THE BARANGAY JUSTICE SYSTEM IN THE PHILIPPINES: IS IT AN EFFECTIVE ALTERNATIVE TO IMPROVE ACCESS TO JUSTICE FOR DISADVANTAGED PEOPLE?

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By

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SUMMARY

This paper will analyse the Barangay Justice System (BJS) in the Philippines, which is a community mediation programme, whose overarching objective is to deliver speedy, cost-efficient and quality justice through non-adversarial processes. The increasing recognition that this programme has recently acquired is mainly connected with the need to decongest the formal courts, although this paper will attempt to illustrate the positive impact it is having on improving access to justice for all community residents, including the most disadvantaged.

Similarly, the paper will focus on link between the institutionalisation of Alternative Dispute Resolution (ADR) and the decentralisation framework in the country. It will discuss how the challenging devolution of powers and responsibilities from the central government to the barangays (village) has facilitated the formal recognition of the BJS as an alternative forum for the resolution of family and community disputes.

Moreover, the paper will support the idea that dispute resolution is not autonomous from other social, political and economic components of social systems, and will therefore explore how the BJS actually works within the context of the Philippine society. Thus, the analysis will be based on the differences between how the BJS should work according to the law and how it really operates in practice. It will particularly exhibit the main strengths and limitations of the BJS, and will propose certain recommendations to overcome the operational problems in order to ensure its effectiveness as an alternative to improve access to justice for the poor.
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>ALG</td>
<td>Alternative Law Groups</td>
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<td>BJA</td>
<td>Barangay Justice Advocates</td>
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<td>BJS</td>
<td>Barangay Justice System</td>
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<td>DFID</td>
<td>Department For International Development</td>
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<td>DILG</td>
<td>Department Of Interior And Local Government</td>
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<td>DOJ</td>
<td>Department Of Justice</td>
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<td>GRF</td>
<td>Gerry Roxas Foundation</td>
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<td>KP</td>
<td>Katarungang Pambarangay (BJS)</td>
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<td>LDC</td>
<td>Local Development Council</td>
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<td>LGC</td>
<td>Local Government Code</td>
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<td>LGU</td>
<td>Local Government Units</td>
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<td>MOA</td>
<td>Memorandum Of Agreement</td>
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<td>NGO</td>
<td>Non-Governmental Organizations</td>
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<td>PD 1508</td>
<td>Presidential Decree No 1508</td>
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<td>PO</td>
<td>Peoples Organizations</td>
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<td>USAID</td>
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PREFACE

During the Masters course in Governance and Development we had very few courses dedicated to the role of Law in development, but somehow I felt curious and inspired about it, and therefore decided to write my dissertation on a related issue: how alternative dispute resolution (ADR) can help improve access to justice. This is a very specific aspect of recent legal reforms, and is closely connected to the increasing concern on the institutional incapacity for administering equal justice for all. Following this idea, administrative and judicial reforms, as necessary steps for improving the quality of justice, are becoming important targets in recent development programs. Hence, it is within this framework that ADR methods are acquiring greater attention, as a possible complement to formal courts, or at least to provide new paths to justice for those whose alternative is no access at all.

In my opinion, lack of access to justice is one of the main indicators of poverty. It obliges poor people to build informal systems to handle their conflicts, which are often more arbitrary and dangerous for the poorest of the poor. Moreover, the absence of real access to civil and social rights that poor people are entitled to as citizens, make them develop a culture of victimization, which distance them even more from the sense of citizenship. Consequently, they end up reinforcing their intolerable social, political and economic discrimination, reproducing their situation.

Considering that poverty reduction is among the international development targets, greater efforts should be made to improve access to justice for the most disadvantaged, in order to help them out of the vicious spiral of poverty. Formal judicial systems have proven inadequate in resolving the large number of cases filed, which cover a wide range of issues. Thus, when it comes to prioritising, cases involving corruption and commercial interests might be given precedence. As a result “petty disputes” without any commercial implications are easily left aside.
Without assuming ADR methods as a panacea, and being very aware of their limitations and hindering factors, they are increasingly being looked to as possible mechanisms to make access to justice more inclusive.

The dissertation is based primarily on secondary sources available in the University of Sussex and the Institute of Development Studies (IDS) libraries. Likewise, some of the books, articles and laws used were provided by people and organizations in the Philippines, which have been extremely helpful and collaborative. However, the lack of empirical data will limit the possibility to draw definitive statements on how the BJS actually works. The few data used are part of several quantitative and qualitative studies conducted by the Gerry Roxas Foundation (GRF) in different regions, which, although they have been very useful to make initial assessments on the operationalisation of the BJS, their findings cannot be contrasted with other studies. I would anyway like to show my gratitude to all of them, in particular Agnes Villarruz, Executive Director of Gerry Roxas Foundation, Raissa Jajurie, Fay Gumba, and Marlon Manuel. I am also indebted to Rose Marie Nierras, Research Officer in the Participation Group, IDS, for her patience and extraordinary help throughout the year, and especially for the time invested and the strategic information provided for my dissertation. I am also very grateful to Celestine Nyamu for her ideas and orientation as supervisor of this dissertation, and for being the person who introduced the role of law in development in our Masters course.

