

Chapter 13

Ensuring the Success of the Philippine Judicial Reform Program*

The ancient Code of Lipit-Ishtar was handed down by the ruler of Isin in 1868 to 1857 BC, about 150 years earlier than the more famous Code of Hammurabi.^[1] Included in the Code of Lipit-Ishtar, which has been translated into English from the old Sumerian language, is the following provision:

“If a man rented an ox and damaged its eyes, he shall pay one half of the ox’s price. If he damages the flesh at the nose ring, he shall pay one third of its price. And if he broke its horn, he shall pay only one fourth of its price.”

This law shows that to Sumerians at the time, an ox damaged at its nose ring was deemed to be more valuable than one with a broken horn.

I cited this simple provision of the oldest known Code to show that laws -- and for that matter, decisions interpreting them -- mirrored some problems Sumerians faced about 1,800 years before the birth of Jesus Christ. By the same token, future generations can study our people’s character and values by the kind of laws, decisions and reforms we promulgate or undertake.

If laws and decisions open up the doors to the attics and cellars of civilization, judicial reforms provide a glimpse of our lofty aspirations. We dream of reinventing our conflict-resolution structures to make them reflect our longing for peace and prosperity.

Because of limitations of time, I will not be able to discuss today the more than 100 reform projects being undertaken by the Philippine Supreme Court. To do

that would take at least one hour. However, these reform initiatives are explained at length in my new book, *Judicial Renaissance*,^[2] which was launched during the opening day of our conference in both paper and digital versions. This 536-page hard-bound book is given to all delegates, with the compliments of the Supreme Court of the Philippines. I hope that by this time, you have already obtained and perused your free copy.

The CIDA Targets of Reform

As you may have noted from this book, the Philippine judicial reform program is very comprehensive and wide-ranging; it addresses all matters connected with the effective dispensation of justice. It plainly confronts the problems relating to **access** to justice by the poor, **corruption**, **incompetence**, and **delay** in the administration of justice. For ease of recall, I refer to these four targets of our program as ACID. As explained often enough by Chief Justice Hilario G. Davide Jr., our goal is to re-engineer “a judiciary that is independent, effective, efficient and worthy of public trust and confidence”; and, if I may add my own view, a court system that zealously safeguards the **liberty** of our people and patiently nurtures their **prosperity**.

The reforms include the following: the elevation of the standards of law schools; the improvement of bar examinations; the more rigid selection and timely appointment of competent magistrates; their continuing intellectual and ethical education; the increase of their compensation and retirement benefits; the strict enforcement of our disciplinary process; the more consistent imposition of sanctions for violations of our Code of Judicial Conduct; the complete computerization of the judiciary; the promotion of alternative methods of dispute resolution; the construction of modern halls of justice; activities to improve our access to justice; and the intensification of our public information campaign.

A Model for Developing Countries

As I have said, I do not have the time to discuss the above programs in detail. Today I would rather talk about how our Supreme Court's **Action Program for Judicial Reform** (APJR)^[3] was conceived, planned and implemented. In so doing, I hope to answer many questions raised by many delegates on why our APJR has become a model for developing countries.

Further, I would like to explain why it has earned the support of all major multilateral developmental institutions like the United Nations Development Program (UNDP), the World Bank (WB), the European Union (EU) and the Asian Development Bank (ADB); funding grants from national aid agencies of several countries including Australia, Canada, Great Britain, Japan, the Netherlands, and the United States; as well as assistance from private donor organizations like The Asia Foundation, the American Bar Association-Asia Law Initiative, and the Rule of Law Effectiveness (or ROLE). I do not know of any other country in the world that has enjoyed similar global assistance for the modernization of its judicial system.^[4]

So what are the various key factors that will ensure the success of the Philippine judicial reform program?

Constitutional Guarantees of Judicial Independence

First. The 1987 Philippine Constitution guarantees the independence and integrity of the Philippine judiciary by placing it on equal footing with our lawmaking body (Congress) and law-executing official (the President).^[5] Not only has our fundamental law given our Supreme Court the final authority to review and correct errors of *all* other courts in the country. Our Constitution has also mandated this

Court to nullify any act of *any* branch or official of the government -- including that of the legislative or the executive department -- when that act has been done with “grave abuse of discretion.”^[6]

The security of tenure of all judges, from the lowest to the highest courts, is guaranteed by our Constitution.^[7] On condition of good behavior, all our magistrates serve until they reach the age of 70, without any extension.^[8] Only by the tedious process of impeachment^[9] may the members of the high court be removed; while only for cause duly proven -- and only by the Supreme Court,^[10] not by the President or Congress -- may all other lower-court judges be removed from office or otherwise disciplined.

