



JUDICIAL REFORM INDEX

FOR

THE PHILIPPINES

March 2006

© American Bar Association

The statements and analysis contained in this report are the work of the American Bar Association's Asia Law Initiative (ABA-Asia), which is solely responsible for its content. The Board of Governors of the American Bar Association has neither reviewed nor sanctioned its contents. Accordingly, the views expressed herein should not be construed as representing the policy of the ABA. Furthermore, nothing contained in this report is to be considered rendering legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication was made possible through support provided by the U.S. Agency for International Development Philippines Mission, under the terms of the Cooperative Agreement No. 492-A-00-03-00018-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Agency for International Development.

ISBN: 1-59031-712-2

Printed in the United States of America

Copyright © 2006 by the American Bar Association
740 15th Street, NW, Washington, DC 20005

TABLE OF CONTENTS

Introduction	i
Executive Summary	1
Philippines Background	5
Legal Context.....	5
History of the Judiciary	6
Structure of the Courts	7
Conditions of Service.....	8
<i>Qualifications</i>	8
<i>Appointment and Tenure</i>	8
<i>Training</i>	9
The Philippines JRI 2006 Analysis	
Table of Factor Correlations	11
I. Quality, Education, and Diversity	12
1. Judicial Qualification and Preparation	12
2. Selection/Appointment Process.....	14
3. Continuing Legal Education.....	16
4. Minority and Gender Representation	18
II. Judicial Powers	19
5. Judicial Review of Legislation.....	19
6. Judicial Oversight of Administrative Practice	20
7. Judicial Jurisdiction over Civil Liberties	21
8. System of Appellate Review	23
9. Contempt/Subpoena/Enforcement	24
III. Financial Resources	25
10. Budgetary Input	25
11. Adequacy of Judicial Salaries.....	27
12. Judicial Buildings	28
13. Judicial Security.....	29
IV. Structural Safeguards	29
14. Guaranteed Tenure	29
15. Objective Judicial Advancement Criteria	30
16. Judicial Immunity for Official Actions	30
17. Removal and Discipline of Judges	31
18. Case Assignment	33
19. Judicial Associations	34

V.	Accountability and Transparency	35
20.	Judicial Decisions and Improper Influence	35
21.	Code of Ethics	36
22.	Judicial Conduct Complaint Process	37
23.	Public and Media Access to Proceedings	38
24.	Publication of Judicial Decisions	39
25.	Maintenance of Trial Records.....	40
VI.	Efficiency	41
26.	Court Support Staff.....	41
27.	Judicial Positions	42
28.	Case Filing and Tracking Systems.....	44
29.	Computers and Office Equipment	45
30.	Distribution and Indexing of Current Law	46
	List of Acronyms	47

Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), and is implemented by the American Bar Association's Asia Law Initiative (ABA-Asia) in coordination with ABA/CEELI's JRI Coordinator. Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable the ABA, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

The ABA developed the JRI with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, the ABA acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after many years of working in the field on this issue, the ABA has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

- (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: “[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy.” Larkins, *supra*, at 616.

Methodology

In designing the JRI methodology, the ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary*; *Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”*; *Council of Europe’s European Charter on the Statute for Judges*, and *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications. The ABA has continually integrated new standards and guidelines into its JRI process, such as the *Bangalore Principles on Judicial Conduct*.

Drawing on these norms, the ABA compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, the ABA developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, the ABA reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, the ABA determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a “scoring” mechanism was one of the most difficult and controversial aspects of this project, and the ABA debated internally whether it should include one at all. During the 1999-2001 time period, the ABA tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, the ABA decided to forego any attempt to provide an overall scoring of a country’s reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, the ABA did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country’s judicial system. Where the statement strongly corresponds to the reality in a given

country, the country is to be given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, *The Chinese Communist Party and ‘Judicial Independence’: 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, the ABA has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, the ABA determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and — as JRIs are updated — within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, the ABA decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help the ABA — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. The ABA also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country’s judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. The ABA offers this product as a constructive step in this direction and welcomes constructive feedback.

Acknowledgements

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association’s Central and East European Law Initiative (ABA/CEELI) (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI, developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-2003) directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

During the course of developing the JRI, the ABA benefited substantially from two expert advisory groups. The ABA would like to thank the members of ABA/CEELI’s First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally, the ABA would like to thank the members of its Second Judicial Advisory Board, including Luke Bierman, Macarena Calabrese, Elizabeth Dahl, Elizabeth Lacy, Paul Magnuson, Nicholas Mansfield, Aimee Skrzekut-



Torres, Roy T. Stuckey, Robert Utter, and Russell Wheeler, who stewarded its completion. Finally, the ABA also expresses its appreciation to the experts who contributed to the ABA/CEELI Concept Paper on Judicial Independence: James Apple, Dorothy Beasley, Nicholas Georgakopolous, George Katrougalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.

Assessment Team

The Philippines JRI 2006 Analysis assessment team was led by The Honorable Evelyn B. Lance, a retired State of Hawaii Judge, current member of ABA-Asia's Advisory Board, and long-term volunteer for ABA's international rule of law programs, with the assistance of the ABA-Asia's Philippines Staff Attorneys Renato B. Lopez, Jr., and Leah R. Olores, and of ABA-Asia's Resident Advisor Teresa Cannady. The team received strong support from the ABA-Asia's staff in Manila and Washington, including Office Administrator Fides Ferrer, Program Manager Sneha Barot, and Program Associate Theresa Luong. Olga Ruda, Co-Coordinator of the Judicial Reform Focal Area of the ABA's international rule of law programs, provided guidance throughout the assessment process and served as editor. The conclusions and analysis are based on interviews that were conducted in the Philippines in March 2006 and relevant documents that were reviewed at that time. Records of relevant authorities and individuals interviewed are on file in the Washington, DC office of the ABA and are kept confidential. The assessment team is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

Executive Summary

Brief Overview of Results

The 2006 Judicial Reform Index (JRI) assessment for the Philippines manifested major strengths, as well as concerns, regarding the judicial system. As noted in the Table of Factor correlations, the Philippines scored positively on nine of the thirty JRI factors and neutrally on twelve factors. Among the positive factors are all of those related to quality, education, and diversity of the judiciary, the code of judicial ethics, and guaranteed tenure. Neutral factors include adequacy of judicial salaries, as well as most factors related to judicial powers, structural safeguards for the judiciary, and transparency of the judicial system. The remaining nine factors received a negative correlation, including most factors related to financial resources and efficiency of justice. As this report is the first JRI conducted in the Asia region, there is no basis for comparison with other similarly situated countries in the region; however, results of JRI assessments conducted in other countries can be found on ABA/CEELI's website.¹

Strengths of the Philippine Judiciary

The Philippine judiciary has many strengths, which makes it a model for other countries in the region. While some educational and legal reforms were adopted during the first half of the 20th century, the most significant factor in recent reform efforts has been the vision of former Chief Justice Hilario G. Davide, Jr. in initiating the Action Program for Judicial Reform (APJR) in 2001 and organizing the Program Management Office (PMO) within the Supreme Court to implement its goals. The APJR has been widely accepted because it was initiated within the judiciary rather than imposed from outside, and it has included partnership with other stakeholders in the justice system and with civil society organizations. Some of its achievements thus far include project proposals, diagnostic studies, systems development and reports, with initiation of some specific administrative programs, and training workshops for judges and court staff. Continued pro-active leadership throughout the court system can ensure that these reforms will yield practical results in the future.

Examples of specific successful programs related to APJR, as well as other strengths include:

- Capacity building and rules promoting **transparency** in the Judicial and Bar Council's **judicial selection process**;
- Formalization, curriculum expansion, and capacity building of the Philippine Judicial Academy, with a **mandatory pre-judicature course** and **career enhancement training** for judges and court staff;
- Ability of individuals, agencies, and others to **contest the constitutionality of laws** and **the legality of administrative actions**, and to **remedy violations of civil rights** through judicial intervention;
- The **finality of Supreme Court decisions**, which may not be modified or reversed except by the Court itself sitting *en banc*, and the **general respect accorded to court decisions** at all levels;
- A 100% **increase in judicial salaries** over the past four years following legislation that authorized such increase through a special allowance, and a resulting increase in the number of judicial applicants;

¹ See <<http://www.abanet.org/ceeli/publications/jri/home.html>>.

- Adoption of a **new Code of Judicial Conduct** based on the Bangalore Principles of Judicial Conduct, as well as a **Code of Conduct for Court Personnel**, and training related to these Codes;
- Vigorous **oversight and investigation of conduct complaints** against judges and court staff, including complaints submitted by members of the general public; and
- Development of **court automation systems**, including the Court Administration Management and Information System, the Case Flow Management, and the Case Management Information System, which should prove fruitful in reducing backlogs and increasing efficiency of case management.

Concerns Relating to Inefficiency of the Judicial System

Inefficiency, frequently resulting in a filing-to-completion period of five or more years in civil and criminal cases, is significantly related to a judicial mindset that is inherent in a busy system. This incapacity has manifested itself in a lack of courtroom control. Complicating factors are the insufficient attention to, and training in, courtroom management, as compared to case management, and the use of enforcement tools.

- Judges are **unduly reluctant to use the contempt and subpoena powers available to them** under the law to: require parties to abide by time frames by denying requests for postponements; ensure appearance of witnesses; and refer attorneys to the disciplinary authority for unprofessional and frivolous delaying tactics.
- The judiciary suffers from the **inordinate backlog of cases**, with over 800,000 cases pending at the end of 2005. Many of these backlogged “archived” cases involve defendants who were never found. Additionally, many cases were settled, but not dismissed. No case events were set to monitor resolution. In addition, a significant segment of the backlogged cases are the so-called “bounced check” cases with simple facts and legal issues. However, the Philippine legal system **does not provide for a small claims procedure** for disposition of such cases. It would be beneficial to implement a short-term, emergency mechanism to deal with the current backlog, following which the existing **sequential trials should be replaced with continuous ones**. Thus, the concern that backlogged cases would suffer if judges had to focus on continuous trials would no longer be valid.
- The **Speedy Trial Act** of 1998 and related Rules of Court have proven **ineffective** in curing the judicial delays. The required “speed” starts and ends only with the actual trial, and the Act contains numerous exclusions and exceptions for granting continuances. Furthermore, it is not uniformly enforced.
- Large numbers of **court personnel are not efficiently allocated**. For instance, many stenographers and sheriffs are presently underused and, to increase efficiency, could be pooled and used where the need is greatest.
- While **significant computerization** of the courts has been **achieved**, there is a **need for underlying effective systems** that, when computerized, will increase efficiency. Although court clerks are required to keep ledgers of case events and produce monthly reports, most branches do not use an individual simple case monitoring technique such as a summary sheet at the front of the file which lists all case events. This summary, combined with routine calendaring for appearances or submission of documents, should significantly alleviate the “archived case” problem.

- Although ***outside of the direct control of the judiciary***, one element of inefficiency that affects the functioning of the courts is the ***shortage in the number of prosecutors and public attorneys*** under the jurisdiction of the Department of Justice. This inadequacy results in scheduling conflicts and delays, lowers conviction rates as witnesses fade away, and decreases incentives for plea bargaining. Moreover, poor pay scales exacerbate the shortage of public attorneys, which not only hampers the efficiency of the judiciary, but also limits access to justice by indigent persons.

Concerns Relating to Corruption in the Judiciary

While the extent of corruption in the judiciary is difficult to measure, the prevailing view is that its magnitude has decreased since implementation of the APJR and the promulgation of the new codes of judicial conduct and court personnel conduct in 2004. Related training workshops and public news releases regarding the codes of conduct, as well as enforcement of judicial discipline and the enhanced judicial selection process, have also contributed to improvement.

- Nevertheless, ***public perception of significant judicial corruption remains***, and is itself an obstacle to the administration of justice. The 2005 PMO report on implementation of the APJR recognized that ***certain areas of court operations are vulnerable to corruption***. The most vulnerable areas appear to be those where court officials are entitled to fees for services to litigants, e.g., sheriffs in enforcement actions, stenographers in preparation of transcripts, and commissions to which certain court clerks are entitled.
- Several ***cultural phenomena***, such as the culture of "gratitude" of judges to the appointing authority or the pervasive reach of influential family and other relationships, ***may also contribute to the situation***. Furthermore, many litigants apparently come to their attorneys expecting to have to pay for a favorable result, and some attorneys have apparently lost clients when they refused to do so.

Concerns Relating to Financial Resources

Lack of reasonable budget support for the judiciary by the Philippine government is a factor complicating the inefficiency and corruption problems, and has resulted in over-reliance on donors.

- While the higher level courts (Supreme Court and Courts of Appeal) appear to have sufficient material resources and personnel, the ***lower courts are not receiving an adequate allocation of funds to meet their needs***. The greatest deficiency exists in maintenance, equipment, and supplies, and some courts are relying on the local governments to supplement costs. Judges and clerks often purchase or obtain (from "friends") their own computers. In some courts, judges have expended personal money to purchase furniture or supplies.
- ***Many court buildings are in poor condition, while courtrooms are small and overcrowded***, often with insufficient chairs or benches. There are insufficient and poorly maintained restrooms, limited accessibility for the disabled, and no meeting areas for litigants and their counsel. Due to the absence of central archival storage space, ***case files are stored in public hallways or under stairwells*** without security.
- Judicial security is the responsibility of the Philippine National Police; however, in practice, ***no resources are allocated to security measures***, with the exception of the higher level courts. While courthouse security does not appear to be a concern, ***security for judges outside the courtroom is an issue***, as ten judges have been killed since 1999, none of them on court premises. These cases remained pending in the courts at the end of 2005.

The Philippines Background

The Philippines is the third largest English-speaking country in the world. Prior to Spanish discovery by Magellan and colonization in 1521, Filipinos were trading with the Chinese and Japanese. The archipelago, named *Filipinas* for Spain's King Philip II, is composed of 7,107 islands spanning 1,854 kilometers from north to south. Catholicism was successfully introduced by the Spaniards in all areas except in Mindanao, where Muslims staved off efforts at conversion. To date, the Philippines remains predominantly Roman Catholic with approximately 5% of the overall population being Muslim. In Mindanao, where Muslims constitute 25-30% of the population, there has been a movement for autonomy with occasional guerilla actions.

After many efforts at revolt, the Filipinos gained a short lived independence in 1898. Following the Spanish-American War, the United States gained control and annexed its first and only colony. From 1901 to the Japanese occupation in 1942, the Americans introduced American-style education and legal systems and an American form of government. Filipinos fought alongside Americans in World War II and waged a guerilla war against the Japanese. The Philippines was liberated from the Japanese in 1945, and gained independence from the U.S. in 1946.

In 1972, Ferdinand E. Marcos declared martial law and ruled as a virtual dictator until 1986, when the Marcoses were forced to flee to Hawaii after a "People Power" revolution.

Corazon "Cory" Aquino, the widow of the assassinated Ninoy Aquino, became president in February 1986, and was succeeded by Fidel Ramos in 1992. In 1998, Joseph Estrada, a popular movie actor, was elected President, but was ousted in 2000. His Vice President, Gloria Arroyo, assumed the presidency and, in 2004, amidst allegations of cheating and electoral fraud, was elected to a new term ending in 2010.