Special thanks to my father, Carlos Sanz-Ramos, for his financial support that made it possible to pursue my studies, and to Pilar, Marta and Salvatore for their encouragement and patience during the whole year.
I. INTRODUCTION

A. Context

Within the context of the renewed interest in law and development, the “good governance” agenda has recently incorporated the ‘rule of law’ as one of its main pillars. This initiative denotes the recognition of the impact that legal and judicial institutions have on the lives of ordinary people, especially the poor and disadvantaged, who are often the most severely affected by the lack of security and protection in their everyday lives (World Bank, 2000). Formal judicial systems evidence serious deficiencies in providing quality justice to all, and as social institutions, they are deeply entrenched in the power dynamics that prevail in the context in which they operate. It is therefore essential to consider the link between law and power when analysing the huge differences in access to justice, which, especially in many developing countries has forced poor people to avoid contact with the formal legal system.

This particular concern about access to justice has led to an increasing experimentation with a variety of ADR mechanisms worldwide. The paper will focus on recent initiatives to address this problem in the Philippines, particularly the promotion and institutionalisation of the Barangay Justice System (BJS) – an ADR programme at the barangay (village) level- whose ultimate goal is to improve access to justice through the amicable settlement of family and community disputes.

The BJS was first recognised in 1978 with the enactment of PD 1508 under Marcos dictatorship, but it was strengthened and further consolidated within the decentralisation framework and the enactment of the 1991 Local Government Code (LGC). The link between decentralisation and the recognition of ADR is what makes the Philippine case original and attractive, mainly considering the long highly
centralised tradition imposed by colonial powers. The BJS is therefore the result of a challenging devolution of powers and functions from the central government to the barangays, and represents the only decentralised justice programme that has been legally and politically recognised.

In addition, the paper will emphasise the importance of the Philippine social and political conditions to understand how the BJS actually work. The large gap between *legality* and *reality* that characterises the delivery of justice in many developing countries is also present in the Philippine context, and plays an important role in the operation of both the formal judicial system and the BJS. The analysis will start with the identification and discussion of the strengths of the programme in helping relieve the courts of docket congestion, and in improving access to justice for all barangay residents. Subsequently, it will examine its limitations focusing on the difference between what the law mandates and how its implementation is actually taking place.

Besides, the paper will suggest that the growing recognition of the need to build partnerships between the governments and civil society to improve security and access to justice for the poor and most disadvantaged (DFID, 2000) is also part of the state policy in the Philippines since the formulation of the 1987 Constitution and the 1991 LGC. Hence, different NGOs such as the Gerry Roxas Foundation (GRF) are actively collaborating with government agencies to help strengthen the BJS and advocate for further judicial reforms. Therefore, this new status of civil society organisations will be deemed a promising channel to overcome the operational problems of the BJS, and thus, to improve its effectiveness in providing access to justice for all, including the poor.

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1 The presence of colonial powers in the Philippines signified the imposition of the western act-oriented process of adjudication in detriment of the pre-colonial mediation and conciliation traditions of resolving disputes (Tadiar, Alfredo F., 1984).
B. Structure of the paper

The paper will start with a theoretical discussion on ADR worldwide, focusing on the role that these mechanisms can play in improving the quality of justice by providing new spaces where certain cases can be dealt more rapidly and inexpensively, and thus, by enabling a better access to justice for disadvantaged groups. Moreover, this conceptual section will also contain a short description of the current debate between supporters and opponents of ADR, reflecting the important strengths and limitations of these techniques.

The paper will then dedicate a chapter to ADR in the Philippines in order to contextualize and describe the main characteristics of the Barangay Justice System (BJS). It will first introduce the current conditions of the formal judicial system, emphasising the growing concern in the country with the chronic delays and frequent corrupt practices in the handling of justice, which represents the main motive for the increasing recognition and institutionalisation of ADR as part of the judicial reform programme. Secondly, the paper will situate the Barangay Justice System in the overall evolution of the barangays in the Philippines. For this purpose, it will explain the progressive formal appreciation that the barangays have acquired, especially under the decentralisation framework in the early 1990s. Finally, the last section will illustrate the provisions that the 1991 Local Government Code (LGC) has established for the functioning of the BJS, including its structure, procedures, target sector, cases under its jurisdiction and people involved in its execution.

