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Barangay Justice System in the Philippines

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I. Introduction

A. The Formal Judicial System and the *Barangay* Justice System in the Philippines

In the Philippine Constitution, it is stated that judicial power must include the duty of the courts of justice to settle controversies involving rights, which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion or excess of jurisdiction on the part of any branch or instrumentality of Government.¹ It is also widely recognized that legal and judicial institutions have the impact on the lives of people, especially the disadvantaged people with lower income, who are often the most severely affected by the lack of security and protection in their everyday lives.²

In the Philippines, the formal judicial system is consisted of four levels; the Supreme Court at the apex, the Court of Appeals, the Regional Trial Courts and the Municipal Courts, although these institutions are not efficient and competent in the execution of their functions. As it is pointed, the inefficiency of the courts is mainly caused by long delays, overload and backlog, corrupted practices and results of serious shortage in providing justice to all. There have been certain approaches to reduce the case processing time, however, it seems that the delays are nevertheless increasing. It is often said that justice delayed is justice denied,³ and this phenomena has negative socio-economic impacts in the society, particularly for the less fortunate. While business' litigation matters, which directly affect people's profit and loss, the less fortunate tend to go to court only

when the most fundamental matters of their livelihood are on the ragged. Thus, small claims among them can be possibly remained for countless years. This situation has been caused by as a defective appointment process of judges and court personnel, large number of vacant judgeships,⁴ lack of training, unethical lawyers, inadequate salaries and low public esteem due to the affect of inappropriate court personnel administration under Marcos regime. All these serious limitations indicate the urgent necessity to make justice accessible, especially for the less fortunate, however, judicial reforms require a long time and countless resources to be accomplished. Therefore, there has been an increasing interest and search for Alternative Dispute Resolution (hereinafter referred to as ADR) processes in the Philippines. Currently, various ADR institutions have been established nationwide in the country, including the Cooperative Development Authority, the Philippine Construction Industry Arbitration Commission, the Department of Agrarian Reform Adjudication Board, the Philippine Dispute Resolution Center, Inc., the National Conciliation and Mediation Board, the National Labor Relation Commission, Bureau of Labor Relations, the Commission on the Settlement of Land Problems, the Insurance Commission, and the Bureau of Trade Regulation and Consumer Protection.⁵ There is a tendency that people take the advantage of ADR actively these days, and in particular, the *Barangay* Justice System (hereinafter referred to as BJS) under the 1991 Local Government Code (hereinafter referred to as LGC)⁶ has been a focus of constant attention. This chapter aims to sort out issues in the light of essence, character and nature including both organizational and judicial aspects of the BJS in conjunction with the administrative function of the *barangay*.

B. The Background of the *Barangay* Justice System

The *barangay*,⁷ the smallest political unit often compared to a village in Japan, has been playing an important role in people's dairy lives in the Philippines. It is recognized as a territorial and political subdivision⁸ with given governmental function with regard to exercising the power to promote the public welfare. In the exercise of governmental power and function, a *barangay* acts as an instrumentality not only of the central government, but local government unit, whether it is the province, city or municipality.⁹ A *barangay* government has an obligation to provide the basic services¹⁰ and facilities publicly which is required in the LGC such as:

- (1) Agricultural support services which include planting materials distribution system and operation of farm produce collection and buying stations;
- (2) Health and social welfare services which include maintenance of *barangay* health center and day-care center;
- (3) Services and facilities related to general hygiene and sanitation, beautification, and solid waste-collection;
- (4) Maintenance of *barangay* justice system;
- (5) Maintenance of *barangay* roads and bridges and water supply systems;
- (6) Infrastructure facilities such as multi-purpose hall, multi-purpose pavement, plaza, sports center, and other similar facilities;
- (7) Industrial research and develop services, as well as the transfer of appropriate technology;
- (8) Pursuant to national policies and subject to supervision, control and review of the Department of Environment and Natural Resources, enforcement of pollution control law, small-case mining law, and other laws on the protection of the environment; and mini-hydro electric projects for local purposes;
- (9) Subject to the provision of Title Five, Book I of the LGC, health services which include hospitals and other tertiary health services;
- (10) Social welfare services which include programs and projects on rebel returnees and evacuees; relief operations and population development services;
- (11) Provincial buildings, provincial jails, freedom parks and other public assembly areas, and other similar facilities;
- (12) Infrastructure facilities intended to service the needs of the residents of the province and which are funded out of provincial funds including, but not limited to, provincial roads and bridges; inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems; reclamation projects; and similar facilities;
- (13) Programs and projects for low-cost housing and other mass dwellings, except those funded by the Social Security System (SSS), Government Service Insurance System (GSIS), and the Home Development Mutual Fund (HDMF) that provide national funds for these programs and projects that shall be equitably allocated among the regions in proportion to the ratio of the homeless to the population;
- (14) Investment support services, including access to credit financing;
- (15) Upgrading and modernization of tax information and collection