A national state of emergency was declared by President Arroyo on February 24, 2006. Petitions were filed to challenge the constitutionality of several executive orders promulgated in connection therewith. The Supreme Court subsequently held that while the executive proclamation declaring a state of emergency was constitutional insofar as it constituted a call by the President on the Armed Forces to prevent or suppress lawless violence, the warrantless arrests and searches conducted in pursuance of this proclamation were in violation of the law.

Legal Context

The Philippines adopted its present Constitution on February 2, 1987, shortly after the overthrow of the dictatorial Marcos regime. The Constitution proclaims the Philippines as a democratic and republican state, and further states that sovereignty resides in the people and that all government authority emanates from them. The Constitution also includes a Bill of Rights guaranteeing basic human rights and, patterned largely after the American model, mandates the separation of state powers into executive, legislative, and judicial branches of government. The most dominant position is the President of the Republic, who serves as the head of state and chief executive officer. The President is assisted by the Vice President and the Cabinet, composed of the heads of the various executive departments. The President and the Vice President are elected for six-year terms, and the department heads are appointed by the President and serve solely at his/her will. The President is not eligible for any reelection.

The Philippines has a bicameral legislature, the Congress, as its sole national legislative body. It consists of the Senate (with 24 members) and the House of Representatives (with not more than 250 members). The Senators are elected nationally, while members of the House of Representatives are elected within their respective local constituencies or legislative districts. Legislative bills must obtain the approval of each chamber voting separately in order for them to be enrolled for signature by the President and, thus, become law.

The Philippine judicial and legal system, including its legal education system, blends elements of civil law inherited from the Spaniards and American common law. For instance, civil code procedures on family and property matters, among others, and the absence of jury trials are attributable to the Spanish civil law influences. However, most of the more significant laws governing trade and commerce, taxation, labor relations, and governmental operations, as well as the principle of judicial precedents are an American derivation. In the hierarchy of laws, the Constitution has the highest legal force, followed by domestic statutes. In addition, generally accepted principles of international law and judicial precedents (i.e., decisions of the Supreme Court) also form part of the laws of the land.

History of the Judiciary

Prior to the Spanish era, judicial authority was in the hands of tribal leaders or *barangay* chiefs. *Barangay* councils still serve as conflict resolution resources. During the early years of the Spanish regime, judicial powers were vested in the Governor-General of the Philippines. They were later transferred to a *Royal Audiencia*, composed of a President, four *oidores* (justices), and a fiscal officer. In 1815, the *Audiencia* was divided into a civil and criminal branch, and its president was replaced by a Chief Justice. When Manila fell to the American occupational forces in 1898, a military government replaced the criminal jurisdiction of the *Audiencias* with courts martial and provost courts.

The present Supreme Court [hereinafter SC] was established on June 11, 1901, with the enactment of a Judiciary Law. Other courts were subsequently established. Until 1935, although a Filipino was always appointed Chief Justice, the majority of the members of the SC were Americans. Thereafter, Filipinos began to replace the American justices. A 1973 Constitution, passed during the Marcos era, increased the membership of the SC to fifteen. It also transferred administration of the lower courts from the Department of Justice to the SC.

The 1987 Constitution vested the judicial power “in one [SC] and in such lower courts as may be established by law.” It also provided guarantees of judicial independence, delineating the SC’s powers and stating that Congress may not deprive the SC of those powers. The Constitution vested administrative supervision over all lower courts and judiciary personnel in the SC rather than the executive branch. Fiscal autonomy was ensured to the extent that appropriations for the judiciary may not be reduced by the legislature below the amount appropriated for the previous year, and must be automatically and regularly released. Finally, a judge’s salary may not be decreased during continuance in office.

In 2001, following a study by the United Nations Development Program [hereinafter UNDP], then Chief Justice Hilario G. Davide, Jr. formulated an ACTION PROGRAM FOR JUDICIAL REFORM [hereinafter APJR] and created a Program Management Office [hereinafter PMO] within the SC to implement it. The APJR focuses on six components: (1) Judicial System and Procedures, (2) Institutions Development, (3) Human Resource Development, (4) Integrity Infrastructure Development, (5) Access to Justice by the Poor, and (6) Reform Support Systems. Funding for the APJR has been supported by various international donor agencies and the World Bank Judicial Reform Support Project [hereinafter JRSP], which is a USD 21.9 million loan to the Philippine Government. Five years later, with the assistance of funds from other international donors, including USAID, the program oversees about 100 projects, and has had a positive impact on specific components. In November 2005, the SC hosted an *International Conference and Showcase on Judicial Reform*, and in March 2006, a Steering Committee convened in Sydney, Australia, to form an Asia-Pacific Judicial Reform Network and to plan the next annual conference.

The Philippine judiciary has many strengths, which makes it a model for other countries in the region. One reason for the impact created by the APJR has been that reform was initiated within the judiciary rather than imposed from outside. Partnership with other stakeholders in the justice system and civil society organizations has also contributed to acceptance. Achievements thus far

include project proposals, diagnostic studies, systems development and reports, with initiation of some specific administrative programs, development of a new judicial code of conduct, and training workshops for judges and court staff. Nevertheless, significant issues of independence, corruption, competence, and efficiency remain to be addressed. Pro-active leadership throughout the court system can ensure that these reforms will yield practical results.

Structure of the Courts

There are a variety of **first level courts [hereinafter FLCs]** in the Philippines, depending on their location: Metropolitan Trial Courts [hereinafter MeTCs] in each metropolitan area, Municipal Trial Courts in Cities [hereinafter MTCCs] in every city not part of a metropolitan area, Municipal Trial Courts [hereinafter MTCs] in other municipalities, and Municipal Circuit Trial Courts [hereinafter MCTCs] in circuits comprising municipalities grouped together. The MeTC has jurisdiction over civil cases not exceeding PHP 400,000 (approximately USD 7,800),² while the MTCC, MTC, and MCTC have jurisdiction over civil cases not exceeding PHP 300,000 (USD 5,860). In addition, all these courts have original jurisdiction in criminal cases punishable by a maximum of six years of imprisonment. This JRI will refer to this entire group as FLCs.

Regional Trial Courts [hereinafter RTCs] are “second level” courts that are established in each of the country’s 13 regions, with each RTC having several branches. RTCs act as trial courts in cases over which the FLCs do not have jurisdiction, and also hear appeals from the decisions of the FLCs in their respective jurisdictions. There is a specialized **Commercial Court** at the RTC level. It has original jurisdiction in cases of intracorporate disputes and other commercial issues such as intellectual property claims, as well as criminal cases involving commercial fraud or theft.

In October 1997, **Family Courts** were established in every province and city in the Philippines. At present, these courts operate at the level of RTCs designated to handle family cases. They have original jurisdiction over: criminal cases where the accused is between the age of 9 to 18 or where the victim is a minor; petitions for guardianship, child custody, adoptions, annulments, and declarations of nullity of marriage; support petitions; and cases of domestic violence against women and children.

The Court of Appeals [hereinafter CA] is organized into 23 divisions of three members each. It reviews cases from the RTCs and from quasi-judicial agencies, such as the Civil Service Commission, Securities and Exchange Commission, National Labor Relations Commission, and Land Registration Authority. Although it reviews cases *de novo*, it generally does so only on the basis of the record, and usually without oral argument. However, it may, and sometimes does, conduct hearings and receive additional evidence.

There are also two additional specialized courts that are at the level of the CA: **the Sandiganbayan [hereinafter SB]** and **the Court of Tax Appeals [hereinafter CTA]**. The **SB** is an anti-corruption court that tries public officers with a salary grade of 27 or higher (i.e., salary range of PHP 20,279-24,105 (USD 396 to USD 471), who are charged criminally with graft or other corrupt practices, as well as corresponding civil claims for recovery of fruits of the crimes. It is composed of a presiding justice and 14 associate justices, sitting in 5 divisions of 3 justices each. It is served by the Office of the Ombudsman, which investigates and prosecutes crimes under the Anti-Graft and Corrupt Practices Act. The **CTA**, elevated to appellate level in 2004, is composed of a presiding justice and five associate justices, and may sit *en banc* or in two divisions of three each. It reviews decisions of the Bureau of Internal Revenue and Customs involving disputed assessments or refunds. It also has original jurisdiction over all criminal offenses arising from violations of the Tax or Tariff Codes. Decisions of both the SB and the CTA are appealable directly to the SC.

² Throughout this JRI, Philippine Pesos (PHP) are converted to United States Dollars using the average exchange rate at the time when the interviews were conducted (USD 1 = PHP 51.19).

The SC stands at the apex of the judicial hierarchy and is the court of last resort. It is composed of a Chief Justice and 14 associate justices who may sit *en banc* or in divisions of three, five, or seven members each, though the most typical composition is three divisions of five justices. It has the power to settle actual controversies involving legally demandable and enforceable rights, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of government. Decisions become part of the law of the land. The SC exercises appellate jurisdiction from judgments of the lower courts, and original jurisdiction in certain instances by petitions for certiorari and other special writs. Generally, it reviews only questions of law.

Shari'a Courts exist in Muslim regions to interpret and apply the Muslim code on personal laws (primarily marriage, divorce, and inheritance). There are Shari'a Circuit Courts (FLC level) and Shari'a District Courts (RTC level), as well as a Shari'a Appellate Court.

The Armed Forces maintain an autonomous military justice system. **Military Courts** are under the authority of the judge advocate general of the Armed Forces, who is also responsible for the prosecutorial function in these courts. They operate under their own procedures but are required to accord the accused the same constitutional safeguards received by civilians. Military tribunals have jurisdiction over all active duty members of the Armed Forces. This authority notwithstanding, all of their decisions are ultimately reviewable by the Supreme Court.

There is no separate Constitutional Court. Issues concerning constitutionality of legal acts may be brought before any court in the Philippines.

Conditions of Service

Qualifications

All justices and judges must be Philippine citizens. Supreme Court and appellate justices must be natural-born citizens. Judicial candidates must have completed four years of undergraduate university education as well as four years of law school and be members of the Bar. SC justices and CA justices must be at least 40 years of age with 15 years of practice. RTC judges must reach the age of 35 and have 10 years of practice, while FLC judges must be 30 years old and have 5 years of practice. "Practice" is defined as practice as a lawyer or in a government agency requiring Bar membership. In addition, all judges must be persons of proven competence, integrity, probity, and independence.

Appointment and Tenure

Justices and judges are recommended to the President for appointment by a Judicial and Bar Council [hereinafter JBC]. The JBC is comprised of the Chief Justice as *ex officio* Chair; the Secretary of Justice and a representative from Congress (currently there is a member from each house of Congress) as *ex officio* members; a representative of the Integrated Bar; a professor of law; a retired member of the SC; and a representative of the private sector. The four non-*ex officio* members are appointed by the President with the consent of the 12-member Commission on Appointments (6 each from the House of Representatives and the Senate) for four year terms. The JBC submits a list of three candidates for each vacant position to the President for appointment. There is no confirmation process.

Judges of all courts hold office during "good behavior" until the retirement age of 70, and only the SC holds the power to discipline and remove judges. SC justices are also subject to impeachment by the Congress.

Training

As judges are appointed laterally during their legal careers, there is no required initial training program for judicial candidates. However, it is preferred that they have completed a voluntary pre-judicature training program given by the Philippines Judicial Academy [hereinafter PhilJA]. There is also a ten-day orientation program for newly appointed judges before they take the bench. Finally, an annual four-day career enhancement education program by PhilJA is mandatory for all judges throughout their careers. The program is given in the 13 regions to alleviate travel costs to bring participants to Manila.

The Philippines JRI 2006 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, the ABA wants to underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and the ABA considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the ABA invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. The ABA views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

I. Quality, Education, and Diversity		
Factor 1	Judicial Qualification and Preparation	Positive
Factor 2	Selection/Appointment Process	Positive
Factor 3	Continuing Legal Education	Positive
Factor 4	Minority and Gender Representation	Positive
II. Judicial Powers		
Factor 5	Judicial Review of Legislation	Neutral
Factor 6	Judicial Oversight of Administrative Practice	Neutral
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral
Factor 8	System of Appellate Review	Positive
Factor 9	Contempt/Subpoena/Enforcement	Negative
III. Financial Resources		
Factor 10	Budgetary Input	Negative
Factor 11	Adequacy of Judicial Salaries	Neutral
Factor 12	Judicial Buildings	Negative
Factor 13	Judicial Security	Negative
IV. Structural Safeguards		
Factor 14	Guaranteed Tenure	Positive
Factor 15	Objective Judicial Advancement Criteria	Neutral
Factor 16	Judicial Immunity for Official Actions	Negative
Factor 17	Removal and Discipline of Judges	Neutral
Factor 18	Case Assignment	Positive
Factor 19	Judicial Associations	Neutral
V. Accountability and Transparency		
Factor 20	Judicial Decisions and Improper Influence	Negative
Factor 21	Code of Ethics	Positive
Factor 22	Judicial Conduct Complaint Process	Positive
Factor 23	Public and Media Access to Proceedings	Neutral
Factor 24	Publication of Judicial Decision	Neutral
Factor 25	Maintenance of Trial Records	Neutral
VI. Efficiency		
Factor 26	Court Support Staff	Negative
Factor 27	Judicial Positions	Neutral
Factor 28	Case Filing and Tracking Systems	Negative
Factor 29	Computers and Office Equipment	Negative
Factor 30	Distribution and Indexing of Current Law	Neutral

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	Correlation: Positive
<p>All judges in the Philippines must have a four year university-level Bachelor's degree followed by four years law school training resulting in an LL.B. degree, have passed the Bar examination, and have had a number of years of legal experience. PhilJA offers a voluntary pre-judicature course to prospective applicants for judicial positions, as well as a two-week orientation program for newly appointed judges. Despite weaknesses in implementation, these requirements set a relatively high threshold for judicial qualification.</p>	

Analysis/Background:

All justices and judges must be Philippine citizens, with members of the SC and appellate courts being natural-born citizens. CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES Art. VIII, Sec. 7(1) [hereinafter CONSTITUTION]. Judicial candidates must have completed four years of undergraduate university education, as well as four years of law school training resulting in an LL.B. degree, and be members of the Philippine Bar. *Id.* Art. VIII, Sec. 7(2). FLC judges must be at least 30 years old and have been engaged in the practice of law for 5 years. See AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES Sec. 26 (Batas Pambansa Bilang [hereinafter BP] 129, Aug. 14, 1981, *as amended*) [hereinafter JUDICIARY REORGANIZATION ACT OF 1980]. RTC judges must reach 35 years of age and have 10 years in the practice of law. *Id.* Sec. 15. Finally, SC and CA justices must be at least 40 years of age and have engaged in the practice of law for 15 years. CONSTITUTION Art. VIII, Sec. 7(1); JUDICIARY REORGANIZATION ACT OF 1980, Sec. 7. "Practice" includes both practice as a lawyer and service in a government agency requiring Bar admission. See, *e.g.*, JUDICIARY REORGANIZATION ACT OF 1980, Secs. 15, 26. In addition, all judges must be persons of "proven competence, integrity, probity, and independence." CONSTITUTION Art. VIII, Sec. 7(3).

As there is no accreditation of law schools, there is concern about a disparity in the quality of education received, as noted in bar exam results and at the pre-judicature course. Furthermore, the SC requires questions in eight subjects on the bar exam. Law professors are concerned that teaching to these requirements may be too restrictive. Additionally, the emphasis on bar exam ranking, which follows legal professionals throughout their careers including appointment and advancement as judges, should be reconsidered.