The next chapter will focus on the analysis of the BJS that, with the aid of some empirical data provided by the Gerry Roxas Foundation (GRF), will attempt to draw up some of the major operating strengths and limitations of the programme in relation to its role in improving access to justice for community residents, particularly the poor. It will also introduce a section on civil society in the Philippines and the initiatives that certain organisations are developing to promote and strengthen the BJS.
In the conclusion, the paper will suggest that the BJS can be considered a promising alternative to improve access to justice for the poor, although greater efforts shall be put in place to overcome its practical problems, and thus, improve its effectiveness and responsiveness to the poor. In order to approach such a challenge, the paper will propose certain recommendations for government officials and civil society organisations that are searching for possible policy changes.
II. THEORETICAL DISCUSSION

Situating ADR within current ‘governance’ concerns

A. ADR & The Access To Justice Movement

The worldwide access to justice movement is attracting considerable support, and is part of broader concerns on the ‘rule of law’, which is one of the pillars of ‘good governance’. This access to justice movement can be considered a very important manifestation of a new approach to both legal scholarship and legal reform in many different parts of the world. It has been specially strong in continental Europe and the U.S. since the 1960s, when the idea of a welfare state led reformers to call for changes in national legal systems to enhance “access to justice,” especially for disadvantaged groups (Sinnar, S., 2001).

At a theoretical level, the access to justice movement challenged the formalistic approach that identified law with the ‘system of norms’ produced by the state; an approach that supported an extremely simplified perception of social reality, without taking into consideration the ‘real-world components – subjects, institutions, processes and, more generally, their societal context’ – (Cappelletti, M., 1993:282). It emphasizes the need to go beyond this limited conception of law, and to analyze the processes of interpretation and implementation of those rules, which reveal how differently law operates in practice according to class, gender and ethnicity (Houtzager, Peter P., 2001:8). Thus, the movement represented a move towards a more realistic and complex vision of human society. It emphasized the need to contextualize law within a particular cultural background, and to consider its normative aspect as only one of its elements.

Moreover, as a reform movement concerned with the limitations of the traditional civil law, it became part of the criticism of liberal conceptions of the rule of law-, which neglected the real obstacles that many people encounter in accessing and benefiting from civil and political liberties. The politico-philosophical ideal of the liberal revolution is
difficult to criticize, since the achievement of a genuine equality before the law is something that we would all desire. However, the gap that separates this ideal from reality is enormous, and therefore it is necessary to go beyond the ‘traditional liberties’ and add a social dimension to the Rule of Law state.

People’s material circumstances influence their experience of justice. It is thus necessary to fight against the conventional belief that “poverty is a misfortune for which the law cannot take any responsibility at all” (a statement by the highest court of the U.S. in the 1930s, Cappelletti, M., 1993:295). Hence, still today, the access movement tries to provide possible solutions to existing economic, organizational and procedural difficulties in order to make justice more responsive to all citizens, in particular the poor.

Following this motivation, there have been a great number of alternatives oriented towards the need to lessen the difficulties of access by identifying innovative means to resolve civil disputes in a less costly, less time-consuming and simpler way than formal litigation in the courts. On the one hand, the movement has promoted a more extensive legal aid and advice to address the economic barriers, and thus improve the quality of information and awareness of legal rights (Cranston, R. 1997:233). On the other hand, and responding to the recent economic transformations of an increasingly globalised world, it tries to propose new mechanisms that can protect isolated citizens from the violation of their social rights. The development of class action suits allows large number of similar claims to be aggregated. Therefore, the economic rationale is that group suits reduce the systemic cost of litigating multiple claims\(^2\). Reforms in these cases imply the creation of devices, whose main intention is to provide effective protection of these collective interests\(^3\) to overcome organizational limitations.

\(^2\) For instance, the case of an individual damaged by mass pollution, or the isolated consumer of a particular good produced and distributed in large quantities.

\(^3\) For this purpose, various mechanisms are being developed in different countries. An illustrative example is the establishment of specialized governmental agencies that represent and protect people in certain areas (Consumer Ombudsman or Ombudsman to protect against sexual discrimination in labour relations in Scandinavian countries, among others). Further, in Continental European countries a device known as ‘collective action’ has been introduced, where specialized private associations are given the authority to represent particular collective
The access to justice movement has also been influenced by the legal pluralist challenge to ‘legal centralism’ – the idea that state norms have a monopoly in social ordering. The strongest expression of the legal pluralist\(^4\) position would hold that norms generated in various spheres of social interaction (such as religious or customary norms, or indeed business practices) are no less important than formal state laws (Griffiths, J., 1986:3). Thus, the access to justice movement emphasizes the fact that new alternatives – or alternatives that are informed by informal systems that people have developed through their social interactions- must be put in place to guarantee effective access to justice for all. Reformers are therefore searching for real ‘alternatives’ to the ordinary courts and litigation procedures. This growing concern to find effective alternatives to the formal judicial system has facilitated the progressive support for mediation, conciliation and arbitration as means of dispute settlement.