- services through the use of computer hardware and software and other means;
- (16) Inter-municipal telecommunications services, subject to national policy guidelines; and
 - (17) Tourism development and promotion programs.¹¹

During the pre-Spanish era, disputes occurred among residents in the same *barangay* were settled by a village chief who was assisted by a group of elderly men that served as chief village advisers. When a dispute was brought for a settlement, the chief's first move was to convince the disputants to settle down their conflict both to their satisfaction. Only when the conviction fails, a formal hearing was set up. At the beginning of the hearing, the parties concerned had to swear before the chief abides by the chief's decision and witnesses were presented by both parties. After the hearing, sound and swift judgment was given by the chief.

The current BJS was based on the traditional concept of this kind of Filipino culture. A decade after the 1973 Constitution's ratification, the first LGC proposed a provision, conceptually the forerunner of the current BJS Law. Then, the proposed LGC, having remained enacted by the National Assembly prompted the President to issue Presidential Decree No. 1293 in 1977, created the Presidential BJS Commission. The Commission, chaired by the then Supreme Court Justice Fred Ruiz Castro, made a draft, what became P.D. No. 1508, the BJS Law afterwards. Before signing of the BJS Law on 11 June 1978, legal minds, headed by the then Chief Justice Fred Ruiz Castro, conceived and nourished the idea of reviving the pre-Hispanic procedure of resolving cases at the village level. Shortly after P.D. No. 1508 got enacted, the Ministry of Local Government promulgated the rules and regulations, with the help of other agencies. After a series of orientation seminars, the machinery of the paralegal system was geared towards the gradual implementation of the law. The P.D. 1508 was drafted based on purposes of (1) speeding up the administration of justice, (2) implementing the constitutional mandate and develop Filipino culture, and (3) perpetuating the time-honored tradition of settling disputes amicably for the maintenance of peace and harmony. The institution of administering justice at a *barangay* level created a new dimension in local government administration and it successfully lightened the burden of lower courts, especially municipal trial courts, by decongesting their dockets of minor, civil and other cases. In addition, in the light of financial savings, the BJS continues to save for the government millions of pesos. On the record, hundreds of thousands of cases are resolved or decided at this level annually (see Table 1).

Table 1
Cases Settled at *Barangay* Level and
Estimated Government Savings (January–March, 2001)

Region	Nature of Disputes					Action Taken						Estimated Government Savings (peso)	
	Criminal	Civil	Others	Total	Thru Mediation	Thru Conciliation	Thru Arbitration	Thru Reputiation	Thru Dismissed	Settled Cases	Certified Cases		Pending
Ilocos	2,339	1,715	1,157	5,211	3,180	1,119	276	9	203	311	4,778	113	50,169,000
Icagayan Valley	1,173	524	623	2,320	1,070	362	93	6	615	60	2,140	114	22,470,000
Central Luzon	5,686	16,596	4,787	27,069	18,363	1,006	2,185	324	2,764	1,517	24,318	910	25,533,900
Southern Tagalog	14,527	10,413	3,992	28,932	16,139	5,372	951	1,280	2,436	1,727	24,898	1,027	26,142,900
Bicol	8,019	5,201	1,730	14,950	8,149	2,423	288	102	1,637	825	12,497	1,526	13,121,850
Western Visayas	7,117	4,898	2,875	14,890	9,169	1,931	207	77	1,614	910	12,921	982	13,567,050
Central Visayas	23,756	16,599	4,539	44,894	27,444	6,097	1,612	366	2,807	2,496	37,960	4,072	39,858,000
Eastern Visayas	11,166	7,835	6,157	25,158	13,339	5,967	976	247	2,398	1,239	22,580	1,092	23,709,000
Western Mindanao	5,459	5,022	4,048	14,529	8,946	2,190	335	122	1,259	545	12,730	1,132	13,366,500
Northern Mindanao	11,045	7,926	3,098	22,069	11,676	2,827	668	193	2,212	1,265	17,380	3,228	16,252,150
Southern Mindanao	14,883	12,975	4,234	31,992	21,347	3,969	594	123	3,474	2,104	29,384	381	30,853,200
Central Mindanao	4,060	4,286	2,702	11,048	5,898	1,999	422	205	1,302	867	9,621	355	10,102,050
Caraga	7,238	5,573	2,826	15,637	5,226	1,721	362	55	5,693	978	12,992	1,612	13,641,600
Metro Manila	38,856	28,285	13,790	80,931	42,459	12,895	5,698	478	5,868	3,765	66,920	9,768	70,266,000
Cordillera	3,197	2,099	354	5,650	3,216	881	164	26	473	394	4,734	496	49,707,000
Total	158,521	130,249	62,564	345,280	195,621	50,659	14,831	3,613	34,745	19,003	295,856	26,808	94,126,998,000

Source: *National Summary Report regarding cases filed, actions taken, and other related information on BJS implementation*, DILG, Manila, March, 2001.