Important legal education reform measures – with participation by the SC, the Association of Law Schools, and the Integrated Bar of the Philippines [hereinafter IBP] – have been initiated. Proposals include establishment of and funding for a previously authorized accrediting body (a Legal Education Board in the SC), bar exam changes, and court internships for 3rd and 4th year law students.

It is noteworthy that there are two required law school courses on professional ethics, and that the Political Law course includes material on international conventions and human rights. Nevertheless, sitting judges are seen to be deficient in these areas.

The SC also requires 36 hours of Mandatory Continuing Legal Education [hereinafter MCLE] for all lawyers every three years. The program is managed by a SC MCLE Committee through contracted providers. A weakness of the program is that the courses are primarily lecture format, and contain mandatory subjects with no electives for special interests. The various bar associations do offer occasional special courses. Therefore, all judicial candidates will have participated in MCLE by the time they are appointed to the bench.

Only participants who have completed the programs prescribed by PhilJA and who have satisfactorily complied with all the requirements incident thereto may be appointed or promoted to a judicial post. See AN ACT ESTABLISHING THE PHILIPPINE JUDICIAL ACADEMY, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES Sec. 10 (Republic Act [hereinafter RA] No. 8557, Feb. 26, 1998) [hereinafter PHILJA ACT]. The pre-judicature course is provided at the candidate's own expense. Unfortunately, due to funding issues, the program does not have the capacity to enroll all applicants and has been reduced from two weeks to one. The mostly lecture courses include procedural and substantive law, judicial skills such as case management and decision writing, gender and ethnic sensitivity, and ethics. The course concludes with an examination, and scores are disclosed to the SC and the JBC.

In addition, after appointment, but before taking the bench, newly appointed judges must participate in an orientation program at PhilJA, without cost to them. This ten-day curriculum is more inclusive. Subjects covered include "awareness", judicial wellness, law and technology (simulated computer legal research), basic computer orientation (exercises), ethics (groups and case studies), trials and alternatives to trials, mediation, social context and Indigenous People's Act, family law, environmental law, agrarian reforms, human and constitutional rights, rights of accused, judicial skills (research, decision writing), court management and delay reduction techniques, civil and criminal procedural and substantive law, evidence (including electronic evidence), commercial law, e-commerce law, maritime law, and insurance law. There are moot court segments that include case studies. A written examination concludes the program. Nonetheless, the number of courses included in a short timeframe makes it impossible to deal with any one in depth, and favors a lecture format. For example, case and courtroom management skills and computer training are minimal.

Despite the weaknesses discussed above, the requirement of a bachelor's degree prior to law studies, MCLE for lawyers, bar admission and practice requirements for judicial candidates, and the pre-judicature and orientation course opportunities all promote a relatively high level of qualification and preparation for the bench.

The qualification to become a Shari'a court judge involves "be[ing] learned in Islamic Law and Jurisprudence," in addition to the requirements for other trial court judges. See CODE OF MUSLIM PERSONAL LAWS OF THE PHILIPPINES Art. 140 (Presidential Decree No. 1083, Feb. 4, 1977). Candidates for Shari'a circuit court judges must be at least 25 years old and have passed a Shari'a "bar exam," manifesting knowledge of Shari'a law. *Id.* Art. 152. There is no Shari'a law school, and Shari'a law training is not included in the pre-judicature seminar curriculum. However, PhilJA provides training on Shari'a laws to newly appointed Shari'a courts judges, after their appointment but before taking the bench.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

<i>Conclusion</i>	<i>Correlation: Positive</i>
<p>Judges are appointed by the President following a selection process that includes investigation, screening and interviews by the JBC. This process is guided pursuant to written rules and procedures. While politicization and possible corruption continue to be reported, the JBC process is significantly better than the prior system, and it has continued to improve based on its rules and increasing transparency. Despite continued politicization at the presidential level, the momentum toward greater integrity should be seen as a positive development.</p>	

Analysis/Background:

Justices and judges are recommended by the JBC for presidential appointment according to the Constitution. Members of the JBC are: the Chief Justice as *ex officio* Chair; the Secretary of Justice and a representative of Congress (currently there is a representative from both the House of Representatives and the Senate) as *ex officio* members; a representative of the Integrated Bar; a professor of law; a retired member of the SC; and a representative of the private sector. The four non-*ex officio* members are appointed by the President with the consent of the 12-member Commission on Appointments (6 persons from each the House of Representatives and the Senate) for four year terms. CONSTITUTION Art. VIII, Sec. 8.

The JBC promulgated its Rules in October 2000 with considerable input from then Chief Justice Davide. See RULES OF THE JUDICIAL AND BAR COUNCIL (JBC-009) [hereinafter JBC RULES]. Major provisions are as follows. Applications may be made by individuals or by recommendation of another person, association, or organization. See *id.* Rule 1(5). The list of applicants for each position (for trial judges as well as CA and SC justices) is published in a newspaper of general circulation and in a newspaper in the province or city of the vacancy to be filled, as well as on the JBC website (<http://www.jbc.supremecourt.gov.ph>). In addition, copies of this list are provided to the IBP and its relevant local chapter, as well as to major religious, civil, professional, social, and business organizations and NGOs in the city where the vacancy is located. *Id.* Rule 1(9).

In determining competence of applicants, the JBC considers educational preparation, experience, performance, and other accomplishments. These considerations include a specific reference to the completion of the pre-judicature course at PhilJA. *Id.* Rule 3(1). Educational preparation includes scholastic record, bar examination performance, grades in other government examinations, academic awards, and membership in honor societies or professional organizations. *Id.* Rule 3(2). Performance is evaluated on the basis of performance ratings for the past three years, which must be submitted by the applicants in government service. *Id.* Rule 3(4). Finally, authorship of law books, treatises, articles, and other legal writings (including non-published), as well as leadership in professional or civil organizations are considered as "other accomplishments." *Id.* Rule 3(5). In addition, in selecting applicants, the JBC considers such criteria as the applicant's record of integrity, honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards, as well as an applicant's probity and independence, and sound physical, mental, and emotional condition. See *id.* Rules 4-6. To this end, the applicants are required to submit a clearance from the National Bureau of Investigation, and the JBC is authorized to order a background check as to the candidate's reputation and to receive written and oral testimony. *Id.* Rule 4. Furthermore, applicants must submit to medical and

psychological/psychiatric testing. *Id.* Rules 6(1)-(2). Finally, in the case of SC vacancies, the JBC is directed to give “due weight” to recommendations of the SC. *Id.* Rule 8(1).

The JBC holds personal interviews with short-listed candidates. Interviews for candidates for the SC, the CA, and the SB are open to the public; however, reports of the interviews are treated as strictly confidential documents. *Id.* Rule 7. The purpose of these interviews is to “observe [the applicants’] personality, demeanor, deportment, and physical condition; assess their ability to express themselves, especially in the language of the law in court trials/proceedings and in their decisions or rulings; test their mastery of the law and legal principles; inquire into their philosophies, values, etc.; determine their probity and independence of mind; and evaluate their readiness and commitment to assume and fulfill the duties and responsibilities of judgeship.” *Id.* Rule 7(1). Voting shall be by majority. *Id.* Rule 10(1). However, in every case where the integrity of a qualified applicant has been challenged, the recommendation must be unanimous. *Id.* Rule 10(2).

Following the selection process, the JBC submits a list of three candidates for each vacancy to the President, and only individuals on such list may be considered for appointment. There is no confirmation process at the legislature.

The interviewing team received comments that, at all levels of the process, it is more “who you know” than “what you know.” This phenomenon was particularly prevalent with regard to advancement from FLC to RTC judge or to CA Justice. It was reported that politicians may call an applicant and ask what the judge would do for them if they supported the nomination.

However, while perceptions varied, there was general agreement that, while politics can never be totally removed from judicial selection, the present process is far better than the previous process of judicial appointment solely by the President, as was the case until 1987 under the 1973 Constitution. The JBC process has continued to improve following the promulgation of rules, written criteria, publication requirements, and public interviews. Apparently, media and NGO representatives do attend interviews, especially for candidates to the CA and SC positions. Transparency has also been increased with the establishment of a JBC website (<http://www.jbc.supremecourt.gov.ph>), on which it announces vacancies, including the names of judges and justices who will retire in the current year, the lists of applicants, and interview dates.

The perception as to fairness in the exercise of the Presidential appointment power was uniformly negative. Some suggested that the Constitution be amended to allow the Supreme Court *en banc* to appoint judges from the JBC’s nomination list.

Although most judges said that they felt independent once appointed, “gratitude” to the appointing authority may remain an issue. Present Chief Justice Artemio Panganiban often refers to the “plague of ships” which pervades the Philippine culture through networks of prominent families and other connections, i.e., “kinship, relationship, fellowship, friendship.” See, e.g., Speech delivered to Joint Meeting of Philippines Chamber of Commerce and Industry and other business organizations (Feb. 15, 2006).

Judges are not appointed to specialized courts based on their expertise or interest. However, after appointment to a RTC, they may be designated to sit on a family court or commercial court. The SC may also transfer a lower court judge laterally to a needed position – “as public interest may require,” but only for 6 months without consent. CONSTITUTION Art. VIII, Sec. 5(3).

In 2002, the Asian Development Bank [hereinafter ADB] conducted a workshop and, in 2004, submitted a REVISED FINAL REPORT ON STRENGTHENING THE INDEPENDENCE AND DEFINING THE ACCOUNTABILITY OF THE JUDICIARY (ADB Technical Assistance No. 3693-PHI). A March 2006 ABA-Asia workshop addressed JBC capacity building. While ADB was initially pessimistic as to the political will for reform, these efforts generated momentum. One example is that a consortium of lawyers’ organizations, including the IBP, Association of Law Schools, and others, are

watching SC appointments and reviewing JBC Rules. They favor public interviewing of SC applicants and expanded publication of applicant lists in prominent local places.

The judicial position vacancy rate is a significant factor in the demands on the JBC. As of December 31, 2005, there were 2,257 judicial positions in the Philippines, of which 1,593 were filled. Thus, while the overall vacancy rate was 29%, it ranges from 23 to 52% in the FLCs (some of which have pending backlogs of up to 2,000 cases per judge). In the RTCs, the vacancy rate is 20%. In certain areas, there is difficulty in meeting the constitutional requirement of nominating three qualified candidates for each vacancy. The five Shari'a District Courts in Mindanao had no sitting judges at the time of the assessment.

Given that there is a need to consider and investigate applications for over 665 vacant positions at the end of 2005, additional JBC staff capacity is necessary. However, there is room to simplify the process without endangering its integrity. Resources badly needed by the trial courts in a limited budget situation should not be diverted to excessive expansion of a bureaucratic structure.

In a positive development, a recent increase in applications to fill vacancies was reported. The JBC is also being pro-active in searching out candidates, reaching out to the Integrated Bar, and meeting with lawyers in problem areas. Vacancies are now being advertised before a judge retires.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion	Correlation: Positive
<p>Sitting judges are required to undergo an annual four-day career enhancement education at the PhilJA. While curricula are broad and cover most areas judges need to know, these programs could be more flexible in content and presentation. Nevertheless, the establishment and development of PhilJA as part of the APJR is largely positive.</p>	

Analysis/Background:

An annual four-day Career Enhancement Program at the PhilJA is mandatory for all judges throughout their careers. This program is part of the overall curriculum designed by PhilJA for the judges. PhilJA was created by an Administrative Order of the SC in 1996 and was granted a legislative charter in 1998 as a separate component unit of the SC and a “training school for justices, judges, court personnel, lawyers and aspirants to judicial posts.” See PHILJA ACT Secs. 2-3. To this end, it “shall provide and implement a curriculum for judicial education, and shall conduct seminars, workshops and other training programs designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability.” *Id.* Sec. 3.

PhilJA’s programs are supported by PHP 25,000,000 (USD 500,000) annually from the SC budget. International donors such as USAID (through The Asia Foundation and ABA-Asia), UNDP, the ADB, and AusAID have provided further support of programs. The Japanese Government has committed to building a PhilJA Training Center campus in Tagaytay, near Manila, which will include housing for participants.

The Chief Justice is Chairman *ex officio* of the Board of Trustees, which includes associate justices, Presiding Justices of the CA and the SB, the Court Administrator, the President of the Philippine Judges Association, and the President of the Philippine Association of Law Schools as *ex officio* members. In addition, the Board includes a first level court judge with at least 5 years of bench experience and at least five years of teaching experience “in a reputable law school.” *Id.* Sec. 5. The educators are mostly adjunct justices, judges, professors, and lawyers. A few are full time, such as a retired CA Justice.

The career enhancement program is given in the 13 regions to alleviate travel costs involved in bringing participants to Manila. After scheduling a seminar and designing the program content, PhilJA identifies the participants and seeks a circular from the SC approving the seminar and requiring the proposed participants to attend it. The basic curriculum is broad, lecture-based and “one size fits all.” New SC jurisprudence and legislative developments, such as the recent passage of the Violence Against Women and Children Act, issues in law and economic development, money laundering, and plunder, are included in some programs. Judges have also had instruction on case management and on the new monthly case resolution reports which they are required to prepare as part of a delay reduction effort.

While the career enhancement curricula are broad-based and cover most areas judges need to know, the extensive list manifests the impossibility of providing more than a brief lecture overview for most subjects. There is an insufficient focus on judicial skills – those not experienced in law practice and best learned through interactive adult learning techniques, such as small group problem solving and experiential role play. As all judges have passed the Bar exam and have had law experience, familiarity with substantive law may be assumed. Care should be taken to present varied and stimulating course material each year, including electives. For example, in light of the fact that most judges are reluctant to use their contempt powers, additional workshops on this topic could be helpful.

Positive developments include specialty programs on such subjects as Juvenile and Domestic Relations Justice, Forensic DNA Technology, Environmental Law for Cebu and Palawan Judges, and E-Commerce workshops, which have been models for the focus on new legal developments. Mediation is being regularly taught. PhilJA is just starting arbitration training, as court-annexed arbitration in business cases is being explored.

In addition to the mandatory PhilJA training program, all conventions of the various judicial associations must include sessions that fall within the “pertinent [PhilJA] educational programs.” PHILJA ACT Sec. 12. These programs must be formulated and conducted by the PhilJA. See PhilJA Memorandum Circular No. 1-99.

A Benchbook for Trial Judges prepared with AusAID funding assistance in 2002 was reported to be very useful for trial court judges, especially on civil procedure and criminal proceedings. See SUPREME COURT OF THE PHILIPPINES, PROGRAM MANAGEMENT OFFICE ANNUAL REPORT 2004 at 47 (Jan. 2005) [hereinafter SC PMO ANNUAL REPORT]. The Benchbook needs updating to reflect changes in legislation and recent case law. A Judicial Writing Manual for SC Justices was completed in 2005, through funding from USAID and The Asia Foundation, “to provide a standardized form for the substance of Supreme Court decisions and resolutions.” See SUPREME COURT OF THE PHILIPPINES, MANUAL OF JUDICIAL WRITING (Dec. 2005). PhilJA has also published benchbooks on Corporate Rehabilitation and on Liquidation and Insolvency, a handbook on Intellectual Property, a handbook for sheriffs, and a manual on Judicial Application of the Doctrine of Primary Jurisdiction.

