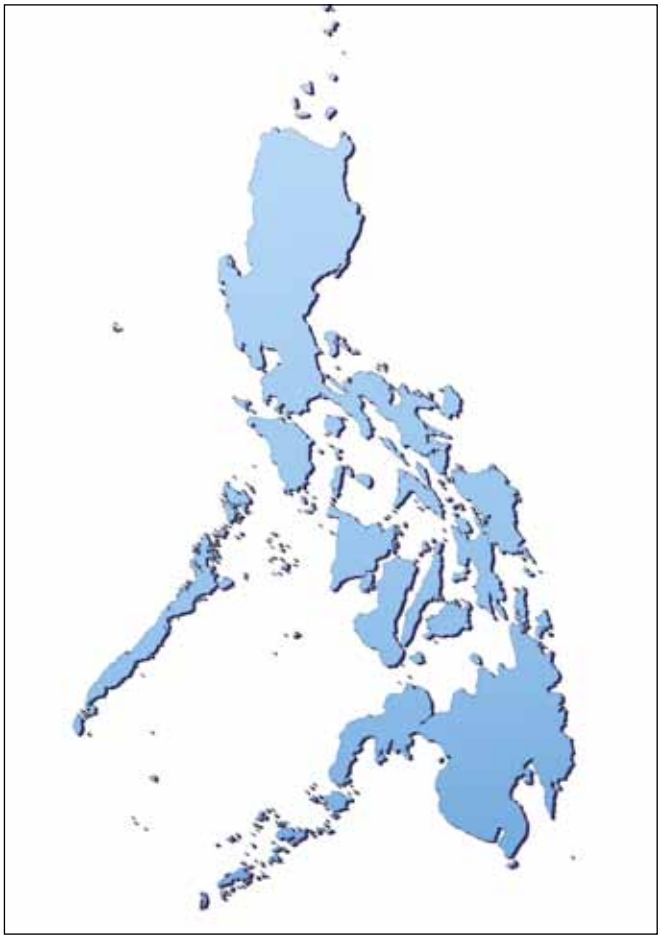
Court-Annexed Mediation in the Philippines – Community Involvement in the Judicial System

The involvement of communities in the Philippine judicial system further contributes to the country's unique legal system, which is a blend of civil law (Roman), common law (Anglo-American), religious law (Islamic) and indigenous law, and is the result of the country's colonial past. Aside from religion (e.g., the Quran as the primary source for Muslim law, particularly in Muslim communities), communities play a major role in the Philippine judicial system, with communities intervening as mediators to assist conflicting parties in reaching an acceptable agreement. The pre-colonial traditional practice of dispute settlement through the so-called "barangay justice system" was institutionalized by Presidential Decree No. 1508 (Establishing a System of Amicably Settling Disputes at the Barangay Level) on 11 June 1978 by President Ferdinand Marcos. This system comprises the "lupong tagapamayapa" (Committee of Peace) and the barangay captain, who serves as its chairman. The Committee intervenes as a mediator at the barangay (village) level. Furthermore, the Supreme Court "en banc" Resolution No. 01-10-5-SC of 16 October 2001 stipulated guidelines for the institutionalization of mediation, which promotes a paradigm shift in the resolution of disputes from a rights-based (judicial) to an interest-based (mediation) process, thus paving the way for the recognition of the significance of community level mediation. Following a pilot test of mediation in the Court of Appeals (CA), the Supreme Court approved the institutionalization of Appellate Court Mediation in 2004. Hence, the courts are in charge of determining the possibility of an amicable settlement, whereas consultation with the barangay (village) mediators serves as a prerequisite for the acceptance of cases. Courts request certificates from barangay captains that the dispute was indeed submitted to the committee, but could not be resolved through community mediation. The symbiotic relationship between communities and courts through the de facto integration of community level mediation in the judicial system is a pragmatic response to the congestion of Philippine courts. In this regard, the judicial system has experienced both a top-down and bottom-up process with reference to the institutionalization of mediation in the judicial system.



Source: Skvoor | Dreamstime.com

The Philippines is divided into 13 judicial regions, where judges of the regional trial courts are posted.

Source: Wikipedia

The Philippine Code of Arms

This essay addresses some theoretical and practical problems of the community-level mediation process in the Philippines which are caused by the country's inherent structural weaknesses. The identification of gaps and loopholes, which to some extent undermine the efficiency of mediation, can be useful for identifying policies that may eventually ensure the sustainability and resilience of the agreements reached.

The Katarungang (Justice) Barangay System – "Please Mind the Gap"

The barangay justice system is an innovation of the Philippine justice system and provides for the resolution of disputes at community level through mediation, conciliation or arbitration by an unpaid committee, which is chaired by the barangay captain and is similar to traditional village justice systems in West Africa and Central Asia (Zartman 1997). The barangay justice system symbolizes recognition of indigenous peoples' conflict resolution practices, which are based on the role and power of the council of elders.