Alternative Dispute Resolution (ADR) practices are not new, and societies world-over have been using non-judicial, indigenous methods to resolve disputes for very long. What is relatively new is the extensive promotion and proliferation of ADR models, the wider use of court-connected ADR, and the increasing use of ADR as a tool for achieving goals broader than the settlement of specific conflicts. These models in both developed and developing countries have a strong influence from processes originated in the U.S. or hybrid experiments mixing ADR models with elements of traditional dispute resolution.

ADR can be defined as ‘devices –whether judicial or not- that have emerged as alternatives to the ordinary or traditional types of procedures. Since the 1970s there has been a growing number of moves to institutionalize ‘alternatives’ to litigation, which has led to the appearance of a broad range of dispute processes that are trying to find their way in the multiple judicial reforms worldwide.

Notwithstanding the heterogeneity in nature and institutional location of these alternatives, ADR have a common characteristic in that they claim to promote decision-making through negotiation, with the aim of reaching agreed outcomes. Their objective is to strengthen and institutionalize more participatory processes, in which the disputants can negotiate and come up with a consensual settlement. This is consistent with recent emphasis on expansion of participation at all social and political levels, and with a greater desire of people to take control of decisions that affect their lives, instead of having decisions imposed on them (Abaya, A.T., 2000). Likewise, the increasing recognition of the need to ensure safety, security and access to justice for all has led to the design of several programs that aim at including civil society as active participants (DFID, 2000).

It is important to highlight that even if litigation has its goal in judgment, there is a growing involvement of judges in the sponsorship of settlement (Glasser, C. & Roberts, S., 1993:278). Especially at lower levels (county courts for example), judges are increasingly suggesting further bilateral negotiation, or recommending outside mediation, which leads to a breakdown of the traditional boundary between the mediator and the judge.

Despite the intense critics, the idea of ‘settlement’ is becoming increasingly influential within the formal judicial system, leading to the proliferation of Court-connected ADR. These are “ADR processes that are linked formally to the governmental justice system; such ADR activities are authorized, offered, used, referred by, or based in the court system”(USAID, 1998). The Mini-trial and early neutral evaluation are two illustrative examples. Further, some judicial system may require the parties to negotiate, conciliate, mediate, or arbitrate prior to court action, being therefore a mandatory process, whose agreements may be enforceable as court orders.

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5 Mini-trial is a hybrid model, where a panel of authorized high-level principals from the disputing parties engage in a summary hearing to learn the strengths and weaknesses of their cases, followed by an attempt to resolve the dispute by negotiation between the party representatives, and other forms designed to promote settlement outside of the formal system (Abaya, A.T., 2000).

6 Early neutral evaluation is also a hybrid model, where lawyers present summaries of their cases and receive a non-binding assessment by an experienced neutral attorney.
At the same time, there is a growing interest in extra-judicial ADR, or “private ADR”, which in many countries represent historically common dispute resolution practices. Their increasing importance in recent years is a result of the perception that lawyers, judges and other integral parts of the formal adjudicative system are part of the financial and procedural obstacles that make access to justice almost impossible for many people. Among them, specialized ADR programs focused on particular types of technical and complex disputes, such as commercial and environmental disputes. For instance, commercial ADR in Bolivia have been legally framed with the enactment of the 1997 Arbitration and Conciliation Law; South Africa has become one of the world’s most active countries for experimentation of ADR systems, especially for resolving union-management disputes (USAID, 1998). Even in the Philippines labor disputes are preferably resolved through mediation, conciliation and arbitration, a policy that is clearly stated in the Labor Code (Marlon J. Manuel, interview, 2002).

Another example of private ADR is the community justice system at the local government level, which is supposed to address and resolve family and community disputes in a more efficient, cheaper and quick way than formal courts. Local\textsuperscript{7} community mediation and conciliation systems are proliferating as a means to overcome the existing inequalities in access to justice, and thus enable poor communities to realize their legal rights. Within the framework of many judicial reforms worldwide, the increasing interest in ADR is also due to the belief that many social conflicts do not need to be adjudicated, but instead they can be more appropriately resolved through alternative or complementary mechanisms. In Bolivia and Peru for instance there are pilot university-affiliated conciliation centers working with marginal communities provide poor people with new and more accessible spaces to settle their disputes. Chile is also an interesting country, where a Mediation Centre is being developed as part of a pilot project within the Judicial Assistance Corporation\textsuperscript{8}.

