPING THE EARTH, MAPPING LIFE 19-43 (Ponciano L. Bennagen & Antoinette G. Royo eds, 2001).

In any case, resort to litigation is often disregarded as a viable option either because of perceived costs and bias against the interests of one of the parties.

We should stress that these conflicts cannot be regarded separately from the larger political context in which they operate. Conflict often arises because of the implementation of State policies that conflict with the rights of communities who are dependent on natural resources. In short, these case studies on ancestral domains recognition arise because the State has a separate economic agenda.

Some of those who are challenging mining activities under the Mining Act point out that "the restructuring of the country's mining industry was not divorced from the new initiative by transnational corporations to recolonize Third World countries under the theme of globalization" (Catalino L. Corpuz Jr., *National Situation: The Mining Industry in the Philippines*, paper written in October 1999 for the National Workshop on Mining and for Third World Resurgence, available at <http://www.minesandcommunities.org/Country/Philippines1.htm>). Corpuz also pointed to "the unethical way the mining companies conducted themselves" and that even before the new mining law was approved and discussed in local consultations, mining companies "already forced themselves into people's territories to conduct exploration work."

It is not suggested here that ADR *should* have a single mechanism for all environmental disputes. The historical development of the environmental movement could explain the late, if disparate treatment of environmental issues. The primacy of democratization of access to natural resources produced laws that address ancestral domains rights because these are areas where the strain of population and industrialization bear heavily on local communities. The policy on decentralization

gave local communities a chance to influence policies at the local level and produced dispute resolution mechanisms under the Local Government Code. The piece-meal approach can be justified as a response to intense conflicts at the local level over environment and natural resource utilization.

The Clean Air Act, by comparison, was not perceived as similarly urgent. That law was written in response to pressure from the international legal community rather than the initiative of Congress or the lobby of local environmental groups. A law on clean water has yet to be enacted.

VI. Conclusion

If ADR is viewed from a wider perspective — as a means through which Filipinos can avert the tedious process of litigation, then the Philippines is not short on legislation. From the incorporation of mediation at the village level to very specific provisions on environmental laws, it is evident that Congress is aware of the advantages of ADR.

This paper demonstrated, however, that ADR mechanisms on environmental disputes are not uniform. Often, Congress will incorporate specific mechanisms in specific laws that affect natural resources or the environment. Thus, no single rule for ADR mechanisms exists. Instead, various remedies are available under the Clean Air Act or the Mining Act of 1995.

It should be clear, however, that Filipinos do not rely purely on the express provisions of the law to settle disputes. People often choose existing modes of dispute resolution, or lobby for changes in policy such as the EIA implementing rules, which allow for the incorporation of concepts such as “social acceptability” to be factored in the official decision-making processes.

It would seem that several factors are needed before ADR can become successful as a means of resolving environmental disputes.

Transparency in the actions of the government officials contributes greatly to the engendering trust in the system. Broad consultations with stakeholders also seem to produce the most satisfactory settlements.

The increase in legislation that incorporates ADR mechanisms must also be neutral. Some of the express provisions on the availability of ADR mechanisms are skewed to favor certain parties, and cannot by themselves generate sufficient trust

among the contending parties. The Philippine experience under the Mining Act of 1995 bears this out. When the law itself is designed to encourage the exploitation of resources, the odds are stacked against those protecting the environment. In the case of the mining law, the structure of the ADR mechanisms makes the chances of successfully opposing mining activities virtually impossible.

Some measures remain untested. The community's power to contest local government acquiescence to resource extractive activities awaits the decision of the Supreme Court.

Finally, the Philippine experience illustrates that other dispute mechanisms exist outside the formal legal framework, and are resorted to when the official mechanisms are suspect.

Summary

In the Philippine setting, the use of court system as dispute resolution mechanism has been characterized by lengthy and costly proceedings, rigid technical rules and highly adversarial process, not to mention a low level of public trust and confidence arising from perceived corruption among judges and court personnel. Current judicial reforms identified alternative dispute resolution (ADR) as the key to decongesting court dockets to solve the problem of delay in adjudication of controversies submitted before the various courts. Such renewed interest in ADR not only underscored its advantage of providing a more effective means of addressing certain issues requiring specialized knowledge but also afford a less confrontational method more attuned to Filipino values and culture. Court-mediated and court-referred mediation is presently being institutionalized to promote and encourage out-of-court systems of dispute resolution for certain types of legal controversies.

However, any study on ADR as practiced in the Philippines today is faced with an inherent limitation due to the dearth of statistics and relevant data in the absence of monitoring, evaluation and documentation in almost all institutions concerned in ADR. The potential of ADR for enhancing access to justice by our citizens can be intensified by giving it importance in law education and its institutionalization through legislation.

In the three areas of focus of this study on dispute resolution --consumers, labor and environment-- the view has been expressed that there may be no single rule for the viability of ADR mechanisms and that historical, social and economic factors may account for lesser acceptability of out-of-court systems of conflict resolution as compared to judicial adjudication in cases where government intervention and control will best secure specific rights and interests. Thus, in consumer disputes, an effective dispute resolution system should be able to correct the gross imbalance of power between the individual consumer and the company seller with the latter's greater access to product knowledge and legal and financial resources. At the same time, the individual consumer must be empowered with knowledge and decision-making skills and properly organized into groups for better implementation and enforcement of laws on consumer protection. In the case of labor disputes, while collective bargaining and voluntary disputes are the preferred methods of conflict resolution, compulsory arbitration will continue to play a significant role because of a long period of reliance on government as

the final arbiter of labor disputes and the faith of the parties in the government. On the other hand, the low level of unionizing coupled with fear of consequences in times of economic downturn, is a major factor for non-availment of collective bargaining as a mode of dispute resolution. As to environmental issues, the Philippine experience is marked by the prominent nexus between protection of the environment and people's access to a particular resource. ADR mechanisms provided in recent environmental laws which primarily relate to such access to a resource, may not prove to be successful in resolving environmental disputes as Filipinos do not rely purely on such express provisions of the law to settle disputes (preferring existing modes of dispute resolution); aside from the need for greater transparency in government actions, broad consultations with various stakeholders and ensure neutral ADR provisions which do not favor certain parties.

In sum, the prospects of ADR in providing more effective avenues of settlement of legal controversies would depend not only in crafting the relevant legal framework and institutionalizing adequate measures but also in the extensive and meaningful education of our people to make out-of-court systems work for their greatest benefit and advantage.

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