Participation of judges in PhilJA training is recorded in their personnel files, while results are given to the SC and to the JBC and considered in promotion applications along with recently initiated periodic performance evaluations.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

<i>Conclusion</i>	<i>Correlation: Positive</i>
<p>Women are well represented in the judiciary, even in leadership positions. As the largest minority, Muslims constitute only 5% of the national population, and judicial appointments reasonably reflect the ethnic makeup of the society.</p>	

Analysis/Background:

There is no specific law prohibiting discrimination in the judicial selection and appointment process. However, the Constitution provides that “[t]he State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.” See Art. II, Sec. 14. In addition, the state must “guarantee equal access to opportunities for public service.” *Id.* Art. II, Sec. 26.

As of December 31, 2005, there were 1,593 sitting judges in the Philippines, of which 451, or 28%, were women. There were 5 women justices on the then 14 member SC. As of August 2005, there were 2 women on the then 63 member CAs, and 3 women on the 15 member SB, including the Presiding Justice. In Mindanao with its significant Muslim population, 35% of FLC judges are women. Approximately 50% of students in law schools are female.

When the assessment team inquired whether there were problems regarding gender sensitivity on the part of judges, staff or lawyers, we were told that problems now occurred only among a small group of “old-timers”. This comment is corroborated by the recent judicial survey commissioned by the SC. See JUDICIAL REFORM SUPPORT PROJECT, NATIONAL SURVEY ON USERS’ EXPERIENCE AND PERCEPTION ON THE JUDICIARY (June 2006) [hereinafter JUDICIARY SURVEY]. Sixty percent of litigants reported no difference in treatment based on gender, ethnic group, religion, or age. See *id.* at 112. A larger percentage identified disparate treatment based on wealth or poverty. *Id.*

Despite this prevailing view, lack of gender sensitivity by male judges, court personnel, and prosecutors toward female lawyers and litigants has also been reported, particularly in the family courts, and in cases of sexual crimes, especially against girl children. To address these concerns, the SC has initiated a Strategic Gender and Development Mainstreaming Plan for the Judicial System to “transform the paradigm” and enhance the commitment to gender equality through training and capability-building. See SC PMO ANNUAL REPORT. According to provisions in the General Appropriations Act, at least 1% of the total budget for the judiciary should be allocated for gender sensitivity projects. Committees on sensitivity training, gender audit and policies, and gender-fair language were established. A subcommittee was also created to organize regular family courts, as opposed to those that currently exist in some RTCs.

Ethnic or religious discrimination is not identified as a judicial appointment issue at the national level. There are 15 Muslim non-Shari’a FLC and RTC trial judges and two CA justices nationwide. There was previously a Muslim SC Justice. However, the situation is somewhat different on the island of Mindanao, where Muslims are centered in provinces such as Cotabato, Maguindanao, and Zamboanga, and reportedly constitute 25-30% of the population. There is a judicial vacancy rate of as much as 70% in some areas, due to a dearth of qualified applicants as well as security concerns. There is only one woman among the 15 Muslim RTC judges in a Muslim region with 40 judicial positions. Additionally, at the time of the assessment, all 5 Shari’a District Court positions were vacant. Of the 51 Shari’a Circuit Court positions, 23 were vacant.

While ethnic or religious discrimination is not perceived to be a significant problem within the judiciary, societal discrimination against Muslims does exist, a problem from which the judiciary is not insulated. See U.S. DEPARTMENT OF STATE, *Philippines*, in 2005 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (March 8, 2006) [hereinafter STATE DEPARTMENT REPORT].

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	Correlation: Neutral
<p>There appears to be no barrier in the Constitution or laws to any individual contesting the constitutionality of legislation and official acts at any level of the courts. However, in practice, constitutionality of laws appears to be rarely raised in the FLCs or RTCs. There is extensive initial jurisdiction in the SC and CAs to contest constitutionality by means of certiorari and other petitions.</p>	

Analysis/Background:

Based largely upon the American tradition, the Constitution does not provide for a separate Constitutional Court. Instead, there is a duty of courts 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.” See Art. VIII, Sec. 1. In the absence of contrary provisions, this clause would appear to authorize any court to determine issues of constitutionality.

The SC is authorized to exercise original jurisdiction over certiorari and other special petitions. *Id.* Art. VIII, Sec. 5(1). Specifically, it is authorized to review on appeal or certiorari those lower court decisions in which the constitutionality of any law, presidential decree, or other orders or ordinances is in question. *Id.* Sec. 5(2). Similarly, there are provisions for petitions for relief in the proper court “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 ... and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.” See RULES OF COURT (*revised and approved* Oct. 3, 2000, *effective* Dec. 1, 2000), Rule 65.

A party desiring to appeal by certiorari from a judgment or final order or resolution of the CAs, SB, RTC or other courts, may file a petition for certiorari with the SC, provided that only questions of law are raised. *Id.* Rule 45, Sec. 1. The CAs also have jurisdiction to issue writs of certiorari and other original jurisdiction. See THE JUDICIARY REORGANIZATION ACT OF 1980, Sec. 9; RULES OF COURT, Rule 46.

Based perhaps on a history of Spanish civil law practice, the common practice appears to be to raise constitutionality by a petition for certiorari to the CA or SC following a trial court decision. In the absence of an applicable SC decision, most trial judges do not appear to be bold enough to make a determination of constitutionality of a law. Lawyers and judges are not sufficiently attuned to these possibilities, although an umbrella group of legal assistance NGOs has taken steps in this direction. As petitions for certiorari may be expensive and cumbersome, the opportunity to contest constitutionality would be more meaningful if judicial, legal, and public education created broader awareness of the right and related remedies.

One exception to the general practice was a recent claim raised by a defense attorney in the Quezon City RTC that the law penalizing prostitution was a denial of equal protection of the laws, as only the female purveyor is penalized. As an acquittal was granted at the trial level, the case was not appealed.

Concern was also heard as to the extent of SC independence in those instances where the executive position on an issue is clearly known. This concern is borne out by the earlier discussion of the culture of “ships,” referenced in Factor 2 above. For example, the SC recently reviewed a petition to determine the constitutionality of a law expanding the Value Added Tax (RA No. 9337). In this case, the several petitioners filed separate petitions arguing against the “undue delegation of legislative powers to the President.” In upholding the constitutionality of this law, the SC affirmed the power of Congress to delegate some of its functions to executive officers or bodies to determine certain facts or conditions in the operation of a statute, but only under standards and policies. See *Abakada v. Ermita*, G.R. No. 168056 (2005). This outcome was perceived by some to be due to presidential influence.

At the time of the assessment team’s interviews, petitions were pending under Court Rule 65 concerning the constitutionality of recent executive actions by President Arroyo. These actions include Executive Proclamation No. 1017 declaring a national state of emergency and enabling her to call on the military to suppress “lawless violence,” and Executive Order No. 464 barring certain executive officials, police, and armed forces personnel from appearing before Congress without her prior consent. The SC subsequently held that while the Executive Proclamation was constitutional insofar as it constituted a call by the President on the Armed Forces to prevent or suppress lawless violence, the warrantless arrests and searches conducted in pursuance of this proclamation were in violation of the law. In addition, the administration’s Calibrated Pre-emptive Response Policy with respect to rallies and public assemblies has recently been ruled unconstitutional by the SC, while the law requiring permits to hold public rallies was upheld.

Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion	Correlation: Neutral
<p>The judiciary has the power to review administrative acts and to compel the government to act where a duty exists. However, as most cases are at the RTC level and involve local government officials, the fact that local governments provide financial and administrative support directly to the courts gives rise to the appearance of constraint.</p>	

Analysis/Background:

In actual cases involving rights, the Constitution mandates the “courts of justice” to determine whether there has been “a grave abuse of discretion” amounting to a lack or excess of jurisdiction by any branch or instrumentality of government. See Art. VIII, Sec. 1(1). In contrast to the practice of determining constitutionality of a law, trial judges do exercise their powers to determine whether administrative acts have violated a complainant’s rights. Indeed, cases related to review of administrative acts are most typically brought at the RTC level. Most judges reported that administrative officers generally comply with court orders. A common type of case is denial of a permit such as a building permit.

Courts are typically perceived to rule fairly in deciding administrative disputes. However, it should be noted that many of the administrative cases involve acts, which are issued by local

government officials. Because many FLCs and RTCs are receiving significant material resources from local governments (as will be further described in Factor 10 below), this practice creates an inference of impropriety, and may create actual impropriety, in the event that a case involving a local government administrative act arises in that court.

Petitions for certiorari, mandamus, prohibition, or *quo warranto* may also be filed in the CA or the SC to remedy improper administrative actions. However, procedural delays may make the legally available remedy ineffective.

One example involves labor cases. A union may not engage in collective bargaining until its registration is certified. By filing a complaint contesting registration with the National Labor Relations Commissions, an employer may delay the certification process for a number of years. Even though there is a right of appeal by special certiorari to the CA, the administrative process and additional delay in the CA may negate the effect of the ultimate result.

Another current example of administrative action involves RA No. 9003, the ECOLOGICAL SOLID WASTE MANAGEMENT ACT OF 2000, which was approved on January 26, 2001. The Act allows individuals to file complaints for administrative failure to comply with environmental laws. Pro bono lawyers recently sent notice to 18 mayors in Metro Manila that they would file suit if provisions of this law were not complied with, and complaints have since been filed against three municipalities. However, they are pending in the environmental Ombudsman’s office for investigation of probable cause. Once again, delays in the overall justice system may impair effectiveness of the legal remedy.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion	Correlation: Neutral
<p>Civil rights and liberties are protected as a matter of law with the judiciary having not only the jurisdiction, but the duty, to enforce these rights. In practice, however, lengthy delays and lack of access to counsel often impairs the effectiveness of these guarantees.</p>	

Analysis/Background:

Constitutional guarantees of civil liberties exist. Specifically, the Bill of Rights guarantees: due process (CONSTITUTION Art. III, Sec. 1); freedom from unreasonable search (*id.* Sec. 2); freedom of expression and association (*id.* Secs. 4, 8); free access to the courts and “adequate legal assistance” (*id.* Sec. 11); presumption of innocence (*id.* Sec. 14); and protection against double jeopardy (*id.* Sec. 21), cruel or degrading punishment, or inadequate prison facilities (*id.* Sec. 19). There is also a right to speedy disposition of a case, but “speedy” is not defined. *Id.* Art. III, Sec. 16. Furthermore, “the generally accepted principles of international law [are adopted] as part of the law of the land.” *Id.* Art. II, Sec. 2. Trainings in law schools and PhilJA in its initial and subsequent judicial education curricula include lectures concerning international law and human rights standards.

Nevertheless, the assessment team was informed of violations committed by the police regarding the ban against physical, psychological, or degrading punishment, and that time frames for bringing defendants to court are often ignored. On the other hand, it appears that as police recruits are now required to have a college education and as Police Academy training has significantly improved, “police are getting better.” Defense attorneys reported that judges are

“pretty well qualified” in considering violations connected with detention and illegal searches and take them seriously, and that charges are frequently dismissed on the basis of Constitutional violations. The rate of acquittals in drug cases is high because of illegal searches. However, lack of sufficient “public attorneys” (the equivalent of “public defenders” in the United States) and pro bono or legal aid counsel to contest violations is a large problem. It was suggested that the SC place more emphasis on the “access to justice” component of the APJR.

The Penal Code provides time frames in which a detained accused must be brought before a judicial authority for a bail hearing: 12, 18, or 36 hours depending on the severity of the offense (Article 125). Moreover, it is a crime for a public officer to arrest a person without legal grounds (Article 124). The detainee must be informed of the cause of his detention and may communicate with “his attorney” (if he/she has one at that stage). The prosecutor then has 30 days to investigate and release the detainee or file an information or a complaint. If the accused is detained, the case shall be assigned to a judge within three days from the filing of the information or complaint, and arraignment shall occur within ten days thereafter. A pre-trial conference shall be held within the next ten days. See RULES OF COURT, Rule 116, Sec. 1(e). However, these time periods are not strictly enforced in practice.

The SPEEDY TRIAL ACT (see RA No. 4908, Feb. 12, 1998) comes into play only at the commencement of the trial. Specifically, the judges are required to “set the case for continuous trial on a weekly [meaning separate hearings once a week] or other short-term trial calendar.... In no case shall the entire trial period exceed 180 days.” See Sec. 6. The judge then has a further 90 days to write the decision. However, there are numerous exclusions and discretionary factors for granting continuances. See *id.* Secs. 10-11. Furthermore, while judges have “no power” to adjourn a trial for more than one month at a time, or three months total (see RULES OF COURT, Rule 30, Sec. 2), the assessment team observed several instances of longer postponements.

Many judges believe that the cure for delay and backlog reduction, and the possibility of continuous “start to finish” trials, requires an increase in the number of courts. However, if vacant positions are filled and judges adhere to strict time frames, more effective justice will result.

An additional obstacle bearing upon trial court functioning is a shortage of prosecutors, as well as public, legal aid, or *pro bono* defense attorneys, under the jurisdiction of the Department of Justice. One judge reported being able to hear criminal cases only one morning per week, as only 9 or 10 prosecutor positions of 25 were filled for the province, and prosecutors had to travel from court to court. Resulting delays aggravate a low conviction rate as witnesses fade away, and the incentive for plea bargaining is decreased. While there is a 30% vacancy in the prosecutorial corps, and there are not enough prosecutors to cover all courtrooms, the situation for defense counsel is even worse as salaries for public attorneys lag behind those of prosecutors. The IBP is awarded a sum of money each year to establish legal aid clinics throughout the country, through their local chapters. Legal aid attorneys are hired at a minimal salary and must supplement this income with private practice. Poor pay scales aggravating the shortage of public attorneys and legal aid attorneys impact not only efficiency, but access to justice by the poor as well.

A slow judicial process was identified as a factor in overcrowded jail conditions. See STATE DEPARTMENT REPORT. Thus, many accused languish in jails in violation of their constitutional rights. UNDP has supported a study of the capability and limitations of the Department of Justice (under whose aegis prosecutors and public attorneys are hired), training of police officers, and a jail decongestion project with the IBP. The ADB has also focused on providing assistance to all “five pillars” of the justice system, i.e., law enforcement, prosecutors, courts, corrections, and community. Even though the implementation of the APJR has resulted in greater judicial awareness and compliance with the Speedy Trial Act, much remains to be done to make the constitutional and statutory guarantees effective.

A positive factor is that the Constitution created a Commission on Human Rights with powers to investigate complaints on its own or on complaint by any party, of all forms of human rights violations. See Art. XIII, Secs. 17-18. It also requires provision of “appropriate legal measures for the protection of human rights ... and ... preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection.” *Id.* Sec. 18(3). The Commission has reported physical and psychological abuse of suspects and detainees, arbitrary arrest and detention, police, prosecutorial, and judicial corruption, and detrimental long delays in trials. See *also* STATE DEPARTMENT REPORT.