\textsuperscript{7} The creation of \textit{local} mediation and conciliation centres can be a very important measure to improve access to justice for disadvantaged people, since poor communities are often isolated and far from regional and national courts.

\textsuperscript{8} Centro de Mediación zona centro de la Corporación de Asistencia Judicial, May 1996 (Cox, Sebastián & Vera, Pedro, 2001).
All these examples reflect the increasing trend towards the institutionalization and recognition of ADR, which, as every important institutional reform, encounters strong supporters and opponents.

ADR can be applied to achieve better equity and support judicial reforms, but they are not supposed to be responsible for guaranteeing the rule of law. Therefore, they should be deemed complementary, and not possible substitutes of a formal judicial system\(^9\). Also of great significance is the fact that success of ADR programs depend extraordinarily on the context in which they are to be set. Consequently, a country’s background conditions, such as norms and cultural values, institutional capacity and political support, are essential for the effectiveness and applicability of ADR.

B. Debate on ADR: Pros and Cons

Informality And Confidentiality

Most ADR processes are less formal and have more flexible rules of procedure, which can improve access to dispute resolution for those people who feel intimidated by the complex formal system\(^{10}\). This informality is even reinforced by the inclusion of laypersons in ADR procedures\(^{11}\). However, the increasing preferential attitude towards settlement (also as part of recent developments in civil litigation) has led to serious critics regarding the role of judges, and further, of ADR processes. These critics are based on the idea that social norms and values are articulated and publicized through judgments in the courts, and hence, adjudication is a crucial function for social cohesion and stability. In addition, ADR settlements often exclude the public from the proceedings to guarantee privacy and decency, making it very difficult to effectively punish certain violent and recurring offenses (domestic violence is a very illustrative example).

\(^9\) ‘Disputing without the force of law will not work unless the force of law is available as a last resort’ (Nader, L., 2001:25). Therefore, it is necessary to consider ADR mechanisms as complementary of the formal judicial system, which should also be reformed and efficient to guarantee the rule of law.

\(^{10}\) Malinowski insisted on the importance of function rather than form, and on giving priority to the cultural categories of the actors themselves (Snyder, F.G., 1992:142-143).

\(^{11}\) Sometimes persons involved with the same interests and problems as the parties in the case. This is very common in labour and agricultural matters.
Moreover, there is a strong concern about the minimum standards\textsuperscript{12} and guarantees to be maintained in these alternative justice systems. It is therefore of great importance to create effective mechanisms that will protect ADR from falling into a ‘second class justice.’ This can be avoided by providing safeguards of independence and training to ADR staff, and by guaranteeing procedural fairness to ADR procedures (Cappelletti, M., 1993:288).

**Application of Equity**

ADR programs are instruments for the application of equity rather than the rule of law. Concretely, ADR offer the opportunity for mediators/conciliators/arbitrators to contextualise the process to the clients’ circumstances (Wilson, B., 2002:556), unlike the court proceedings that apply standardized solutions based on what the law establishes according to the nature of the conflict. Moreover, they often perform functions, which the state is unable, or unwilling to take on, such as the popular tribunals in some Brazilian shantytowns, where the absence of state courts has pushed local communities to establish informal mechanisms to administer justice and certain political functions (Faundez, J., 1997:19).

Despite its advantages, this is also conceived as an important limitation, since the attempt to resolve individual disputes in a case-by-case basis may lead to resolve similar cases in a different way according to local norms, beliefs and perceptions. As a result, they reproduce local power relations and discriminatory norms (Nader, L., 2001:25), such as the ‘lok adalats’ in India which, even if they were efficient and cheap in resolving disputes, they were perceived as being oppressive against women and lower casts (USAID, 1998).

\textsuperscript{12} This concern is associated with the idea that informal justice may compromise the individual’s rights either because it is inferior in quality, or because the nature of its decision-making overrides legal rights (Cranston, R., 1997:241).
Reconciliation instead of Adjudication: The case of Family and Community Disputes

ADR can be more appropriate for resolving certain civil disputes, in particular small disputes among persons living in ‘total institutions’ such as schools, offices, hospitals, urban quarters, villages and even families, where people are forced to live in daily contact with neighbors, relatives and colleagues, making ‘avoidance’ extremely difficult\(\textit{13}\) (Cappelletti, M., 1993:290). In these cases, the main objective is not the achievement of short-term solutions, but the preservation of the disputants’ relationships.