II. Organizational Aspects

A. The Board for Amicable Settlement

In each *barangay*, a *barangay* chief is required to establish the board for amicable settlement (hereinafter referred to as board) as chairman with ten to twenty other members. The main function of the board is to exercise administrative supervision over the conciliation panel (hereinafter referred to as panel) and its several obligations contain (1) meeting regularly once a month to provide a forum for exchange of ideas among members and the public on matters relevant to the amicable settlement of disputes; (2) sharing their observations and experiences in effecting speedy settlement of dispute with other panel members; and (3) exercising powers and functions prescribed by law and ordinance.¹²

B. Qualification and Disqualifications of the Board Officers

The members appointed to the board initially hold their office for two years, unless sooner removed for some reasons. Upon the expiration of their term, the *barangay* chief prepares a list similar to the one made at the initial organization of the board. In any event, the chief can appoint appropriate replacements to fill the vacancies. With the concurrence of a majority of all members, the chief may withdraw the appointment of any one of them, for some valid reasons such as repeated failure to perform one's duties in the board, abuse of authority in the exercise of one's functions, and serious personal misconduct. As required by the BJS Law, there are certain qualifications to become a board member. For instance, being professionals or officials is not an official requirement, however, the person who is chosen for the board duty shall have at least a certain level of experience or education to be able to make fair decision for disputants. The board membership also entails certain disqualifications. A person who is expressed and disqualified by law from holding a public office may not be appointed. In addition, those who have been convicted of a crime in which the offender, aside from imprisonment, are barred temporarily from holding public office. Those who have committed corruption of public funds, revelation of secrets, and disobedience to superior orders, illegal exercise of office, bribery, and illegal use of public funds are disqualified to be chosen *barangay* officials as well.

C. Duty and Function of the Board Officers

As the board chairman, the *barangay* chief has three principal duties such as (1) determining the number and qualifications of the board members and appointing them, (2) settling disputes among residents in the *barangay*; and (3) constituting the panel to adjudicate a dispute properly. Other duties as the board chairman are to determine the date, time, place and agenda of monthly meetings of the board; to preside over the meetings of the board; to issue summons and subpoenas; and to attest to the minutes of the meetings of the board and certifications issued by the board secretary. As one of board officers, a secretary functions significantly and its official duties are:

- (1) To serve as the acting presiding officer in the absence of the *barangay* chief, concerning the selection of the panel, including the alternate member;
- (2) To keep and maintain a record book for all complaints, each numbered consecutively in the order in which they were received. The book should contain the names of the parties, dates, when the complaints were filed, nature of each case, and disposition;
- (3) To note the results of the mediation proceedings before the *barangay* chief and submit a final report thereof to the proper city or municipal court;
- (4) To make a record of the willful refusal or failure of a party to comply with the summons or order of appearance issued by the *barangay* chief and submit a certification to the effect to the proper court.
- (5) To receive and keep the records of proceedings submitted by various panels;
- (6) To transmit the settlement agreement of the parties to the city or municipal court not earlier than the 11th day but not later than the 15th day from the date of the settlement;
- (7) To transmit the certification of arbitration award to local city or municipal court within five days from the date of the award;
- (8) To issue the certification required for filing of action or proceedings in court or any government office for adjudication. The certification should show that a confrontation of the parties had been held and that no conciliation or settlement had been reached;
- (9) To issue certificates to bar the complainant from filing a case or the respondent from filing a counterclaim in court, in case of wilful failure of the complainant or respondent, as the case may be, to appear before the board or the panel on the date set for the

- conciliation or arbitration meeting; and
- (10) To furnish copies of the settlement or arbitration award to the *barangay* chief and all other parties concerned.

D. The Board Services

It has been observed that while the jury system has not been accepted in the Philippines, despite American influence over its judicial system, people are now given an opportunity to take advantage of dispute settlement mechanism similar to it. Thus, the service in the board and the panel takes the nature of civic duty. The members have no compensation whatsoever for their services, although such service is for official purpose. Namely, whether the member is from government or from a private concern, the employer must care for the member's services with the board or panel as official service and could not reduce any seniority or salary or allowance for occasional absences from work. The member as a part of one's community serves the interest of the *barangay* residents in that one helps preserve peace and order by helping in the amicable settlement of disputes. The satisfaction one derives from this cannot be given money value, however, it may be considered a privilege to serve in the board or panel.