Another civil liberties concern, in light of the Philippines’ recent political situation, is misuse of Title III of the Revised Penal Code, establishing crimes of rebellion, sedition, and disloyalty, including coups d’etat. The provisions appropriately focus on seditious acts as opposed to intentions. See *generally* REVISED PENAL CODE OF THE PHILIPPINES (Act No. 3815), Arts. 134-142 [hereinafter RPC]. There are also provisions against “illegal assemblies and associations,” defined as meetings attended by armed persons or in which the audience is “incited to commit treason, rebellion or insurrection...” See RPC Arts. 146-147. Further, the PUBLIC ASSEMBLY ACT OF 1985 (BP 880, Oct. 22, 1985) requires a written permit to organize and hold a public assembly in a public place. A “public assembly” includes any rally, demonstration, march, parade, procession, or any other form of concerted action held in a public place for the purpose of presenting a lawful cause, expressing an opinion to the public on any particular issue, protesting a state of affairs (political, economic, or social), or petitioning the government for redress of grievances. See Sec. 3(a). Recently, a former government official was arrested for violating this Act while peacefully walking along a boulevard with colleagues wearing a black T-shirt with a printed slogan. She was detained for five hours and released (after her husband called an attorney) pending investigation.

In the recent case of *Bayan, et al. v. Secretary Ermita*, G.R. No. 169881 (April 25, 2006), the SC upheld the constitutionality of BP 880, but directed the local government units to establish “freedom parks,” which are public places where citizens can hold peaceful rallies and other public gatherings without need of securing a permit, pursuant to Section 15 of BP 880. In addition, the SC ruled that applications for permits to hold rallies shall be presumed to be granted if the local government fails to act on the application within two days from its submission. In cases where the local government unit is unable to promptly act on an application, the rallyists can simply present a copy of the application duly and promptly filed when asked for one by the government authorities. Thereafter, the burden will be on the local government unit to show that the application was indeed denied.

Military courts, which fall under the authority of the judge advocate general of the Armed Forces, have jurisdiction only over active duty members of the Armed Forces. They do not have jurisdiction over civilians. In addition, they are required to accord the accused the same constitutional safeguards received by civilians. Decisions of the military courts may be appealed to the SC. Military tribunals have jurisdiction over all active duty members of the Armed Forces.

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	Correlation: Positive
<p>Judicial decisions may be reversed only through the judicial appellate process. The Supreme Court is the court of last resort. Its decisions are considered part of the law of the land and are not subject to further appeal.</p>	

Analysis/Background:

The MeTCs have jurisdiction over civil cases not exceeding PHP 400,000 (approximately USD 7,800). The MTCCs, MTCs, and MCTCs have jurisdiction over civil cases not exceeding PHP 300,000 (approximately USD 5,860). In addition, all FLCs are competent to hear criminal cases where the penalty is less than six years of imprisonment. Decisions of the FLCs are appealable to the RTCs. See JUDICIARY REORGANIZATION ACT Sec. 22. The RTCs may take evidence and hear the case *de novo*. RTCs are also courts of first instance for the remaining civil and criminal cases. Both original jurisdiction RTC cases and RTC appeals from the lower courts may be appealed to the CA. *Id.* Secs. 9.3, 22. In addition, the CA also reviews cases from agencies such as the Civil Service Commission, the Securities and Exchange Commission, and the National Labor Relations Commission. *Id.* Sec. 9.3. The CAs generally resolve cases only on the record, but may conduct hearings and receive evidence. *Id.* Sec. 9. Cases from the CA, the SB, and CTA may be appealed to the SC.

Congress may not deprive the SC of jurisdiction over cases enumerated in the Constitution. See CONSTITUTION Art. VIII, Sec. 2. Moreover, “No doctrine or principle of law laid down by the court in a decision rendered *en banc* or in a division may be modified or reversed except by the court sitting *en banc*.” *Id.* Art. VIII, Sec. 4(3). Thus, the SC is clearly a court of last resort.

As the Constitution guarantees freedom from double jeopardy, prosecutors may not appeal acquittals. However, prosecutors file many interlocutory appeals of decisions on motions, contributing to the extensive delays described in Factor 7 above.

Factor 9: Contempt/Subpoena/Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	Correlation: Negative
<p>Judges have adequate subpoena, contempt, and enforcement powers, but do not utilize them. Reported corruption among process servers, sheriffs, and police are aggravating factors that reduce effectiveness.</p>	

Analysis/Background:

The Rules of Court empower judges with sufficient subpoena and contempt powers, including control over the enforcement of their orders and judgments. Specifically, courts have an inherent power to enforce order in proceedings before them, to compel obedience to their judgments, orders, and processes, and to compel the attendance of witnesses to testify in pending cases. RULES OF COURT, Rule 135, Sec. 5. The Rules distinguish between direct contempt, which is punished summarily, and indirect contempt, which is punished following a formal hearing. The penalty for direct contempt, which includes misbehavior in the presence of or near a court in a manner that obstructs or interrupts proceedings (such as disrespect toward the court or refusal by a witness to testify), is a fine of up to PHP 2,000 (about USD 40) and/or imprisonment of up to 10 days if the offense takes place at the RTC or a higher level court, or a fine of up to PHP 200 (about USD 4), and/or imprisonment of up to one day for offenses before lower courts. *Id.* Rule 71, Sec. 1. In the case of indirect contempt, such as disobedience of or resistance to a lawful writ, process, order, or judgment of a court, an abuse or unlawful interference with the process or proceedings of a court that does not rise to the level of direct contempt, improper conduct tending to impede, obstruct, or degrade the administration of justice, or failure to obey a duly served subpoena, the punishment is a fine of up to PHP 30,000 (USD 580) and/or imprisonment of up to

6 months (at RTC or higher level court), or a fine of up to PHP 5,000 (USD 98) and/or imprisonment of up to one month (at lower court). *Id.* Rule 71, Secs. 3, 7. In addition, if a witness fails to respond to a duly served subpoena, the court may compel appearance by issuing a warrant to arrest the witness and bring him/her before the court. The witness will bear the costs of enforcing such warrant if it is determined that his/her failure to report to court “was willful and without just excuse.” *Id.* Rule 21, Sec. 8.

In practice, judges are inordinately reluctant to use these procedures despite the APJR’s emphasis on delay reduction and PhilJA’s attempts to provide training on case management. What is clear from court observation is that most judges have poor skills and a reluctance to use the tools available to them under the law in controlling their courtrooms and requiring parties to abide by time frames. Judges tend to be overly sympathetic to claims of difficulty in securing witnesses, and acknowledge that service problems exist because of improper conduct by serving officers. Most judges report never having used the contempt power, except on the rare occasion when a local official did not obey a direct court order. Court orders seem to be respected by administrative officials.

There were no reports of judges referring attorneys to the IBP for possible disciplinary proceedings for causing delays or other professional misconduct, even though Canon 2, Section 3 of the new Code of Judicial Conduct says that they “should” do so.

Resources are more than adequate for service of process by court process servers, and for sheriffs to serve bench warrants when a witness fails to appear.

Case disposition reporting requirements to the Court Administration Management and Information System [hereinafter CAMIS] and computerized case flow management [hereinafter CFM] may assist, but will not significantly affect delays without intensive encouragement of judges to use their powers to enforce time frames. PhilJA should emphasize use of these legal powers in case management and delay reduction programs or provide separate workshops on contempt.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	Correlation: Negative
<p>While the judiciary has the structural opportunity to influence the amount allocated to it by the legislative and executive branches, the funds provided are insufficient to meet its needs. While the judiciary also has control over how the funds are spent within the judicial system, the allocations made among the various courts are not always sufficient to meet their needs.</p>	

Analysis/Background:

The Judiciary “shall enjoy fiscal autonomy,” while annual appropriations may not be reduced by the legislature below the amount appropriated for the previous year. CONSTITUTION Art. VIII, Sec. 3. Further, the approved amounts shall be automatically and regularly released. *Id.* Such autonomy furthers independence. However, sufficient funding is also essential for the judiciary to meet its responsibilities.

The judiciary has its own administration with a Fiscal Management and Budget Office [hereinafter FMBO] within the SC. The Office of Court Administrator [hereinafter OCA], which has oversight of trial courts, assumes the role of surveying executive judges regarding their budget needs and presenting a proposed annual budget to the FMBO. The FMBO submits the entire judiciary budget to the Department of Budget and Management [hereinafter DBM] in the executive branch. DBM typically makes substantial cuts and transmits the amended budget to Congress. The latter, reportedly, does not significantly change the DBM's recommendations.

Since it is permitted to retain filing and other legal fees collected by the courts in a Judicial Development Fund [hereinafter JDF] (as described in Factor 11 below), the judiciary obtains additional funds, which may be used for "special" personnel allowances (up to 80%) and for maintenance and materials (20%).

The total judiciary budget allocated by the legislature in 2003-2005 is presented in the following table.

Court Level	2003	2004 (reenacted from 2003)	2005
SC and lower courts	6,372,388,000	6,372,388,000	6,705,025,000
CA	470,497,000	470,497,000	514,940,000
SB	155,962,000	155,962,000	197,406,000
CTA	36,840,000	36,840,000	59,541,000
Presidential Electoral Tribunal	38,088,000	38,088,000	46,820,000
TOTAL	7,073,775,000	7,073,775,000	7,523,732,000
in USD equivalent	138,186,658	138,186,658	146,976,597

A recent report states that in 2004 the government of the Philippines allocated only 0.88% of the national budget to the Judiciary. This is a reduction from the 1.17% average in 1998 and 1.05% in 2001. See ASIAN INSTITUTE OF JOURNALISM AND COMMUNICATION, ON BALANCE: JUDICIAL REFORMS IN THE PHILIPPINES (Nov. 2005). The DBM alleges that the courts do not need more treasury money as they have the JDF. International donors funding APJR programs are concerned that the lack of governmental support signals a lack of understanding about justice as an essential component of good governance and a common good.

While the SC and CAs appear to have sufficient material resources and personnel, management of funds within the Judiciary is not meeting the needs of the trial courts. The budget requests submitted by executive judges to the OCA are acknowledged to have little influence on the budget request submitted to the DBM, as the FMBO does not anticipate success in obtaining the funds. Once the budget is awarded, the SC, through the FMBO, places the budget in operation. The budget is allocated to the various programs and projects of the SC and the lower courts.

Insufficient funding has meant that it is not possible to allocate necessary material resources, especially for the lower courts. The greatest deficiency exists in maintenance, equipment, and supplies. Some courts have insufficient money to pay telephone and electric bills and are relying on the local government to supplement costs. Judges and clerks are often purchasing or obtaining (from "friends") their own computers, while in some courts, judges have expended personal money to purchase furniture for their chambers.

Supplies are ordered semiannually and procured centrally through the OCA. In some regions, last year's supplies had not been delivered at the time of the assessment, and when delivered, the ration lasted for about two months. As a result, judges and clerks are routinely expending their own funds for supplies such as paper, pens, or photocopies at a nearby shop.

Decentralization is being considered by the OCA and the SC to alleviate the delays and shortages in supplies. This step would give executive judges the authority to manage their own budgets, order supplies locally, and hire authorized personnel.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

Conclusion	Correlation: Neutral
<p>Judicial salaries are in the process of being increased by 100% in four annual increments. The final increment is due in November 2006. Salaries are now somewhat higher than those of comparable government officials. This fact has made it easier to attract applicants for vacant positions.</p>	

Analysis/Background:

Prior to 2003, judges' salaries had not been increased for a number of years. An act adopted in 2003 increased judges' earnings by 25% per year over the course of four years by Special Allowances for Justices and Judges [hereinafter SAJJ]. See AN ACT GRANTING ADDITIONAL COMPENSATION IN THE FORM OF SPECIAL ALLOWANCES FOR JUSTICES, JUDGES, AND ALL OTHER POSITIONS IN THE JUDICIARY WITH THE EQUIVALENT RANK OF JUSTICES OF THE COURT OF APPEALS AND JUDGES OF THE REGIONAL TRIAL COURT, AND FOR OTHER PURPOSE (RA No. 9227, Oct. 23, 2003). The last step in this process, which will increase judicial salaries by a total of 100%, is due in November 2006. The salary raises are seen to be a factor in the increase in the number of applicants for the many vacant judicial positions. As judges rarely retire prior to the mandatory retirement age of 70, salaries are apparently sufficient to retain them on the bench.

Adding to the compensation package and the SAJJ are other special allowances all judges are entitled to, with the most significant one being the Representation and Transportation Allowance [hereinafter RATA], which equals about PHP 11,000 per month (USD 215) for RTC judges. There is also a Personal Emergency Relief Allowance [hereinafter PERA] of PHP 1,000 (USD 20) and an "extraordinary allowance" of around PHP 7,000 (USD 137). In addition, judges receive their share of JDF, which translates to an additional PHP 2,400 per month (USD 46) for RTC judges. Some judges also receive an allowance from the local government unit where their court is located, but the amounts vary across the different localities. FLC judges are entitled to the same allowances but in slightly smaller amounts. Further, SC and CA justices also receive additional allowances if they are a member or chairperson of a Committee. Finally, these justices are also entitled to cars and drivers.

In 2005, the lowest level FLC judge earned PHP 38,079 (USD 744) per month in salary and allowances (including the JDF allowance). RTC judges earned PHP 45,724 (USD 893) per month in salary and allowances (including the JDF award). The salary of CA justices averaged PHP 28,875 (USD 564), while that of the SC Justices amounted to PHP 40,425 (USD 790) (PHP 46,200 (USD 903) for the Chief Justice). These amounts exclude the allowances that are available to justices.

The salaries enable judges to reasonably support their families in the Philippine economy. According to the Census bureau, as of April 2006, the national average monthly wage in the Philippines was PHP 16,661 (USD 325). See <http://www.census.gov.ph>. In addition, judicial salaries compare quite favorably to the salaries of other similarly situated government officials.

For example, while the basic salary of a state prosecutor is equivalent to that of an FLC judge, prosecutors are not entitled to SAJJ or the JDF allowances. Although salaries of trial court judges are approximately comparable to those of senior associates with medium-sized or large law firms and are much lower than those of law firm partners, there are apparently few instances of judges leaving the bench to seek employment in the private sector.

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	Correlation: Negative
<p>The Supreme Court and appellate-level courts are centrally located and easy to find. They provide a highly respectable environment and infrastructure. These statements are not true for trial courts in many locations. A more significant problem is maintenance and equipping of buildings, courtrooms, and offices.</p>	

Analysis/Background:

There are insufficient budgetary funds for capital expenditures, building, furnishings, materials, and basic maintenance other than at the SC and the CAs.

Courthouses are generally well located and accessible by public transportation, with well marked courtrooms and posted daily calendars and legal notices. However, many buildings are in poor condition, with courtrooms being small and overcrowded, often with insufficient chairs or benches. There are insufficient and poorly maintained restrooms, limited accessibility for the disabled, and no meeting areas for litigants and their counsel. See JUDICIARY SURVEY at 54-55, 102, 113. There is no central archival storage space. Each judicial chamber is required to keep their own old case files for 15 years or more. Files are stored in public hallways, or under stairwells without security.

A recent innovative program has been “Justice on Wheels,” a mobile courtroom in a bus, which moves from place to place. The program was piloted by the SC in 2004, and its success has prompted the SC’s planned increase in the number of such buses that will be deployed to the major islands in the country. These buses are effective in dealing with simple cases which can be resolved in one sitting, and have also been used for proceedings at prisons. Each bus is custom-built to efficiently serve its function as a courtroom, is fully air-conditioned, and is equipped with amenities for the judge, the court personnel, the litigants, and the lawyers. The program was initially intended to provide a courtroom for hearing juvenile cases, with the aim of decongesting the various youth reception and detention centers within the Metro Manila area, as well as the heavy caseloads of the designated Family Courts.