The Philippines: Background Information

Location: Southeastern Asia, archipelago between the Philippine Sea and the South China Sea; the Philippine archipelago consists of 7,107 islands
Population: 97,976,603
Area: 300,000 sq. km
GDP per capita: $3,300 (2009 est.)
Government Type: republic
Legal System: based on Spanish and Anglo-American law
Executive Branch: Chief of State/ Head of Government: President Gloria Macapagal-Arroyo
Legislative Branch: bicameral Congress consisting of the Senate (Senado) (24 seats) and the House of Representatives (Kapulungan Ng Nga Kinatawan) (269 seats at present, including 218 members representing districts and 51 sectoral party-list members representing special minorities).
Judicial Branch: Supreme Court (15 justices appointed by the president on the recommendation of the Judicial and Bar Council); Court of Appeals; Sandigan-bayan (special court for hearing corruption cases of government officials).
A barangay is the smallest government unit in the Philippines and means village, district or ward. The Philippines has nearly 42,000 barangays. The **Barangay Justice System** or the *Katarungang Pambarangay* (KP) was institutionalized by Presidential Decree 1508 of 1978 and the Local Government Code of 1991 to improve the justice system and to make it more responsive to the needs of communities. "The Local Government Code of 1991 Section 324 mandates the barangay with three most basic functions. a) as a *basic political unit*; b) as a *primary planning and implementing unit*; and c) as a *forum*. In relation to the first and last basic functions, the barangay provides *a venue for the amicable settlement of disputes*."

Source: Aquino, R. S. (2008) Five Municipal Case Studies on the Philippine Barangay (Village) Mediation System, paper presented at the 4th Asia-Pacific Mediation Forum held in Kuala Lumpur, Malaysia, on 16–18 June 2008. The conference theme was 'Mediation in the Asia-Pacific: Constraints and Challenges (http://www.apmec.unisa.edu.au/apmf/2008/papers/28-RACHEL%20S.AQUINO.pdf)

The barangay, the smallest administrative division in the Philippines, is a pre-colonial community system headed by a datu (elder).

At present, 42,021 barangay captains are elected for a three-year term (NSCB 2009). Elections at community level are usually hotly contested, especially in rural areas, which are controlled by "political warlords" with private armies. Mediation at community level is, to a significant degree, de facto non-neutral, non-efficient and non-autonomous; decisions are imposed by barangay captains rather than agreed between conflicting parties. Furthermore, the barangay justice system is yet another "political machine" unable to provide objective and sustainable agreements. The barangay captain is an "executive" who carries out "judicative" functions. The barangay system is reduced to a power instrument of an elected official. The lack of public information and education campaigns on how the barangay justice system works not only on the part of the public, but in particular on the part of the committee members and barangay captains, who are to a large extent not even aware of their role, duties, and responsibilities (Martinez 2001), undermines its effectiveness and public acceptance. Furthermore, no training scheme has been established for barangay captains to learn about the theories and skills of mediation to ensure its quality.

The institutionalization of the barangay justice system should have included the training of barangay captains and committee members in mediation. Another important question is how to ensure its quality when participation in the community justice system is not voluntary, considering that it is a precondition for a court trial, and not an alternative. Gottwald (2003, 10-11) discussed the dilemma between requiring mediation and the principle of voluntary participation in mediation. He claims that this procedure does not undermine the principle of autonomy and voluntary participation as long as only participation is required and not the reaching of an agreement. However, based on the author's personal experience with the barangay system, coercion is an undeniable element of intervention, because the mediator holds executive powers.

The courts have institutionalized and integrated community mediation without making any provision to ensure accountability of the quality of community mediation. The courts have declined to institutionalize any standard systems. Nevertheless, more research on the conflicting parties' "feeling of procedural justice" (Gottwald nd) should be conducted, especially when many of them had no prospects of turning to local courts in the first place due to lack of financial resources.

The author of this essay was able to observe more than 50 barangay-level mediations, both as a committee member and as a conflicting party. In several cases, the barangay captain simply imposed his or her decision, playing more the role of a judge rather than a neutral and impartial mediator. For instance, after learning that

Source: Afren de Guzman | Maitum Information Office

Vice-Governor Steve Chiongbian Solon consults residents of barangay Ticulab following their return to the village after fleeing a raid by armed men.

the conflict was about a tenant who had failed to pay rent for six months, the barangay captain immediately decided to grant the tenant three additional months of free lodging to enable her to find a new home. However, after three months, she still had not moved out because she lacked the funds to pay the deposits for a new home. In the end, she lived in the original house for over a year without paying rent, to the dismay of the claimant. Martinez (2001) asserts that some barangay officials have shown partiality toward certain litigants who are related to them either by consanguinity or affinity ("compadre" culture).

Conclusion: Recommendations for Bridging the Gaps

The institutionalization of the barangay justice system and its de facto integration in the Philippine judicial system has created gaps and loopholes. Instead of promoting societal self-help in resolving conflicts (Schreiber 2004), the system has suffered from the absence of training, accountability, and good governance, which has prevented the achievement of the technocratic (lowering costs and easing the burden of courts) and people-related (autonomy and self-help) goals of mediation. The institutionalization of the barangay justice system and its de facto integration in the justice system has transformed it into the judicial system's "first instance", with untrained and politically motivated officials from the "executive" branch, who have been given additional power instruments for use in their communities.

The clear separation of the barangay justice system from the conventional judicial system, the revision of the policy that requires disputes to be submitted to barangay mediation before being taken to court, and the training of barangay captains in the field of mediation, combined with a more extensive public information campaign about the barangay justice system are required to establish a properly working system. Although college education is not a precondition for respect, impartiality and competence in mediation, a clear description of mediators' roles, duties and responsibilities would increase the barangay captains' awareness of the opportunities provided by the barangay justice system and subsequently its legitimacy. A clear separation of the barangay system from the judicial system makes it a viable option.

Ariel Macaspac Penetrante

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Source: Rita Festin | wordpress.com

Mayor Linda P. Gonzales (standing) of Ligao City discussing the success of the InfRES (Infrastructure for Rural Productivity Enhancement Sector) Project with barangay and ADB officials, following destruction caused by typhoons in late 2006.

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The Processes of International Negotiation Program *Network Newsletter 34/2010*

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Issue Editor: I. William Zartman

Registration number: ZVR 524808900