When the civil court system has many institutional weaknesses and failures (lack of sufficient resources, corruption and systemic bias), and reforms have no short-term perspective, ADR programs can then be an appropriate way to provide an alternative forum for family and community disputes\(\textit{14}\). Following this idea, Bangladesh, India and South Africa have developed ADR programs to by-pass corrupt and discredited court systems that could not provide a reasonable justice for certain parts of the population (women, poor and black people). Similarly, in some Latin American countries (Bolivia, Haiti, Ecuador, El Salvador among others), the need to make justice more accessible has led to serious attempts to develop local, independent, informal dispute resolution panels.

Parties’ Satisfaction

ADR can increase parties’ satisfaction on the outcome of a dispute due to its speed and lower cost. Moreover, the greater control over outcomes empowers parties and

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\(\textit{13}\) This might explain the traditional preference for conciliatory solutions in some primitive societies, where ‘avoidance’ could mean the loss of that kind of family, tribe or village solidarity. And in modern societies, this same idea explains the trend to establish all kinds of ombudspersons in certain institutions, and ‘\textit{neighbourhood justice centres}’ in urban quarter and rural areas.
strengthens their commitment to abide by a voluntary agreement (Abaya, A.T., 2000). The flip side of this argument emphasizes the danger of delegating all the responsibility of the final agreement to the parties involved in the conflict. As laypersons they are not qualified to make legal decisions, and therefore, the quality of justice can be undermined.

14 This is the case of the Barangay Justice System in the Philippines, which will be the main topic of this paper. It is an informal but institutionalised community-based ADR, whose main objective is to make justice more accessible for the poor.
III. ADR IN THE PHILIPPINES: THE BARANGAY JUSTICE SYSTEM (BJS)

A. The Formal Judicial System and the BJS

The Philippine Constitution states that the judicial power must “include the duty of the courts of justice to settle actual controversies involving rights, which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion or excess of jurisdiction on the part of any branch or instrumentality of Government” (Nolledo, Jose N., The 1987 Constitution of the Philippines, Article VIII, Sec.1-). The courts consist of four levels: The Supreme Court at the apex, the Court of Appeals, the Regional Trial Courts and the Courts of First Instance. These institutions integrate the formal Philippine Judicial System, which although it operates under a Constitutional framework, it is far from being efficient and competent in its functions.

As the theoretical discussion has suggested, the inefficiency of the courts is mainly due to long delays, overload and backlog, as well as to corrupt practices. There have been certain initiatives to reduce the case processing time, but it seems as the delays are nevertheless increasing. “Justice delayed is justice denied” (Anderson, M., 2001), and this has extremely negative socio-economic implications, especially for the poor. While businesses litigate matters that affect their levels of profit and loss, the poor tend to reach court in cases where the most fundamental components of livelihood are at

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15 It is important to indicate that the Family Courts were constituted by the Republic Act No.8369 in 1997, but due to lack of funding, they have been set aside.
16 The chronic congestion of lower courts in the Philippines reveals a very disturbing picture. By the beginning of 1999, 771,337 cases were pending and 588,649 additional cases were filed. The courts were able to dispose only 25.50% of their piled work. By the year 2000, a caseload of 801,625 cases was registered (Benipayo, A., 2001). This overload is worse for the municipal level courts, which represent the first step into the formal judicial system.
17 One of the measures to alleviate the situation was the expansion of the jurisdiction of the municipal level courts, which unfortunately only managed to shift the burden around.
Therefore, if serious cases are not heard and resolved promptly, it can be suggested that small claims will remain pending for years. This situation is worsened by the system’s vulnerability to corruption and manipulation by powerful elites, which reinforces the inability of the courts to decide cases correctly. There are many suggested reasons for this, such as a defective appointment process of judges and court personnel, large number of vacant judgeships, lack of training, inadequate salaries and low public esteem, and unethical lawyers.

All these serious limitations indicate the urgent need to make justice operable and accessible, especially for the poor who are the most severely affected. However, judicial reforms require a long time and numerous resources to be accomplished and thus, there has been an increasing search for complementary alternative dispute resolution (ADR) processes that in the Philippines have led to the recognition of the BJS under the 1991 LGC. Further, 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 desperate need to overcome the persisting problems, but also as a result of positive 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 try the applicability of mediation in the court system through the development of pilot court-annexed mediation projects. As a result of all these

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18 A good example of corrupt practices that seriously affect the livelihood of the most vulnerable is the profits earned from disasters. For instance, an initiative to investigate the misuse of the P10 billion in public funds to assist the victims of the 1991 Mt. Pinatubo eruption found out that 10 to 30% of the funds allocated for reconstruction projects was lost to illegal commissions, onerous contracts and irregular financial management (Florentino-Hofilena, Chay, 2000).