E. Conciliation Panel

The conciliation panel is said to be a variation of the old village justice system, and the three-person panel formed as one of the units of the board. The panel is a unit of the board and alternate chosen by the disputants from among the members of the board to settle the case. Choosing members to serve in the panel can be an elaborate job for the *barangay* chief with a local leadership. The excellence of the panel is that it has enabled the present board to subdivide itself into several panels and attend to as many cases as possible, while the old *barangay* chief could attend to only one dispute at a time. While the *barangay* chief bears the responsibility in the implementation of the BJS Law, it is the panel that does the job of mediation and arbitration. The panel's main function is to mediate or conciliate disputes among *barangay* residents. Should it fail in this task, it has to arbitrate the case. Arbitration may likewise be resorted to by the panel at the initiative of the contending parties themselves. In the light of this function, the BJS Law allows the panel to bring the parties to settle their conflicts amicably through mediation or conciliation. As pointed out earlier, the various panel units can work various cases at any time. To prompt action on several cases, it is quite

conceivable for more than one panel to be working at the same time, each one assigned to try to settle a dispute.

III. Jurisdiction and Procedure

A. Coverage

As provided under the LGC of 1991, cases as follows are to be handled at *barangay* level in the first place. As far as prison sentence and fines are concerned, the penalties that fall within the jurisdiction of the BJS Law are for the period of imprisonment ranging from one day to thirty days; ranging from one month and one day to six months; and for the maximum period from six months and one day to two years and four months. In addition, there are at least several offences carrying less-than-a-year penalty, as reflected in as many articles under the Revised Penal Code, including light threats, grave and light coercion, and other similar coercion offences such as compulsory purchase of merchandize and payment of wages by means of tokens. Moreover, there are also several offences against involving minors that may now be settled at the board level. These include unlawful use of means of publication and unlawful utterances (Art. 154), alarms and scandals (Art. 154), using false certificates (Art. 175), using fictitious names and concealing true names (Art. 178), illegal use of uniforms or insignias (Art. 179), physical injuries inflicted in a tumultuous affray (Art. 252), giving assistance to unconsummated suicide (Art. 253), responsibility of participants in a duel if only physical injuries are inflicted or no physical injuries have been inflicted (Art. 260), unlawful arrest (Art. 269), qualified trespass to dwelling without the use of violence or intimidation (Art. 280), formation maintenance and prohibition of combination of capital or labor through violence or threats (Art. 289), discovering secrets with abuse of office (Art. 290), revealing secrets with abuse of office (Art. 291), threatening to publish and offer to prevent such publication for a compensation (Art. 356), prohibited publication of acts referred to in the course of official proceedings (Art. 357), incriminating innocent persons (Art. 363), and intriguing against honor (Art. 364).

B. Case Certification

One of the main purposes of this dispute settlement system is to promote the amicable settlement without formal court action as a means of the speedy

administration of justice. For this reason, a party with a cause of action against another on a subject within the authority of the board, cannot take one's case directly to court or to any other government office for adjudication, unless one can show that earnest efforts at settlement have failed or that such settlement has been validly repudiated. A certificate to this effect shall be issued as evidence to the court of the fulfillment of the condition for judicial adjudication. Regarding the general rule requiring prior conciliation, there is exceptional cases where urgent judicial action is necessary to prevent an injustice from being further committed. The first case is where the accused has already been arrested without a warrant and is under police detention. In such a case, a person accused cannot be charged by the police without prior conciliation proceedings and it is doubtful, if a judge would grant bail to anyone who has not been charged in the court. The result would be an injustice to the accused, consequently, the exemption to file such a case directly with the court. The second case is where a person is illegally deprived of his rightful custody over another person, where one is illegally deprived of his liberty. In such cases, the remedy would be to file a petition for habeas corpus with the court to regain custody or to secure the immediate release of the person being detained. To require conciliation of such cases while detention unjustifiably continues will not serve the ends of justice. Habeas corpus is a remedy available to a person unjustly detained, whereby a written order of a court directs a person who is detaining another to bring said person before the court so that it may determine whether or not the confinement or detention is legal. The third case is the action couple with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support during the pendency of the action. Direct recourse to the court is permitted in these cases, because they must be adjudicated promptly and definitely to avoid injury or damage to the person or interest of the petitioner. The fourth case is that where the action, if not brought to court within the time prescribed by law may no longer be filed with the court, because the criminal liability is totally extinguished or the right to file civil action has lapsed as fixed by law.