Moreover, the judiciary is constitutionally granted fiscal independence in two ways: (1) the salaries of members of the bench cannot be decreased during their terms of office,^[11] and (2) the appropriation for the entire judiciary cannot be decreased by Congress below that for the previous year.^[12] Once approved, the judiciary budget shall be “automatically and regularly released” to the high tribunal.^[13]

The Supreme Court, not Congress, prepares and promulgates rules of procedure and evidence in all courts in our country.^[14] Also, the Court decrees those rules “concerning the protection and enforcement of constitutional rights,” a prerogative that is quasi-legislative in character.^[15] Moreover, it controls admission to the practice of law; for this reason, it conducts the annual bar examinations.^[16] It is also empowered to discipline, suspend or disbar lawyers.^[17]

Comprehensive Diagnosis

Second. Before embarking on its reform program and with assistance from in-house and external experts, the Supreme Court undertook a comprehensive review of

the state of the Philippine judiciary then.^[18] The subjects of the assessment were the judicial environment and the Philippine judiciary's institutional capacity, including its strengths, weaknesses, opportunities, and the threats (SWOT) confronting it. Through this diagnostics,^[19] the Court was able to establish baseline data with which to identify its goals and activities.

The follow-through came in the form of perception surveys to gauge the level of public confidence in our judiciary, as well as judges' and court personnel's impressions of the gravity of the problems they faced.^[20] For this reason, our reform program can then be said to be firmly grounded on a realistic assessment of facts.

Review of Past Programs

Third. All our past judicial reform efforts were reviewed in order to learn from their successes and failures. A better understanding of the projects formulated and the methods used certainly helped us develop a more effective program of action.

Involvement of All Stakeholders

Fourth. We consulted the various stakeholders of the judiciary -- judges, court personnel, litigants, practicing lawyers, law professors, law students and nongovernment groups. Around the country, we held workshops and dialogues that opened communications among them.^[21] Thus, all affected parties had substantive involvement in developing and reviewing the objectives and approaches of the programs; and in identifying and prioritizing projects, as well as setting time frames and other important details.^[22]

Global Perspective

Fifth. To avoid costly reform pitfalls, a global perspective was given to the reform program. Lessons were drawn from relevant international experiences and practices. At the same time, however, we recognized that our judicial system had certain constitutional, legal, social and cultural peculiarities that should differentiate our reform initiatives from certain projects and methodologies that had been successfully implemented in other jurisdictions.

Holistic Approach

Sixth. Using a holistic approach, we identified and defined the essential components of the reform program: institution, policy, procedure and resources. The interdependent and mutually reinforcing relationships among these components were paramount considerations in the development and management of reforms. Methods or approaches were tailored to promote an efficient coexistence among these relationships.

Chronological Execution of Various Components

Seventh. Another key consideration in the implementation of our reform program is the proper or chronological execution of various components of the projects in relation to sequencing targets, as well as short- and long-term goals. In this manner, we hoped to avoid backtracking, delay and waste of valuable resources.

Working Within Resources

Eighth. Realistic goals within the confines of available resources were also set. Along this line, we explored all possible avenues to generate funding and invoked the

assistance of agencies that were willing and able to finance our reform program.^[23] Realizing the inadequacy of local finances, the Court requested and was granted a meeting with the donor community to explore the possibility of receiving funding for its projects. Representatives of the donors were asked to help develop a cohesive strategy and a sequencing of the measures to be undertaken. A public investment plan was thus drawn up to organize the reform activities, schedule them, and calibrate the levels of resource infusion.

To assure their feasibility and avoid costly mistakes, the initial reform programs were undertaken as pilot projects. Pilot testing proved beneficial in a lot of ways. For one, it enabled close monitoring of interventions to permit refinements and also to build momentum and support for the next phases. It also allowed the project to build on the strengths of specific components and improve on the weaknesses that had surfaced during the implementation of the projects.