The World Bank is currently supporting construction of several new “model” (and computerized) courthouses. The model courts in Lapu-Lapu City in Cebu Province and Angeles City in Pampanga Province are expected to be completed by the second half of 2007. The construction of the model court in Manila is expected to be completed in early 2009. However, the proposed construction of a model court in Cagayan de Oro City was suspended, with funding reallocated for the Manila model court. In addition, no provisions have been made thus far for maintenance of these courthouses once the construction is complete.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

<i>Conclusion</i>	<i>Correlation: Negative</i>
--------------------------	-------------------------------------

Other than in the SC and some CAs, there is no courthouse security. There are no weapons detection machines and no security staff.
--

Analysis/Background:

Judicial security is the responsibility of the Philippine National Police. In practice, however, no resources are allocated to provide courthouse security, with the exception of the SC and some CAs. In the latter courts, there are metal detectors at the front entrance assigned for visitor entry. In addition, security guards are stationed at these entrances to inspect the bags of those entering the buildings. In other courts, however, there are no metal detectors and no security staff.

In practice, courthouse security does not appear to be a concern for the judiciary administration, judges, staff, lawyers, or the public. However, judges are concerned about their security outside the courts. Ten judges have been killed since 1999, none of them on court premises. The most recent attacks occurred on September 23, 2005 when a MeTC judge was killed in her house in Natividad, Pangasinan, and on December 31, 2005 when two men riding a motorcycle shot and killed a Pasay City RTC judge. The ten alleged murders remained pending in the courts at the end of 2005. See STATE DEPARTMENT REPORT.

In addition, sheriffs have indicated that they often feel at risk while conducting execution procedures. When requesting police assistance, a financial reward may be requested from the sheriff.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

<i>Conclusion</i>	<i>Correlation: Positive</i>
--------------------------	-------------------------------------

The Constitution guarantees judicial tenure for “good behavior” until the mandatory retirement age of 70.

Analysis/Background:

The Constitution provides that all judges hold office “during good behavior until age of 70”. See Art. VIII, Sec. 11. As explained in Factor 17 below, the SC controls procedures for removal of appellate level or trial judges or other disciplinary sanctions for improper behavior. Impeachment proceedings may be commenced in the Congress for allegations against SC justices. Only one such procedure has been filed in recent years and it was dismissed.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion	Correlation: Neutral
<p>Advancement is governed by the same procedures delineated for the JBC and the President of the nation as found for the selection of new judges. There is less satisfaction as to the impartiality of advancement procedure as compared to initial nomination.</p>	

Analysis/Background:

The procedures for promoting judges to the RTC, as well as for justices to the CA or SC, are identical to those for the selection of new judges. As noted in the analysis of Factor 2 above, there are written criteria and public interviews, and the JBC nomination process is seen by most as more merit-based than prior procedures.

A greater measure of discontent was heard in regard to considerations for advancement. The factors considered by JBC in making judicial advancement decisions include the rate of appellate reversal of a judge’s decisions, the rate of case disposition, and the present performance evaluations by a candidate’s executive judge. See JBC RULES, Rule 3, Sec. 4. Despite these purportedly objective criteria, there was widespread concern that what counts most in judicial advancement decisions is “who you know.”

Additionally, a bias against promotion of rural judges is perceived in some quarters. There is a natural tension, which is not necessarily negative, between promoting from within as compared to selection from the “outside.” Advancing incumbents supports the limited opportunities for career enhancement and rewards those who have dedicated themselves to public service. However, reports of advocacy and interference by politicians were more prevalent in the promotion process.

Assignment as executive judge in FLCs and RTCs is done on a “rotation basis” among incumbent judges on the court. On the other hand, the appointment as presiding justice of the various CAs or as Chief Justice of the SC is highly political, and is dependent solely on the President’s discretion. Seniority, however, may play a key role in the selection process.

In 1991, a private non-profit organization, The Foundation for Judicial Excellence, initiated annual awards for judicial excellence. In 2003, the SC took over this Search for Outstanding Judges, Clerks of Court, and Other Court Personnel. The SC has limited the awards to incumbent judges and staff. In addition, the SC administers a Program on Awards and Incentives for Service Excellence (PRAISE), which was instituted in 2001. Receipt of these awards is considered in promotion applications.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Negative
<p>There is only limited judicial immunity for civil or criminal actions taken in official capacity.</p>	

Analysis/Background:

While immunity from civil suits for damages based on actions within a judge's jurisdiction is an important protective measure supporting judicial independence, such immunity does not appear to be absolute in the Philippines.

In *Louis Vuitton v. Francisco Diaz Villanueva*, A.M. No. MTJ-92-643 (Nov. 27, 1992), the SC made the general statement that: "It is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. This concept of judicial immunity rests upon considerations of public policy, its purpose being to preserve the integrity and independence of the judiciary."

However, Article 204 of The Revised Penal Code holds a judge liable for knowingly rendering a manifestly unjust judgment. In the *Vuitton* case, the Court made a full inquiry as to whether an Article 204 charge against the judge had been proved, and also whether the judge could be found civilly liable for enabling the defendant in the case to pursue fraudulent actions. The SC found that the prosecutor had failed to prove either claim. It stated that a judge is not personally liable for error, "provided he acts in good faith" and "in the absence of malice or wrongful conduct."

The lack of absolute immunity is not perceived to be a problem as such complaints against judges are rare, as are instances of investigating or prosecuting judges for alleged criminal acts. Disgruntled litigants prefer to use the discipline procedure discussed below in Factor 17.

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>In the context of a structural safeguard for judicial independence, the disciplinary process has the hallmarks of written criteria, specific descriptions of misconduct, and a fair process. In practice, it is not working effectively.</p>	

Analysis/Background:

Rule 140 of the Rules of Court spells out the process for judicial discipline and removal. It provides that any person may file a disciplinary complaint against a judge with the OCA. However, the written complaint must be verified with supporting evidence. While anonymous complaints are permitted, they must be supported by "public records of indubitable integrity." See *id.* Sec. 1. The OCA shall dismiss the complaint if is insufficient in form and substance. Otherwise, the complaint is served on the respondent who is to submit a response within 10 days. *Id.* Sec. 2.

Following the judge's response, the complaint is investigated by a retired SC justice if the respondent is an appellate level judge; by a CA justice if respondent is a RTC judge; by a RTC judge if respondent is of lower rank. *Id.* Sec. 3. A hearing is then set with notice to both parties. The Rule specifies strict timeframes for each procedural step. Thus, the investigation should be terminated within 90 days from the date of its commencement (or additional extension(s) granted by the SC), followed by the submission to the SC of a report containing findings and recommendations as to disciplinary action. *Id.* Secs. 4-5. However, these time frames are not being regularly complied with, as cases reportedly have an average life of more than 6 months,

with the occasional case taking as long as three years. Preventive suspension without pay during the pendency of the proceeding may be ordered by the SC.

While there are no specific provisions in the Rules regarding due process guarantees available in the judicial discipline proceedings, respondents indicated that judges under investigation are always guaranteed the right to counsel (although they almost never avail themselves of one), and they can always seek a reconsideration of any unfavorable decision. In addition, the Rules guarantee the confidentiality of disciplinary proceedings against judges and justices. *Id.* Sec. 12.

The ultimate decision for removal, or other disciplinary sanctions imposed upon a judge, is made by the SC upon recommendation of the investigating justice or judge. Sanctions are spelled out for serious, less serious, or light charges. There are lists of offenses within each category. Thus, “serious charges” include: direct or indirect bribery; dishonesty and violations of the Anti-Graft and Corrupt Practices Act; gross misconduct in violation of the Code of Judicial Conduct; knowingly rendering an unjust judgment; conviction of a crime involving moral turpitude; willful failure to pay a just debt; borrowing money or property from lawyers or litigants in a pending case; “immorality”; gross ignorance of the law or procedure; involvement in partisan political activities; and alcoholism and/or “vicious habits.” See *id.* Sec. 8. “Less serious charges” are defined as: undue delay in rendering a decision or in transmitting the case records; frequent and unjustified absences without leave or habitual tardiness; unauthorized practice of law; violations of SC rules, directives, and circulars; receiving additional or double compensation not specifically authorized by law; untruthful statements in the certificate of service; and “simple misconduct.” *Id.* Sec. 9. Finally, “light charges” include: “vulgar and unbecoming conduct”; gambling in public; fraternizing with lawyers and litigants in a pending case; and undue delay in the submission of monthly reports. *Id.* Sec. 10.

It should be noted that these definitions of misconduct are not coordinated to the Code of Judicial Conduct. The only reference is that “[g]ross misconduct constituting violations of the Code of Judicial Conduct” is a “serious charge.” Certainly not all Code violations constitute “serious” charges.

Depending on the severity of disciplinary charges, judges found guilty of misconduct can be subject to any of the following penalties. Serious charges are punishable by: a dismissal from service, forfeiture of judicial benefits in full or in part (except for accrued leave credits), and disqualification from reinstatement or appointment to any public office; suspension from office without salary and other benefits for a period of three to six months; or a fine in the amount of PHP 20,000-40,000 (USD 390-780). *Id.* Sec. 11.A. Judges guilty of a less serious charge may be subjected to suspension from office without salary and other benefits for a period of one to three months, or a fine in the amount of PHP 10,000-20,000 (USD 195-390). *Id.* Sec. 11.B. Finally, sanctions that can be imposed for light charges include a fine in the amount of PHP 1,000-10,000 (USD 20-195), and/or censure, reprimand, or admonition with warning. *Id.* Sec. 11.C.

The balanced intent – to allow individuals to file complaints against judges for improper actions or behavior, while providing a fair process for investigation of allegations based on specific criteria - is positive and provides safeguards against arbitrary removal or discipline of judges. However, the process is not working fairly in practice. At the time of the assessment, implementation was being weighted heavily to convince the public opinion that the SC is vigorously addressing corruption. To this effect, the SC alone has the authority to decide whether to dismiss a complaint or not, based on the recommendation of the OCA. Every complaint is forwarded to the judge for comment, and OCA has referred each and every one of them for investigation, even though it does not have the capacity to do this. This practice is creating an undue burden on judges in the large percentage of cases where allegations are insufficient on their face. The system is inefficient and delay-ridden, and creates a chilling effect on judicial independence in decision making, as well as on the delay reduction process, as it makes judges more reluctant to

firmly deny continuances. In June 2006, the OCA announced its intention to exercise more discretion to dismiss insufficient complaints rather than pursuing every claim which is filed.

The SC PMO Annual Report states that “the [SC] is relentlessly enforcing Judicial Discipline and in [sic] policing its ranks.” From 1987-2005, 6 CA Justices, 1 on the SB, 5 on Shari’a courts, and 120 FLC and RTC judges were dismissed. According to the OCA, the number of disciplinary actions imposed on RTC judges were 57, 60, and 55, respectively, for the years 2003-2005. For FLC judges, the number of disciplinary actions for those years was 67, 43, and 46, respectively. These data, and the additional fact that they were published in PMO reports, show that the process is furthering accountability.

The existence of Rule 140 in providing written procedures and definitions of improper conduct are positive. However, the Rule needs to be amended to give more consideration to implementation of the 2004 Code of Conduct, and to allow for fair and practicable enforcement.

Pursuant to the Constitution, members of the Supreme Court may only 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. See *generally* Art. XI, Sec. 2. The House of Representatives has the exclusive power to initiate all cases of impeachment, provided that no impeachment proceedings may be initiated against the same official more than once within a period of one year. Proceedings may be instituted through the filing of a verified complaint for impeachment either by a member of the House or by any citizen upon a resolution of endorsement by any member of the House. The complaints are then referred to the proper committee (usually the Committee on Justice), which reviews it and submits its report and recommendation to the plenary. The House then votes either to affirm the favorable resolution of the committee or to override its contrary resolution, with only a vote of one-third of all members of the House necessary in order for the vote to be carried. In the event that the House votes in favor of impeachment, the recommendation and report submitted by the committee constitute the Articles of Impeachment against the Supreme Court Justice. Thereafter, the trial by the Senate takes place, with the Chief Justice presiding.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

<i>Conclusion</i>	<i>Correlation: Positive</i>
The assignment of cases is done weekly in an open “raffle” proceeding. There is less opportunity for corruption at this level than at any other stage of proceedings.	

Analysis/Background:

The procedure for assignment of cases is impartial and transparent. Pursuant to the Rules of Court, a “raffling” procedure takes place every Monday afternoon in every courthouse with more than one judge (including the CAs), for all cases filed the previous week. This is done “in open session of which adequate notice shall be given so as to afford interested parties the opportunity to be present.” See Rule 20, Sec. 2. Case numbers are put in a “Bingo” wheel. Case numbers are retrieved from the wheel and assigned to judges in the numerical order of their “branches” until all cases are assigned. The executive judge, two other judges, a representative of each other judge, attorneys, and sometimes parties observe the procedure. A stenographer takes

minutes of the raffle. The minutes are subsequently submitted to the Office of the Clerk of Court. See also SC Resolution A.M. No. 03-8-02-SC (Jan. 27, 2004), describing the raffling procedure.

Despite the transparency of the procedure, there were a few isolated reports of manipulation of the system. An additional defect, unrelated to concern for judge-shopping, is that there is no opportunity in the process to consider special expertise of a judge or relative complexity of cases.

Judges may be disqualified from hearing a case in instances where there may be a conflict of interest. For example, this includes situations where a judge (or his/her spouse or children) has a pecuniary interest in a case as heir, legatee, creditor, or otherwise, or is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, or has been an executor, administrator, guardian, or counsel. In addition, a judge may not hear a case if he/she presided over it in a lower court. Further, a judge may recuse himself/herself from hearing a case for other “just or valid reasons,” exercising his/her “sound discretion.” See RULES OF COURT, Rule 137, Sec. 1. A party may file a written objection to the judge’s presiding over the trial, stating the reasons for the request. The judge must issue a written decision to withdraw or proceed with trial. However, this decision is not appealable until after the conclusion of trial. *Id.* Sec. 2.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	Correlation: Neutral
There is no single national judicial association. There are several and, while they appear to be independent, they lack capacity and effectiveness.	

Analysis/Background:

There are a number of voluntary judges’ associations, primarily based on the type and level of the court, e.g., the Metropolitan and City Judges Association of the Philippines [hereinafter MCJAP] and the Philippine Judges Association. There is also a Philippine Women Judges Association. Most judges belong to one or more of these associations as dues are minimal, ranging within PHP 300-500 (USD 6-10) per year. The associations seek to promote the interests of judges, but do not yet see their role as serving the interests of the judiciary as a whole.

Some associations have just recently started having annual conventions. Some meet every two years when officers are elected. Per PhilJA Act, all judicial association conventions must have a PhilJA seminar component, usually for one or two days. See Sec. 12. The Manila chapter of the MCJAP has monthly meetings, primarily for networking and social contact.