C. Rules on Venue

The place provided by law for filing a proceeding is often referred to as the venue. An action cannot be brought for settlement to any *barangay* at random except the place chosen as venue of the proceedings. It must be filed with the *barangay* that has proper authority over it in accordance with the following rules:

- (1) If the parties reside in the same *barangay*, the complaint should be filed in the same *barangay*;
- (2) If the parties reside in different *barangays* within the same city or municipality, or if they are located in different cities or municipalities, but their respective *barangays* adjoin each other, the dispute shall be settled in the *barangay* where the respondent or any one of the respondents actually resides, depending on the choice of the complainant; and
- (3) If the dispute involves real property, it shall be settled in the *barangay* where the respondent or any part thereof is located. Where the parties live in separate, but adjoining *barangays*, the law assigns the venue to the place of the respondent in the belief that the chances for reaching a settlement will be increased by the persuasive efforts of a *barangay* chief who is personally known to the respondent. It was deemed unwise to place venue in the complainant's *barangay* as this could be used to harass a respondent, and cause the latter to resist settlement efforts of an official who is a stranger to him.

D. Rules on Prescription

Offences or cases covered by the BJS have some normative limitations. The Revised Penal Code, under Article 90, provides the following with their corresponding prescriptive periods such as crimes punishable, imprisonment from six months and one day to six months shall prescribe in ten years, and imprisonment from one month and one day to six month, shall prescribe in five years; the crime of libel or other similar offences shall prescribe in six months; and light offences that prescribe in two months.

On the other hand, Title V of the Code, provides prescriptive period of right to ownership and to file on civil cases such as recitation of movables prescribes through uninterrupted possession for four years in good faith (Art. 1132), ownership and other real rights over immovable property are acquired by ordinary prescription through possession of 10 years (Art. 1134), a mortgage action prescribes after ten years (Art. 1142), and action for forcible entry, detainee and defamation prescribe after 1 year (Art. 1147).

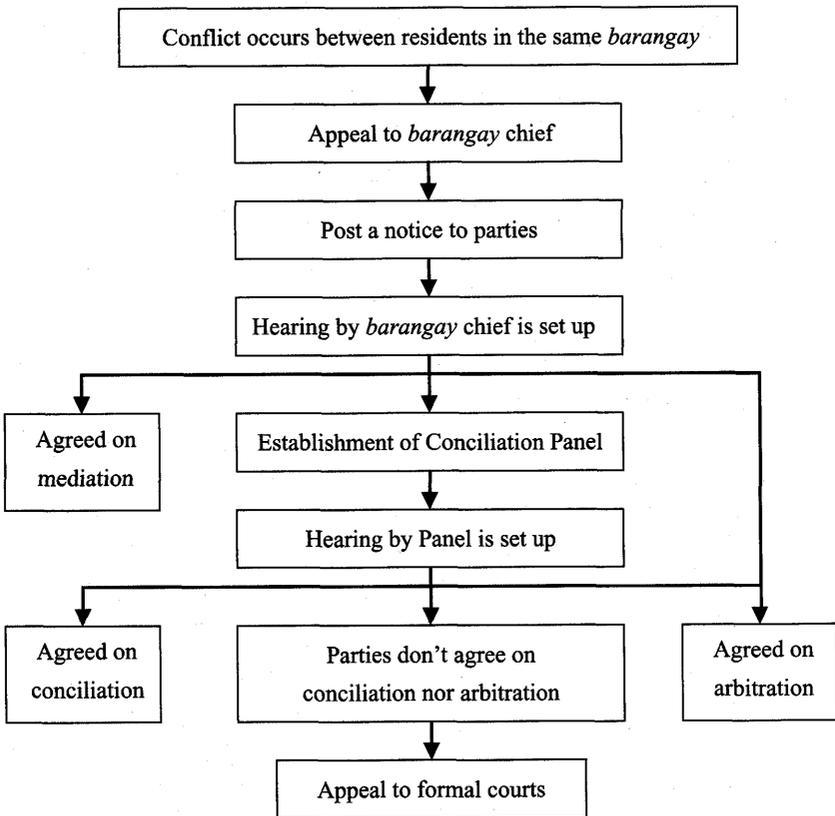
E. Dispute Settlement Measures

1. Procedures

When the *barangay* chief or the panel settles disputes, their first stage will

be conciliation or mediation. The next alternative mode that the *barangay* chief and the panel may use is arbitration. Arbitration is to be used only when the first stage fails to settle the issues. The parties themselves may then agree to submit their case for adjudication at any stage of the conciliation proceedings. In any cases, however, the dispute should first be presented for settlement to the *barangay* chief. If the chief's efforts at conciliation or arbitration fail, the law then requires the chief to refer the case to the panel. If the panel fails to settle disputes despite their efforts, the case shall be forwarded to formal courts (see Figure 1).