Separate Reform Office

Ninth. Indispensable to a sound reform management process is the establishment of a separate office with a definite structure, streamlined work flow and skilled personnel. Our Program Management Office (PMO)^[24] is not staffed by judges but by experts in management, reform and finance. This separate reform management office proved to be the catalyst in demonstrating the sincerity and determination of our Court to institute both short- and long-term projects to solve the maladies of our judiciary.

Clear and Measurable Standards

Tenth. At the outset, clear and measurable standards were set for each project. The PMO was tasked to monitor and evaluate the reform outputs, based on pre-

agreed schedules and resource allocations in a multi-year frame. By defining performance indicators and milestone targets, the PMO provided (and continues to provide) a database for the evaluation of accomplishments, the implementation and management of forthcoming activities, and the anticipation of problems that may arise.^[25]

International Recognition

All in all, the Philippine judicial reform program owes its success to the confluence of these ten factors that I have briefly discussed, especially our favorable constitutional provisions that guarantee judicial independence and integrity; the clear statement of our vision, mission and direction; the outpouring of technical and financial assistance from donors; our consultative and focused implementation; and our constant and continuous monitoring and evaluation of all activities.

Indeed, these factors coincide with the observations of the World Bank that our APJR is the “most comprehensive in x x x scope and x x x detail” among reform programs in Southeast and East Asia; and that it is “well-rooted,” “well informed,” and a “model that other countries would be really well served [to] emulate.”^[26]

We are sponsoring this International Conference and Showcase on Judicial Reforms, in order to share these lessons we have learned in crafting and implementing our judicial reform program; and to facilitate a further exchange of ideas, experiences, and projects among various nations of the world. Using avant-garde technology, we aim to produce -- with the concurrence of all the delegates -- a website, on which the latest judicial innovations and modernization programs of all participating countries may be posted and shared. This website we propose to call Judicial Reform Network in the 21st Century or JRN21.

We also propose the creation of an Asia-Pacific Judicial Reform (APJR) Forum to institutionalize the gains achieved by our conference. This forum will be the more permanent vehicle for knowledge-sharing on judicial reform.

I close this address with a reiteration of the principle that, in a popular democracy, there can be no assurance of good governance and no meaningful and sustained economic development without a stable, credible, independent, accountable, transparent and competent judiciary.

Maraming salamat po.

* Paper I delivered prior to my appointment as Chief Justice and while still the chairperson of the Third Division of the Philippine Supreme Court during the Third Plenary Session of the International Conference and Showcase on Judicial Reforms, held on November 28-30, 2005, at the Rizal Ballroom of the Makati Shangri-la Hotel. I was also the overall chairperson of the conference.

[1] S. ROBBINS (ED.), LAW: A TREASURY OF ART AND LITERATURE 11 & 19-20 (1990).

[2] November 2005 ed., Supreme Court Printing Press.

[3] The APJR was approved by the Supreme Court of the Philippines on December 8, 2000.

[4] For further particulars, see my address before the Consular Corps of the Philippines on August 31, 2005, reprinted in JUDICIAL RENAISSANCE, Chapter 3 (2005).

[5] The tripartite allocation of powers is provided in the Constitution as follows:

Art. VI, Sec. 1. "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum."

Art. VII, Sec. 1. "The executive power shall be vested in the President of the Philippines."

Art. VIII, Sec. 1. "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. x x x. "

[6] CONSTITUTION, Sec. 1, Art. VIII, which provides thus:

"x x x. [J]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

The Philippine Supreme Court is also the sole judge of all contests relating to the "election, returns and qualifications" of the President and the Vice-President of the Republic. [CONSTITUTION, Art. VII, Sec. 4 (last par.)]

[7] CONSTITUTION, Art. VIII, Sec. 20, has this pertinent provision:

"No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members."

[8] CONSTITUTION, Art. VIII, Sec. 11, provides:

“The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. x x x.”

[9] Justices of the Philippine Supreme Court are among the public officers who can be removed from office only by impeachment, as provided under the CONSTITUTION, Art. XI, Sec. 2, which reads as follows:

“The President, the Vice President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.”

[10] As provided under the second sentence of the CONSTITUTION, Art. VIII, Sec. 11, as follows:

“x x x. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberation on the issues in the case and voted thereon.”

[11] CONSTITUTION, Art. VIII, Sec. 10, provides that “[t]he salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.”

[12] CONSTITUTION, Art. VIII, Sec. 3, reads thus:

“The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.”

[13] Id.