While there is no manifest interference from other branches of government, the associations have not fully assumed the role that judges’ associations may play in advocating the interest of judges and the judicial system. They are primarily concerned with issues of benefits to members, such as the provision of death benefits by the associations themselves. There is some advocacy for improvement of working conditions, such as salaries and material resources. However, awareness of, and capacity to play, a role in systemic improvement in or furthering trust in the judiciary by increasing public understanding is lacking at this time.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	Correlation: Negative
<p>The extent of corruption in the judiciary is difficult to measure. The prevailing view is that there is less corruption since implementation of the APJR and the promulgation of the new Code of Judicial Conduct in 2004. However, the public perception of significant corruption remains, and is itself an obstacle to the administration of justice.</p>	

Analysis/Background:

Independence of the judiciary is assumed from it being a separate and co-equal branch of government as provided for in the Constitution. The Constitution also provides that all judges must be persons of proven competence, integrity, probity, and independence. See Art. VIII, Sec. 7(3). The Rules of Court further mandate that justice is to be administered in an impartial manner. See Rule 135, Sec. 1. Specific guarantees of independence for judges and prohibitions against external influence are also contained in Canon 1 of the Code of Judicial Conduct. Finally, provisions of the ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA No. 3019, Aug. 17, 1960, as amended), which declare it unlawful to persuade, induce, or influence another public officer to perform an act constituting a violation of rules and regulations promulgated by competent authority or an offense in connection with the official duties of the latter, as well as for a public official to allow himself to be persuaded, induced, or influenced to commit such violation or offense (see Sec. 3), may also be applicable.

The SC PMO Annual Report on implementation of the APJR recognized that “certain areas of court operations are vulnerable to corruption,” and that the extent is “difficult to document and measure.” At the same time, a recent report by Freedom House cited lack of impartiality as being among the most serious problems of the Philippine judiciary, which seems to “favor[] individuals with political connections or wealth.” See FREEDOM HOUSE, *Philippines, in COUNTRIES AT THE CROSSROADS 2005: A SURVEY OF DEMOCRATIC GOVERNANCE*. To support this contention, the report referred to a 2004 public opinion survey that found only 40% of the Philippine respondents agreed with the following statement: “Whether rich or poor, people who have cases in court generally receive equal treatment.” *Id.* This perception may be corroborated by the results of a 2003-2004 LAWYERS’ AND JUDGES’ SURVEY ON THE STATE OF THE JUDICIARY AND THE LEGAL PROFESSION by the Social Weather Station Report. According to it, about 25% of respondent lawyers reported that many/very many judges are corrupt. However, although half of them said they knew of a case in their own city or province where a judge took a bribe, only 8% reported the bribery, the main excuse of those keeping silent being that they could not prove it. On the other hand, only 7% of respondent judges saw many/very many judges as corrupt. Another survey that looked into the public perception regarding sincerity of public agencies in fighting corruption found that of the nine agencies surveyed, the SC and the SB received Moderate Net Sincerity Ratings, while the trial courts received a Mediocre net score. See SOCIAL WEATHER STATION REPORT, SURVEY OF THE GENERAL PUBLIC ON CORRUPTION (Dec. 2004).

While less prevalent in judicial decision making than in other judiciary functions, corruption is still acknowledged to be a problem. Eliminating corruption was first on a list of recommended judicial system reforms made by the Alternative Law Groups, Inc., a legal reform consortium. The most vulnerable areas of the courts appear to be those where court officials are entitled to fees for services to litigants, e.g., sheriffs regarding enforcement actions, stenographers in preparation of

transcripts, and commissions to which certain court clerks are entitled. Nevertheless, evidence of the influence of private interests on judicial decision making may also be inferred from the reported ubiquity of *ex parte* communications between lawyers and judges, and the fact that many litigants come to their attorneys expecting to have to pay for a favorable result. Some attorneys have apparently lost clients when they refused to do so.

Influence from the executive and legislative branches is more subtle. As discussed in Factor 10 above, there is the widespread material support provided to trial courts by local government authorities. A more prevalent concern is the culture previously referred to and described by the present Chief Justice as the plague of “ships”: kinship, relationship, fellowship, and friendship. The predominant cultural value of “gratitude” extends to gratitude for having been appointed to be a judge at all levels of the court system.

The PMO’s statistics on the number of judges administratively sanctioned do not contain the grounds on which the judges were removed or otherwise disciplined. The assessment team was not made aware of any recent corruption proceedings against judges in the SB court.

The SC has made strides through the promulgation of the new Codes of Conduct for judges and court personnel and related training workshops, as well as public news releases regarding the codes. Judges and court personnel are more aware of ethical constraints. The Court’s zealous enforcement of judicial discipline and the improved judicial selection process have also contributed to improvement. Salary increases for judges may also play a role.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

<i>Conclusion</i>	<i>Correlation: Positive</i>
<p>A new Code of Judicial Conduct for the Philippine Judiciary took effect on June 1, 2004. The new document adopts the provisions of the internationally recognized Bangalore Principles of Judicial Conduct with very few changes. Judges are required to undergo training on the new Code as part of their Career Enhancement Programs.</p>	

Analysis/Background:

The new Code of Judicial Conduct for the Philippine Judiciary [hereinafter Code of Conduct] was promulgated by the SC in May 2004, and took effect on June 1, 2004. The Code of Conduct adopts the Bangalore Principles of Judicial Conduct, with very few exceptions. Specifically, the Code covers the basic principles such as judicial independence (Canon 1), integrity (Canon 2), impartiality (Canon 3), propriety (Canon 4), equality (Canon 5), and competence and diligence (Canon 6).

One positive addition is Sec. 3 of Canon 2, which states that judges should (but not shall) take or initiate appropriate disciplinary measures against lawyers or courts personnel for unprofessional conduct of which the judge may have become aware. However, judges are not required to report misconduct by other judges.

Consideration should be given as to whether the common receipt of benefits from local governments in connection with operation of courts violates Canon 4, Secs. 13-14 of the Code of

Conduct, forbidding judges from accepting gifts or favors in relation to “anything done ... in connection with the performance of official duties.”

While there is no provision of the Code of Conduct which expressly deals with *ex parte* communications, Canon 4, Secs. 1 and 3, would seem to apply. This insidious practice, apparently widespread as part of the legal culture, is still not recognized by many as improper.

Judges and other government officials are required to file annual financial disclosures. See ANTI-GRAFT AND CORRUPT PRACTICES ACT, Sec. 7. However, while such disclosures are recognized as public record, access to them is regulated by the SC’s *en banc* resolution of May 1989, which outlines the steps to be complied with before any such request can be accommodated. As the reason for the regulation of disclosures, the SC has cited endangerment of independence and objectivity in the performance of judicial functions, as well as exposure to revenge for adverse decisions through acts such as kidnapping, extortion, blackmail, and other untoward consequences. As a result, judges’ financial disclosures may be released by the SC upon a showing of good cause. In practice, requests by journalists to obtain such filings have been denied. In the alternative, the office of the Ombudsman has the authority to institute “lifestyle checks” whenever there is an allegation of corruption of a public official. While such checks are not explicitly mentioned in the law, they are in consonance with the duty of the Ombudsman to act upon complaints by anyone regarding public officials with unexplained wealth or immodest lifestyles that are not in keeping with their means or positions. See *generally* THE OMBUDSMAN ACT OF 1989 (RA No. 6770). Such requests related to judges have been referred by the Ombudsman to the OCA for the administrative judicial complaints process.

Training components related to the Code of Conduct are included in the mandatory career enhancement programs for judges at PhilJA, which were discussed in greater detail in Factor 3 above.

The Code of Conduct, its public promulgation, and numerous subsequent training workshops organized through PhilJA have had a positive effect. Judges, court personnel, and lawyers commented that conduct has improved because of an increased level of awareness as to appropriate and inappropriate conduct in particular situations. Many stated that this change has been the most significant impact of the APJR. The proposed annotated commentary to the Code of Conduct, which is currently being developed by ABA-Asia in cooperation with PhilJA, will be useful.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	Correlation: Positive
<p>There is a meaningful process under which judges, lawyers, and the public may register complaints concerning judicial misconduct. The complaints are vigorously investigated by the OCA and the SC.</p>	

Analysis/Background:

As discussed in detail in Factor 17 above, any person has the right to file a complaint against a judge with the OCA. RULES OF COURT, Rule 140, Sec. 1. The written complaint must state clearly and concisely the acts and omissions that allegedly constitute violations of judicial conduct standards prescribed by the law, the Rules of Court, or the Code of Judicial Conduct. Each

complaint must be verified with supporting evidence, such as affidavits of those with personal knowledge of facts alleged in a complaint or documents that may substantiate these allegations. While anonymous complaints are permitted, they must be supported by “public records of indubitable integrity.” *Id.* The OCA must dismiss the complaint if is insufficient in form and substance. *Id.* Sec. 2.

The negative aspects of the process have been described in detail in relation to Factor 17 from the perspective of judicial independence and protection of judges from arbitrary removal or discipline. However, despite delays resulting from unnecessary investigation of every complaint, whether or not it is sufficient in form and substance, the process is a meaningful mechanism to further judicial accountability. It could be improved by implementing the provisions of Rule 140, authorizing the OCA to dismiss patently insufficient complaints without further action, so that the limited investigative resources could be focused on complaints which appear to have substance. The OCA has announced their intention to pursue this option for future complaints.

Between 1987 and 2005, a total of 11,473 complaints were filed against trial judges, and an additional 141 complaints against CA justices and court personnel. The number of complaints has increased since the onset of the APJR, and the extent of corruption has reportedly decreased.

The assessment team was not made aware of any instances where a judge has complained about another judge, and individual lawyers are reluctant to make such an allegation. However, follow-up information has indicated that there is a recent case filed by a judge against another judge in Baguio City.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Courtroom proceedings are open by law and in practice. However, most courtrooms are not large enough to accommodate the public and media in high profile cases.	

Analysis/Background:

The Rules of Court proclaim that courts of justice shall always be open for the trial of cases, hearing of motions, and for the issuance of orders or rendition of judgments. See Rule 135, Sec. 1. This statement means that all court proceedings are, as a rule, conducted in public, and examination of witnesses is done in an open court. *Id.* Sec. 2; Rule 132, Sec. 1. However, a court may exercise its discretion to exclude the public “when the evidence to be adduced is of such nature as to require their exclusion in the interest of morality or decency.” *Id.* Rule 135, Sec. 2. In addition, in cases that fall under the SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA No. 7610, June 17, 1992), court proceedings are conducted in the judge’s chambers, and the judge may also invoke confidentiality, making it unlawful for the case to be featured in any print, radio, or TV broadcasting. See Sec. 30.

Courtrooms are open to the public, and there are no overt constraints against the media presence. Video or still cameras are not yet permitted in courtrooms, although in high profile anti-corruption cases, the SB may make a videotape of proceedings for archival and educational purposes, but not for public release. Closed circuit transmission to an overflow courtroom is apparently not yet a practice. In addition, physically limited courtroom space means that in cases

of great public interest, there is insufficient space available for those interested in observing the proceedings.

The SC instituted a Public Information Office [hereinafter PIO], as a result of which operations of the judicial system have become more transparent. See SC Resolution A.M. No. 99-04-09-SC (Aug. 4, 1999). Yet, while the PIO’s reports are informative in regard to the activities and achievements of the court, the role is not yet seen to include dissemination of information to the lay public as to what their legal rights are or how the judicial process works. In fact, the SC held that while they can engage in information dissemination activities, these “should generally be confined to court users with respect to actual cases as well as Rules issued by the Court.” See *Re: SC Project: Access to Justice for the Poor Project*, SC En Banc Resolution A.M. No. 05-2-01-SC (Feb. 15, 2005). Increase in public understanding is a factor in increasing access to justice, as well as the public respect for the system. The Ombudsman’s office (the prosecutorial arm of the SB) also has a PIO.

Journalists are able to obtain information from the courts as to calendars and forthcoming hearings. Yet there is a lack of understanding of the process on the part of most journalists. Training for media representatives as to judicial process would be helpful in increasing accurate reporting and public understanding. Former Chief Justice Davide raised the possibility of the equivalent of a benchbook for journalists. Joint judiciary-media dialogues or conferences would be another useful mechanism. PhilJA has recently submitted to the SC a Guide for the Judiciary in Dealing with Media, for its review and approval.

While there is a Philippine Center for Investigative Journalism, the media show little interest in most court proceedings, or in issues of judicial independence, efficiency, or corruption, claiming that these stories do not hold the public interest. Such investigations have been the catalyst for reducing systemic corruption in many nations. One factor furthering this reluctance may be that, while there are no laws restricting what may be written, there are subtle constraints and an impression that asking questions may get one into trouble with government and others.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	Correlation: Neutral
<p>SC decisions are published and are public record. Appellate opinions are disseminated only for internal use within the CAs. Although trial and intermediate appellate court decisions are not published, they are recognized as public records, and anyone may obtain copies of such decisions from the appropriate clerk of court.</p>	

Analysis/Background:

The Rules of Court require that the judgments and final resolutions of the courts are published in the Official Gazette and in the officially designated Reports. In addition to the full text of a judgment, the publication should include a concise synopsis of the facts necessary for clear understanding of a case, the material and controverted points involved, the authorities cited, and a syllabus confined to points of law. See Rule 55.

Additionally, Supreme Court Reports Annotated are printed by a private publishing company and sold to the general public. These reports are published in multiple volumes per year and contain the full text of decisions, including all separate, concurring, and dissenting opinions, if any.

SC decisions are *res judicata*, and trial judges are expected to follow them. Yet, while the JUDICIARY SURVEY reported that most judges stated that they regularly and promptly receive complete SC decisions, it is not clear that this practice is occurring. Trial courts are provided with journals containing only a digest of recent SC decisions. These digests are not always timely. At the time of this assessment, the most recent journal received had contained cases decided in mid-2005.

The SC also distributes compact discs to the lower courts containing SC decisions and recently passed laws. The most recent disc that was distributed contained cases from 2005. However, the SC PIO does not routinely disseminate important decisions either to trial judges or to the media, in print or electronically, promptly following promulgation. Decisions of the SC from 1996 onwards may be accessed free of charge by the public through the Court’s website (<http://www.supremecourt.gov.ph>). Additional cases and laws are available through the E-Library (<http://elibrary.supremecourt.gov.ph>) by those within the judiciary who have Internet access. The E-Library is part of the World Bank’s JRSP project and was launched in late 2004. At present, it contains SC decisions since 1996, although a private contractor is currently in the process of adding all SC cases dating back to 1901. CA and SB cases may be added in the future. However, the system is not open to all. It is linked to the SC website, and one must obtain a user name and password to enter the E-Library. Moreover, it is not fully accessible to judges, as there is little, if any, Internet access in courthouses.

Additionally, PhilJA publishes a monthly Fax/Electronic Alert, which summarizes the SC rulings in administrative cases and is designed to further support training programs on the Code of Conduct.

CA decisions are published only for “internal” use, i.e., for use within the CAs, and are not distributed to lower-level courts. They are considered “persuasive”, but not binding, even within the court’s own region.

Although trial and intermediate appellate court decisions are not published, all court decisions are recognized as public records. This means that anyone can obtain a copy of any court decision, unless their publicity is specifically forbidden by the court, in the interest of morality or decency or for cases such as those involving child protection. See RULES OF COURT, Rule 135, Sec. 2. Any interested person may apply to the office of the clerk of court of the judge who rendered the decision with a request for a copy of such decision. For a specified fee, the clerk must prepare the certified copy. *Id.* Rule 136, Sec. 11.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

Conclusion	Correlation: Neutral
A verbatim transcript of courtroom proceedings is created by a court stenographer. Transcripts are deemed public records, and copies are available to interested parties for a fee.	