Figure 1
Procedure of *Barangay* Justice System



2. Conciliation and mediation

Conciliation or mediation is the act of intervening between parties to prevent or settle a dispute without any previous agreement on the part of the parties concerned to abide by the decision of the *barangay* officials who takes a role of a conciliator or mediator. The conciliators or mediators has two primary roles or functions. Firstly, after ascertaining the issues in dispute, they shall assist the parties in reaching an agreement with all their efforts. Secondly, they try to adjudicate on the merits of the case. As mentioned, the panel is a pool of conciliators who are putatively common friends who could counsel and advise the parties and persuade them to come to terms, however, if ever it makes any, is not binding on the parties. Agreement is usually reached by mutual compromise that the parties could make by themselves or, at the instance of the conciliator. The counsel and advice given by the conciliator usually carries conviction with the parties in proportion to their belief in the conciliator's integrity and their respect for the conciliator's power or influence on them. Therefore, it is said that the panel is a significant key concerning much of the success of conciliation proceedings.

3. Arbitration

Arbitration is a process of adjudicating disputes in which the parties agree beforehand to be bound by the decision of a third person or body in place of a regularly organized tribunal. The arbitrator's role is to investigate, examine and determine matters of contestation between the disputants. The arbitrator shall listen to them and their witnesses and on the basis of the evidence provided, the arbitrator makes own conclusions and renders judgment that the parties, by previous agreement, are bound to respect and obey.

IV. Examination of the *Barangay* Justice System

The examination is to illustrate the image of the BJS, despite various regional differences throughout the country, referring to cases in Naga, the Bicol region, located in the southern part of Luzon Island.¹³ The reasons why Naga city was chosen as the research field are that it has a long history dating back to the time of Spanish rule, therefore researchers can avoid the uniqueness of the new cities established by American colonial authorities or by migrants from other part of the country; and there is less direct intervention by the central government in the city's local politics unlike the cities of Metro Manila. Additionally, the city's industrial structure is dominated

by the commercial sector, which provides a typical feature of a regional Philippine city.¹⁴

It is said that the BJS represents a challenge to the long tradition of the Philippines, being the only decentralized program that has been recognized by law for the administration of justice at the local level. It is, therefore, the only forum in the country where family and community disputes can be amicably settled without having to go formal courts that costs very expensive and requires a long time.

According to results from the field survey, cases dealt in *barangay* Dinaga, Naga city, under the BJS include physical injuries, collection of money and ejectment, unlawful detainer, redemption of pawned item, demand of specific obligation, grave coercion, slander, damages, disturbance, confrontation, malicious mischief, oral defamation, and threat. In the period of between January 2001 and June 2002, fifty-one cases were brought to the *barangay* chief and forty-three of them were settled amicably (see Table 2). Residents pointed out several elements as strengths of the BJS including personal atmosphere in a court, flexibility of hearing schedule, less technical proceedings, informality, and spontaneity. They also suggested that the enforcement of rights at *barangay* level is easier compared with going to formal courts, and better legal knowledge, more ideas and explanation shall be easily obtained from *barangay* officials.

The BJS has been maintained under the decentralization framework, and its implementation has encountered certain disturbances that need to be overcome to function well enough as a genuine alternative to improve access to justice for the less fortunate. Needless to say, a supportive legal background is significant, however, it is not a sufficient factor to guarantee the program's effectiveness. As it has already been suggested earlier, the gap between legality and reality often remains very wide, and in the case of dispute resolution practices, power and social conditions play an important role. Most disputants in Naga city pointed out several limitations of the BJS including that (1) it can be too time-consuming and costly sometimes; (2) its procedures can be too complicated; and (3) it is often difficult to obtain fair resolution.

As the supervising system of the BJS is concerned, it focuses on the mandate of the law, which implies the absence of specific programs where supervising are monitored. According to the author's interview in both the Department of Justice and the Department of Interior and Local Government in Manila, there are no such programs set up and it is difficult that they can hardly collect any statistical data from each *barangay* in the country. Moreover, in the Department of Justice, a State Prosecutor gave a comment

Table 2
Category of Cases settled in *Barangay* Dinaga (01/2001–06/2002)

Case	Percentage
Collection of money	16%
Confrontation	14%
Ejectment	12%
Physical injuries	10%
Demand of specific obligation	8%
Collection of money and ejectment	6%
Damages	6%
Oral defamation	4%
Unlawful detainer	2%
Redemption of pawned item	2%
Grave coercion	2%
Slander	2%
Threat	2%
Malicious mischief	2%
Marital problem	2%
Disturbance	2%
Others	8%

Source: By the author based upon information from the logbook of *Barangay* Dinaga where the author visited on 5 September 2002.

that the Department of Justice has not been able to do specific supervising or monitoring on BJS due to a severe lack of budget.