19 There are two Tagalog words that describe how judges’ decisions are easily influenced: “lagayan” (bribing) and “palakasan” (favoritism). An illustrative example of how wealthy and powerful actors can manipulate court decisions in detriment of the poor is the case of Hoechst, the world’s second largest chemical manufacturer. The connections of a Makati trial court judge led to the implementation of several rulings in favour of Hoechst that implied the overturning of a government ban on harmful pesticides. This shows how the protection of a powerful’s Company sales is prioritised to the health of millions of farmers who were using Hoechst’s deadly formulation (Severino, Howie G., 2000).

20 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. Therefore, even if the court functions in the meantime, the cases filed will have to ‘wait’ until a judge comes along (Benipayo, A., 2001). It is propounded that in order to dispense justice effectively, each municipality must, at least, have one municipal trial court (Agra, Alberto C., 2000).
experiences, the Congress is currently discussing a Draft Bill entitled “The Alternative Dispute Resolution Act of 2002”, which declares as policy of the State:

“1. To establish the Philippine Alternative Dispute Resolution Centre; 2. to establish the use of alternative dispute resolution systems to achieve speedy, impartial and non-adversarial justice; 3. to utilize alternative dispute resolution systems as a bar and diversionary procedure for appropriate cases, and 4. to engage active private sector participation in the administration of justice”.21

B. The Barangay Justice System in the context of the historical evolution of the Barangay

The Barangay is the smallest territorial and political unit in the country, which evolved from a social organization based primarily on kinship ties and its survival depended very much on smooth interpersonal relationships among community members. Today there are approximately 42,000 barangays in the entire country with a population from at least 2,000 in municipalities and component cities, and 5,000 in highly urbanized cities and in municipalities of Metropolitan Manila (Ortiz, Juanito S., 1996).

The 1991 LGC clearly establishes the operative principles of decentralization, emphasizing the need to empower local government units by devolving new functions, powers, responsibilities, and resources22 from the national to the local level:

“(a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources…” (Nolledo, Jose N., 1991 LGC, Chapt.1, Sect.2)

21 These are provisions from the proposed Bill 5004, House of Representatives, ‘The Alternative Dispute Resolution Law’, sponsored by Speaker Jose de Venecia. It is currently being discussed in Congress.

22 In order to comply with all the devolved functions, the LGC provides the automatic appropriation of resources from the central government to the barangays’ accounts. The barangay share in the Internal Revenue Allotment (IRA) increased to 20% of the 40% transferred to Local Government Units (Nolledo, Jose N., 1991 LGC, Sec. 285), since ‘increased responsibilities definitely require increased resources’ (Tapales, P.D., 1992).
Within this framework, the barangays are provided with executive, legislative and judicial powers, as a precondition to enjoy full local autonomy. In addition, the LGC recognises judicial decentralisation at the barangay level, unlike other local government units.23

Barangay elections are conducted every three years to elect the Punong barangay, who represents the head of the barangay government (chief executive), and the seven members of the sangguniang barangay (legislative body), also chaired by the Punong barangay. These elections are non-partisan24 and never fall into the same schedule as the national and local elections. The judicial body, otherwise known as the Barangay Justice System (BJS) is constituted by the Lupong Tagapamayapa (“barangay court” –Lupon-) whose structure and procedures will be discussed in the next chapter.

The recognition and status that the barangays enjoy today is the result of a long and gradual process. Almost throughout the Spanish colonial period, the Barangays were administrative units of the government, and it was only in 1899 that the American military government recognized them as “Barrios” or wards of towns. Despite the succession of different Acts that granted progressive powers to the Barrios, these had to wait until 197325 to become “full-fledged” municipal corporations (Ortiz, J.S., 1996) and be renamed as Barangays. Further, the enactment of Batas Pambansa Blg.337, otherwise known as the 1983 Local Government Code was another major event in the local government administration.

It was therefore under the Marcos (1972-1986) regime that the nature of the Barangays changed extraordinarily, since he used them as part of his machinery building strategy to develop a more popular dictatorship26. He further played a crucial role in the recognition of ADR in the Philippines, establishing the Barangay Justice System (BJS)

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23 The administration of justice is highly centralised, except for the recognition of the BJS at the barangay level.
24 Although barangay elections are supposed to be non-partisan, elected barangay officials will always have their political loyalties, especially considering the patronage dynamics of the Philippine political life. Therefore, even if it is not allowed for any political party to openly campaign at the barangay elections, the party of the elected candidates will certainly have important support and influence.
25 As a result of the 1972 Constitution enacted at the beginning of the Marcos administration.
26 Concretely, Marcos realized that he had to build support straight from Barangay residents in order to weaken the dependency links that voters had with local elites and political personalities.
through the 1978 Presidential Decree (PD) NO. 1508, also known as “Establishing A System Of Amicably Settling Disputes At The Barangay Level”. Under this PD, conflicts among residents of the same cities/municipalities should first be lodged for mediation or, in case this fails, for conciliation in the Barangay:

“No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated” (Presidential Decree NO. 1508, Section 6, June 1978).