[14] This authority of the Court is spelled out in the CONSTITUTION, Art. VIII, Sec. 5, par. (5), which reads thus:

“(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform in all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

[15] Id.

[16] Id.

[17] Id. This power proceeds from its authority to promulgate rules concerning the Integrated Bar.

[18] On July 4, 1997, and long before the Philippine judicial reform program was formally adopted, the Supreme Court (SC) had created a Judicial Reforms Committee under the Philippine Judicial Academy, the SC’s lead education arm for judges and judicial personnel. The committee was mandated to “conduct a in-depth examination of our present legal and judicial system for the purpose of upgrading, improving and reforming it to meet the changes in and challenges of the new millennium.” On November 24, 1998, the SC subsequently authorized the creation of a Committee on Management Study of the Judiciary, with a mandate to “conduct a study focusing on the organizational structure and the administrative management procedures of the court, identifying dysfunctions and capability gaps, as well as overlapping of functions.” The project, which was supported by the United Nations Development Program (UNDP) under a Technical Assistance (TA) package to the Philippine Judiciary on Justice and Development, focused on organization

review, personnel management, financial administration, and systems and procedures. *General Report on Management Study of the Judiciary* was released by the committee on May 17, 1999.

[19] Among the studies that were instrumental in identifying specific areas for judicial reform was the *Philippine Judicial Sector Study* (Report 20446-PH), May 31, 2000.

[20] A number of surveys on the state of the legal profession and the judiciary in the Philippines were conducted between 1985 to the present to obtain a reading of how the public, lawyers and judges perceived the judiciary; and to identify problems plaguing the legal and judicial system. The most recent survey was conducted between 2003 and 2004 by the Social Weather Stations under the sponsorship of The Asia Foundation.

[21] In 1999 alone, our Chief Justice Hilario G. Davide Jr. conducted 17 dialogues with judges, judicial officials and employees nationwide. On March 3, 2000, a workshop was convened for judges of all court levels and for other stakeholders, to determine the priorities for judicial reform. The following priorities were identified: (1) attaining fiscal autonomy, (2) reducing corruption, (3) reducing delay and improving court administration, and (4) improving judicial education.

Consultations on the APJR are continuously being conducted to ensure feedback on the projects undertaken and to pinpoint areas to be improved and strengthened. Conducted in 2004 were 79 APJR briefings and advocacies, including 13 dialogues with the private and the public sectors. These figures show that more efforts are being exerted to make the APJR presentation an integral part of every workshop, focused group discussion, consultation, forum, and conference that are initiated, sponsored or funded by PMO. [*Executive Summary*, PMO Annual Report (2004)]

[22] After an 18-month consultation process, a Blueprint of Action for the Judiciary was launched on February 4, 2000. The present APJR owes its origin to that blueprint. This process of consulting the different stakeholders and sectors was carried out with the assistance of the United Nations Development Program and our National Economic Development Authority.

[23] To ensure effective coordination and collaboration with donor institutions, donors' forums are periodically held during the year to facilitate discussions on the status of APJR implementation and to identify areas in which the institutions may provide further assistance.

[24] Originally created as an office attached to the Office of the Chief Justice on July 17, 2001, the PMO is now a regular office under the administrative structure of the Supreme Court.

[25] Early on, the APJR identified six key result areas and the corresponding key performance indicators (KPIs) for each area. The KPIs are expressed in clear and, as far as practicable, quantifiable terms -- with regard not only to the number of projects or targets, but also to the time involved to get the projects going. This system makes reporting easier during the evaluation period. The key results areas (KRAs) are project development, resource mobilization, advocacy, project implementation and monitoring, procurement and contract management, and financial management.

On December 18 and 19, 2003, the PMO Year End Evaluation Workshop and Work Planning Session identified the KPIs for 2004. A timelines was also set for each KPI.

[26] The observations came from Mr. Anthony Gerald Toft, the World Bank's chief counsel for East Asia and the Pacific region, during his lecture entitled "Judicial Reforms: Issues to Consider" on August 24, 2005, at the Freedom Hall of the Lyceum of the Philippines. He acknowledged that our reform program is rooted in our Chief Justice's vision of a "judiciary that is independent, effective and

efficient, and worthy of public trust and confidence. A legal profession that provides quality, ethical, accessible and cost-effective legal service to our people and is willing and able to answer the call of public service.” He also noted that the program was built on a number of important diagnostic studies and a real willingness to learn from the experiences of other countries.