In the last decade, the Philippines have gone through various approaches and experiences of legislative initiatives, aimed at making decentralization and citizen participation more efficient and effective. The progressive devolution of power and responsibilities from the central government to the different sub-national levels, and the recognition of the role of civil society in policy planning and implementation, have indicated a challenge to the centralized tradition in the country, however, there are still great limitations in the implementation of the new frameworks. Concerning efficient and effective implementation of administration of justice, the integration of the central government, the local governments and civil society play a significant role to promote institutional support in the form of inter-governmental, municipal and central government agencies. Particularly, civil society

collaboration shall raise recognition among *barangay* officials and community residents on the importance of the BJS. This wave will help achieve greater awareness of the program in *barangay* planning and budgeting councils, which shall ensure a better share in the budget distribution.

As far as the documentation and reporting function is concerned, it can be said that the individualization of justice that ADR mechanisms represent makes it difficult to analyze the different cases filed and the respective agreements reached, unless there is an efficient reporting and documentation system. Apart from official training programs, the BJS implementers would need a frame of reference drawn from the old cases dealt in the past, if they are to improve their knowledge and effectiveness in carrying out their dispute resolution functions. Although it is a direct mandate of the law that the board secretary shall keep and maintain a record book of all the complaints filed with the *barangay* chief, this function is often not well performed. Thus, it is important to include this in any training designed for board secretary, since efficient reporting mechanism is the necessary first step for guaranteeing a well-organized documentation system. This can also serve to establish ADR jurisprudence, based on past precedents that may be useful in orienting mediators and conciliators, and in facilitating the evaluation of community problems in the country.

As far as improving supervision mechanisms regarding the BJS is concerned, the Philippine decentralized system is presented as an obstacle for a well-performed organization that can monitor its achievements, and detect its errors. The central supervising body, the Bureau of Local Government Supervision of the Department of Interior and Local Government, does not have human resources to exclusively monitor the BJS nationwide, as it only accesses the Department's field officers to secure data and collect information from 42,160 *barangays* in the country. Consequently, an evaluation on a national scale shall be difficult to make, as there is no central nerve by which experiences is documented.¹⁵

According to the author's survey, a multi-agency with initiative on the BJS is going to be established in order to improve the supervising mechanisms in the country. The agency will be comprised of representatives from Department of Interior Local Government, Department of Justice, Philippine Judicial Academy (hereinafter referred as to PhilJA), Supreme Court, University of the Philippines Law Center, the Integrated Bar of the Philippines (hereinafter referred as to IBP), the Consortium of Centers for Local Governance, Inc., the Gerry Roxas Foundation, Inc., and the Conflict Resolution Group Foundation, Inc. In July 2002, all representatives concerned agreed on provisions as below:¹⁶

- (1) Jointly organize the BJS program management team to develop, coordinate and monitor programs of action for the BJS strengthening nationwide;
- (2) Generate and mobilize resources for research, training, monitoring and evaluation for the effective BJS;
- (3) Initiate and advocate reforms that aim to enhance the BJS and other community-based justice services;
- (4) Establish and maintain close relationship and enter into joint projects with other government and non-government organizations, local or international, in the furtherance of the BJS objectives;
- (5) Formulate and implement policies for integrated training program for *barangay* chiefs, members of the board and community volunteers in collaboration with training and development institutions; and
- (6) Organize working communities to under take any matter assigned to them by the BJS management team.

To make the BJS more efficient and effective, the Department of Interior and Local Government made agreements on advocating the BJS program and other local government unit based justice-related service; and initiating research as well as maintaining a data bank on the BJS. The Department of Justice agreed on coordinating the development of training materials on the BJS and legal literacy; and initiating policy studies for the BJS reforms. In addition, Court of Appeals, Supreme Court, PhilJA, U.P. Law Center, the Gerry Roxas Foundation and the Conflict Resolution Group Foundation agreed on developing training materials on the BJS and other community-based justice services; and organizing a speakers bureau for the BJS orientation trainings and seminars. Furthermore, U.P. Law Center, IBP, the Department of Interior and Local Government, the Gerry Roxas Foundation and the Conflict Resolution Group Foundation made agreement on conducting and evaluating implementation of the BJS program and initiating or advocating reforms to improve the BJS programs. The Department of Interior and Local Government, the Conflict Resolution Group Foundation, and the Gerry Roxas Foundation also agreed on generating and mobilizing resources for research, training, monitoring and evaluation for the BJS and other community-based justice services. The secretariat services to ensure successful synchronization of the above-mentioned multi-agency efforts and initiatives on the BJS shall be provided by the Department of Interior and Local Government through the Bureau of Local Government Supervision. The secretariat's responsibilities include providing administrative and technical support services, coordinating, monitoring and ensuring the

implementation of the integrated capability-building program and monitoring and evaluation system on the BJS submitting reports on the progress and completion of the approved plans and programs to the BJS program management team.