Analysis/Background:

Each judge has one or more stenographers, who record all proceedings verbatim by means of shorthand or stenotype machines. The transcript must cover the entire proceedings of a trial or hearing, including the interrogation of a witness, the statements made by the judge or any of the parties, the counsel, or witnesses with reference to a case. Such transcript is deemed *prima*

facie a correct statement of the court proceedings. See RULES OF COURT, Rule 132, Sec. 2; Rule 136, Sec. 17.

Two years of college education is a prerequisite for court stenographer positions. There is little ongoing training. Stenographers are paid a salary, and charge a per page fee (set by the Rules of Court) for transcripts. The litigant pays the fee to the Clerk of Court who deposits 1/3 in the JDF account and transmits the remainder to the stenographer. It is reported that litigants often bypass the clerk and deal directly with the stenographer, or make additional “voluntary” payments for “expedited” service. Several stenographers have been dismissed pursuant to the administrative complaint process.

The transcripts are used by the courts, especially the appellate courts, in reviewing the decisions and are reportedly fairly accurate. In addition, some courts use tape recordings as a resource if clarification is needed. A few courts have been provided with computer-aided transcription machines.

Per the Rules of Court, most court records, including transcripts of proceedings, are deemed public records, and any person may apply to the clerk’s office to request a copy of any court records and is entitled to receive such copy for a fee. See Rule 135, Sec. 2; Rule 136, Sec. 11. Records are available for inspection “at all proper business hours, under the supervision of the clerk having custody of such records.” *Id.* Rule 135, Sec. 2. However, non-parties must show a valid purpose for obtaining such records, which the court must assess. In remote areas, where there is a lack of computers and copying machines, the transcripts have to be manually type-written, and thus it takes longer to obtain copies.

VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion	Correlation: Negative
Although each judge has more than sufficient support staff, allocation of staff and overall efficiency constitute serious obstacles to achievement of justice.	

Analysis/Background:

Each judge, even in the FLCs, has several clerks, stenographers, legal researchers, interpreters, a process server, and a sheriff. Other staff positions include clerks of court, cash clerks, cashiers, and others. According to the PMO, as of December 31, 2005, there were a total of 32,091 approved court staff positions for 2,257 judges, averaging 14.2 staff per judge. Therefore, the existing inefficiencies within the judiciary cannot be blamed on lack of adequate staff.

APPROVED COURT PERSONNEL POSITIONS (as of Dec. 31, 2005)

Court Level	Personnel positions	Judicial positions	Staff Ratio per Judge
SC	2,375	15	158.3
CA	1,658	69	24.0
SB	391	15	26.1
CTA	224	6	37.3

Lower courts (RTCs, FLCs, and Shari'a)	27,443	2,152	12.8
TOTAL	32,091	2,257	14.2

Source: PMO.

A Clerk of Court, the highest level staff member, earns PHP 21,000 (USD 420) per month. Clerks of Court are required to be law graduates. They are eligible for an additional allowance from SAJJ when there is money left over from allowances allocated to judges. As the vacancies are filled, funds from “savings” may stop. The branch Clerks of Court in the RTCs are eligible for RATA, while other FLC branch Clerks of Court are not eligible for the allowance or seniority increases. Branch Clerks assist judges in writing decisions, and are responsible for calendaring and file maintenance. In addition, RTC branch clerks also conduct preliminary pre-trial conferences.

Clerk and other staff training is not yet sufficient. There appears to be no regular initial or orientation training for court personnel. Regional Judicial Career Enhancement Programs are now held every year rather than every three years as it was at the outset. Different groups of court support staff, such as sheriffs or court clerks, have their own voluntary professional associations, which hold at least biannual conventions. One day of such meetings must be devoted to a PhilJA seminar program. Travel to these annual conventions is at the participant's own cost or is supplemented in some areas by local governments. It is not clear whether those staff without associations get regular, or even any, training.

A court clerk's association has advocated for training on matters such as uniformity of filing procedures and record-keeping, assessment of fees, working conditions, and more computers. However, while staff suffers from a lack of technological equipment and while computerization projects have positive impact, technology alone will not solve the problem. As will be discussed in Factor 28 below in regard to case tracking, efficient systems and concepts must be identified before they can be computerized.

In May 2004, the SC promulgated a new Code of Conduct for Court Personnel. The PhilJA, with the help of ABA-Asia, is conducting workshops for the court personnel on the new Code. This is an ongoing project and has not yet covered all court personnel in the country.

Staff positions could be better allocated. Specifically process servers, sheriffs, maintenance workers, stenographers, and possibly interpreters could be pooled and serve where the need is greatest. Many are presently underused. Reduction or reallocation of staff, and use of the resources made available thereby to increase salaries for necessary staff and for training on management of case loads, individual case calendars, and files might achieve results.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion	Correlation: Neutral
New judicial positions are created by legislative action. However, creating such positions will not be necessary until the existing vacancies are filled.	

Analysis/Background:

The number of SC positions was fixed in the Constitution. See Art. VIII, Sec. 4. The JUDICIARY REORGANIZATION ACT OF 1980 specified the number of judicial positions for all other courts, and

has been amended from time to time. However, as reported in Factor 2 above, out of 2,257 judicial positions that existed in the Philippines as of December 31, 2005, only 1,593 were filled. Thus, the overall vacancy rate was 29%, although it was only 17% in the RTCs while ranging from 23 to 52% in the FLCs. The situation with respect to judicial positions and existing vacancies is summarized in the following table.

Court Level	Approved Judicial Positions	Actual Number of Judges	Vacant Judicial Positions	Vacancy Rate, %
SC	15	14	1	7
CA	69	63	6	9
SB	15	14	1	7
CTA	6	6	0	0
RTCs	952	787	165	17
FLCs	1,144	681	464	41
Shari'a District	5	0	5	100
Shari'a Circuit	51	28	23	45
TOTAL	2,257	1,593	665	29

Source: PMO.

This situation results in lack of effectiveness that significantly impairs the administration of justice at all court levels. The JUDICIARY SURVEY reported that while 82% of judges stated that the courts resolve cases with “minimal delay,” only 29% of lawyers agreed with this. Eighty two percent of judges and 33% of lawyers believed that cases are resolved within the periods prescribed by the Court Rules.

CASE BACKLOG AND CLEARANCE RATES FOR 2005

Court Level	Pending on Dec. 31, 2004	Case Inflows	Case Outflows	Pending on Dec. 31, 2005	Case Clearance Rate, %	Backlog Clearance Rate, %
SC	6,780	4,348	4,813	6,315	111	131
CA	23,098	13,483	14,060	22,521	104	160
SB	1,784	768	275	2,277	36	828
CTA	639	391	259	771	66	298
RTCs	347,708	191,703	190,503	348,908	99	183
FLCs	428,458	251,171	275,360	404,269	110	147
Shari'a District	54	36	41	49	114	120
Shari'a Circuit	309	267	291	285	109	98
TOTAL	808,830	462,167	485,602	785,395	105	162

Source: PMO.

The largest segment of case backlog at the FLC level consists of the so-called “bounced check” claims. These cases were criminalized and transferred to FLC jurisdiction under An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes (BP 22, April 3, 1979). Even though resolution requires consent of the victim, the proof in these claims is generally simple, requiring only verification by the bank of the lack of funds and the testimony of the victim. Yet they are allowed to go to multiple hearings, with the same postponements and delays as complex cases. It would be helpful if a small claims procedure were instituted for these and other FLC cases with simple facts and legal issues. Once backlog is reduced, the Philippines should speed up the SB’s pilot project and replace sequential trials (which involve many hearing dates over a long time period, with only one or two witnesses per hearing) with continuous (start to finish) trials, favored by many judges and lawyers. The excuse that backlogged cases would suffer if judges had to focus on continuous trials would no longer be valid.

Pursuant to the JUDICIARY REORGANIZATION ACT OF 1980, judges may be assigned temporarily to another location as public interest may require, but for no longer than six months without the consent of the judge. See Sec. 17. There is no data on how often this reassignment takes place. However, in areas where there is shortage of judges, some judges handle two or even more branches.

Several events should occur before a need for new positions can be evaluated. These steps include capacity building and further training of the JBC to enable it to fill vacancies promptly, as well as implementation of efficiency, delay, and backlog reduction mechanisms. Moreover, new positions would have to be accompanied by an increase in budget for judicial and staff salaries, courtrooms, and equipment.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	Correlation: Negative
<p>There is no effective case filing and tracking system. A manual system is in place in most courts, which is often inefficient given the number of pending cases, the judicial vacancy rate, the system of non-continuous trials, and other factors that contribute to the lengthy process.</p>	

Analysis/Background:

A manual system of docketing, filing, and tracking cases is prescribed for all courts. Per the Rules of Court, the clerk’s office in each court is required to keep a number of logs, including the general docket, the judgment and entries book, the execution book, and other books as may be directed by the court. See *generally* Rule 136, Secs. 8, 9, 10, 12. These books should record, in chronological order, all cases received by a court, as well as the details of various procedural steps and other actions taken with regard to each case. For instance, each page of the general docket “shall be ... prepared for receiving all the entries in a single case ... so that by reference to a single page, the history of the case may be seen.” *Id.* Rule 136, Sec. 8. All dockets and court books must be indexed in alphabetical order. In addition, upon a court’s direction, the clerk’s office should keep separate books for civil and criminal cases, as well as actions and special proceedings, or implement other separation of cases by classes. *Id.* Sec. 13.

Aside from this system, most judges also have their own methods of tracking the movement of cases pending before them. The sophistication of these methods depends on how technologically literate the judge is and how many cases are pending. For instance, some judges use index cards for each case, recording the movement and relevant dates thereon. Others have come up with their own computerized system of tracking cases.

In practice, it does not appear that many courts are using the prescribed case filing and tracking system effectively in the sense of having a “docket page” at the front of each file so a judge or a lawyer can see it. Overall, the existing system of tracking and filing cases is often inefficient given the number of pending cases, the judicial vacancy rate, the system of non-continuous trials, and other factors that contribute to the lengthy process.

APJR and international donor efforts to improve case tracking have had limited impact thus far. Thus, CAMIS is not a case filing and tracking system. It gathers information as to the numbers of cases filed and disposed of each month. It has had impact, as the data have helped the PMO and the OCA to identify weak points in case resolution. It has also made judges and clerks aware

of the need to track their case events from filing to completion as they must submit monthly filing and disposition reports to the OCA.

A CFM pilot project initiated by USAID in Pasay City is an effort to create a filing and tracking system for individual cases. It has had limited success thus far, even though it has increased awareness of the need for tracking. While there is a present effort to integrate CAMIS and CFM, the achievements thus far are the tip of a large iceberg. Having data as to the extent of the problem is an important first step. However, there is a need to track the status of all pending individual cases.

This need is evidenced by the CAMIS data. As of December 31, 2005, an average backlog of 1,479 cases per judge existed. The total backlog includes 6,315 cases in the SC, 22,461 cases in the CAs, 357,393 cases in the RTCs, and a total of 417,413 cases in the various FLCs. Many of these cases are unidentified “archived” cases over 10 years old. They may include cases where criminal defendants or witnesses have never been found, or civil cases which have been settled but the settlement has not been reported to the court in the form of a stipulation or dismissal. There does not seem to be an effective system to track and identify these cases, although individual CFM combined with CAMIS data collection should eventually alleviate the problem of these “archived” (i.e., “lost”) cases. One possibility would be to then devote a time period, perhaps one month during which no new cases except for emergency situations would be “raffled” to judges, when all such cases would be set for a status report hearing and most of them efficiently disposed of.

Despite the general inefficiency of case tracking and filing methods, some judges and clerks have been successful in reducing their backlogs significantly by inventorying and reviewing old case files. Procedures need to be standardized throughout the various courts.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	Correlation: Negative
<p>There is insufficient budget allocated to equipment for trial level courts. Typically, a court branch with a staff of six to ten people has one SC-provided computer and no copying machine.</p>	

Analysis/Background:

Judges in the Philippines are given one-time, interest-free loans of PHP 36,000 (USD 703) to purchase laptop computers for themselves, pursuant to SC Resolution A.M. No. 05-9-18-SC (Sept. 20, 2005). However, most trial courts have only one computer provided by the SC for court support staff of 6 or 7 positions. In practice, many clerks provide their own computers or are using machines donated by local government officials or “friends.”

There is a similar shortage of other equipment. Thus, there are few copying machines, and those which exist are often in disrepair, or there are insufficient funds to buy toners. Judges and clerks are routinely expending their own funds for copying at a nearby shop. Some courts are still using mimeograph machines. Stenographers use shorthand or stenotype machines, although computer assisted transcription machines are slowly making an appearance in the courts.

Availability of computers and other equipment is better at the higher courts. For instance, all law clerks have a computer in the SC, and there are copying machines in each office.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

Conclusion	Correlation: Neutral
Judges receive copies of new laws and jurisprudence, but not necessarily in a timely manner.	

Analysis/Background:

All laws are published in the Official Gazette and in a newspaper of general circulation. Orders promulgated by the President are also published in a newspaper of general circulation. Administrative orders of the executive agencies are filed at the Office of the National Administrative Register [hereinafter ONAR]. Legal acts are deemed effective 15 days after the publication. Judges can obtain copies of the administrative orders from ONAR or from Congress. In addition, as discussed above in Factor 24, jurisprudence and new laws are distributed to lower courts periodically on compact discs, and are available on the E-Library on the SC website (<http://elibrary.supremecourt.gov.ph>). The E-Library currently contains texts of all laws since 1986. Furthermore, many laws and other legal acts are available through private online resources, such as Chan and Robles Library. However, since most courts do not have Internet access, the accessibility of these resources to judges is limited.

The assessment team was not made aware of any systemic identification or organization of changes in the law.

List of Acronyms

ABA-Asia	American Bar Association's Asia Law Initiative
ABA/CEELI	American Bar Association's Central European and Eurasian Law Initiative
ADB	Asian Development Bank
APJR	Action Program for Judicial Reform
BP	Batas Pambansa Bilang
CA	Court of Appeals
CAMIS	Court Administration Management and Information System
CFM	Case Flow Management
CTA	Court of Tax Appeals
DBM	Department of Budget and Management
FLC	First Level Court
FMBO	Fiscal Management and Budget Office of the Supreme Court
IBP	Integrated Bar of the Philippines
JBC	Judicial and Bar Council
JDF	Judicial Development Fund
JRI	Judicial Reform Index
JRSP	Judicial Reform Support Project of the World Bank
MCJAP	Metropolitan and City Judges Association of the Philippines
MCLE	Mandatory Continuing Legal Education
MCTC	Municipal Circuit Trial Court
MeTC	Metropolitan Trial Court
MTC	Municipal Trial Court
MTCC	Municipal Trial Court in City
OCA	Office of Court Administrator of the Supreme Court
ONAR	Office of the National Administrative Register
PERA	Personal Emergency Relief Allowance
PhilJA	Philippines Judicial Academy
PHP	Philippine Pesos
PIO	Public Information Office of the Supreme Court
PMO	Program Management Office of the Supreme Court
RA	Republic Act
RATA	Representation and Transportation Allowance
RPC	Revised Penal Code of the Philippines
RTC	Regional Trial Court
SAJJ	Special Allowance for Justices and Judges
SB	Sandiganbayan (Anti-Corruption Court)
SC	Supreme Court of the Philippines
UNDP	United Nations Development Program
USD	United States Dollars