V. Concluding Note

A formal judicial system that has showed its incapacity to fulfill the function and responsibility of delivering justice equitably has led to an increasing interest in ADR, and to the legal recognition of the BJS in the Philippines. The BJS appears as an acceptable mechanism for the less fortunate, apart from being an institutionalized system enforced by law, as it is localized in the community and administered by local officials such as a *barangay* chief elected directly by residents and considered to be more understanding of community needs and values compared with judges and lawyers in formal courts. Although this individualization of justice may reveal certain limitations, people feel more satisfied with flexible hearing schedules, personal atmosphere, less technical proceedings, informality and spontaneity in which they are allowed to negotiate their disputes at their own pace, making them responsible for the final outcome. Determinably, the BJS, as an ADR, has proved to be less expensive and speedy method in responding to the issues of delay, and access to justice and provides a more accessible means for less fortunate to realize rights to settle their disputes at the community level. Therefore, although there are still some limitations and gaps, the system has made the overall progress in the administration of justice in the country.

Notes

- 1 Const. Art. III, Sec. 1.
- 2 See World Bank, *World Development Report 2000/2001: Attacking Poverty*, Oxford: Oxford University Press, 2000.
- 3 Bakker, Jan William, *The Philippine Justice System*, Leiden: PIOOM/CIJL, 1997, p. 157.
- 4 There are 950 Regional Trial Courts, of which, only 731 have incumbent judges (23.05% vacancies). Not all municipalities have municipal trial courts, and even when courts exist they are often unfilled. Thus, even if the court functions in the

meantime, the case filed will have to wait for an available judge. For further information, see *Philexport News and Features*, June 30, 2000.

- 5 Disini, Domingo P. et al., *Dispute Resolution Mechanism in the Philippines*, IDE Asian Law Series No. 18, Chiba: IDE-JETRO, 2002, pp. 19–27.
- 6 Furthermore, both the Supreme Court and the Department of Justice have identified the use of mediation as part of their Judicial Reform Program. This priority has not only been motivated by the need to overcome the problems, but also as a result of ADR experiences in different parts of the world, including the Philippines. In fact, inspired by the BJS's accomplishments, the Supreme Court and the Department of Justice decided to apply mediation in the court system through the development of pilot court-annexed mediation projects.

As a result of all these experiences, the Congress discussed a Draft Bill, House Bill No. 5004 introduced by House Speaker Jose C. de Venecia, Jr., entitled "The Alternative Dispute Resolution Act of 2002," which declares:

 - (1) To establish the Philippine Alternative Dispute Resolution Center;
 - (2) To establish the use of alternative dispute resolution systems to achieve speedy, impartial and non-adversarial justice;
 - (3) To utilize alternative dispute resolution system as a bar and diversionary procedure for appropriate cases; and
 - (4) To engage active private sector participation in the administration of justice.
- As far as the House Bill 5004 is concerned, Atty. Teofilo Pirando, Jr., National President of the Integrated Bar of the Philippines commented that the Article regarding the need of legal education and training of lawyers in negotiations, mediation, arbitration, and other ADRs who are at the core of the justice system shall be added in the draft bill, as students in law schools are taught nothing about ADR matters presently (Source: the author's interview on 2 September 2002).
- 7 For further information, see William Henry Scott, *Barangay: Sixteenth-Century Philippine Culture and Society*, Quezon: Ateneo de Manila University Press, 1994, pp. 4–6.
- 8 In Section 15 of the LGC, as a local government unit, a barangay shall exercise its powers as a political subdivision of the National Government and as a corporate entity representing the inhabitants of its territory.
- 9 Reynaldo B. Aralar, *Barangay Government*, Manila: R. B. Aralar & Associates, 2002, p. 3.
- 10 LGC, Sec. 17 (a).
- 11 LGC, Sec. 17 (b).
- 12 LGC, Sec. 402.
- 13 All information is based on the field research that the author conducted both in Manila and Naga city from 27 August to 11 September 2002.
- 14 Kawanaka, Takeshi, *Power in a Philippine City*, Chiba: IDE-JETRO, 2002, p. 4.
- 15 In August 2002, the proposal to establish the Alternative Dispute Resolution Law (Bill No. 5004) was submitted to the Congress. Its provision for the creation of the Philippine Center for Alternative Dispute Resolution, to which civil and minor criminal cases would be referred before they are sent to the formal courts and the prosecutors office, could help strengthen the supervision of the BJS. One of the purposes of the Philippine Alternative Dispute Resolution Center is "to supervise, oversee, promulgate guiding rules and regulations, monitor, evaluate, regulate, and

institute changes as necessary to the PMC and BJS Coordinating Council for the purpose of developing, strengthening, aligning, improving their programs, in accordance with world standards of ADR practice and achievements” (The Alternative Dispute Resolution Act of 2002, House Bill No 5004, Sec.4-b).

- 16 Based on information obtained by the author from DILG, Manila, on 3 September 2002.