The PD No 1508 was later revised and consolidated by the 1991 Local Government Code (LGC), where Mediation, Conciliation and Arbitration were recognized as legitimate and effective methods to resolve certain types of disputes, in particular family and community disputes. As a result, The KP became an integral part of the Barangay Governance with expanded scope and powers over the cases it was allowed to cover.

C. How should the BJS work according to the mandate of the Law?

The maintenance of the BJS represents one of the eight functions devolved to the Barangay level, and thus, each barangay will be mandated by law to create a Lupon Tagapamayapa, which will be responsible for the administration of justice in the community. The main purpose of compulsory mediation/conciliation is to restore the role of the judiciary as the forum for the final and authoritative resolution of disputes that..
have failed the efforts of private resolution. Failure to comply with this requirement is sanctioned by barring the dispute from being adjudicated by the courts.

The Lupon –Barangay Court- is composed of the Punong barangay as chairman and ten to twenty members appointed every three years from among the barangay residents. Each Punong, within the first fifteen days from the start of his term of office, will prepare a list of proposed people who want to serve as Lupon members for the administration of community justice. Similarly, the Barangay Secretary, appointed by the Punong barangay, will also serve as the secretary of the Lupon to record the results of mediation and conciliation proceedings, and to submit a report of the cases settled to the proper city or municipal courts. Moreover, a conciliation panel (Pangkat) shall be constituted for each dispute brought to the Lupon that has not been successfully settled through mediation. This conciliation panel consists of three members who must be chosen by the parties involved in the dispute among the list of members of the Lupon. In case no agreement is reached on the Pangkat membership, the Punong will determine its composition.

The BJS has a universal target sector unlike Sri Lanka or Bangladesh, where ADR are explicitly oriented towards the poor and marginalized. For this reason, any individual who pays the appropriate filing fee can participate from the system and bring his/her dispute before the Lupon chairman of the barangay. Once the complaint is received, the Punong barangay will call both the respondent(s) and complainant(s), with their respective witnesses, to appear before him for a mediation of their conflicting interests. If he fails, he will set a date for the constitution of the conciliation panel –pangkat- that will hear both parties and their witnesses, simplify issues, and explore all possibilities for amicable settlement. Arbitration is also recognised as an ADR procedure under the BJS.

29 The recognition of the BJS was especially motivated by the increasing concern on the heavy court docket congestions, although it can be suggested that the possibility of resolving disputes through cheaper and quicker processes may also improve access to justice for those who cannot make use of the formal system. 30 According to a study conducted in Panay and Guimaras, most of the participants responded that the Punong barangay (or barangay captain) was the person often involved in the settling of cases/disputes. However, due to the workload as chair of the executive, legislative and judicial powers, the barangay captain in some barangays delegates his mediation functions to a Kagawad who is the Peace and Order Chairman (GRF, The Panay and Guimaras Experience in Barangay Justice, 2001).
and parties can, at any stage of the proceedings, agree in writing that they shall abide by the arbitration award of the Punong barangay or conciliation panel. When a settlement has been voluntarily agreed upon by the parties before the barangay mediator or the three-member conciliation panel, the law gives it “the force and effect of a judgment of the court” (Tadiar, Alfredo F., 1984). This means that the prevailing party may have the settlement be enforced by a writ of execution to be issued upon application by the municipal or city court.

The responsibilities and duties of the Lupon are primarily to supervise over the conciliation panels, to meet once a month to provide a forum for discussing issues on the amicable settlement of disputes, and to enable conciliation panel members to exchange their experiences, as well as other duties and functions that may be prescribed by law (1991 LGC, Sec. 402).

Each Barangay is given the authority to bring together the parties residing in the same city/municipality for amicable settlement of all disputes, except for cases that involve residents of different cities/municipalities, or where one party is the Government or a public official (being the nature of the dispute related with the performance of his official functions), and those that fall into a criminal category. According to some studies conducted in different provinces, most of the cases referred to the Lupon involved family, debt collection, property or land and interpersonal problems or infractions (GRF, Interview, 2002). In addition, the 1991 LGC provides BJS implementers with the possibility to ask the provincial, city or municipal legal officers for legal advise on matters involving questions of law.

31 There are certain crimes that are within the competence of the KP, in particular those that carry a punishment of one year imprisonment and a fine of P5000 (Nolledo, Jose N., 1991 LGC, Sec. 407)
32 The data come from the findings of three different research studies conducted by the GRF in different provinces to analyse the efficiency of the BJS and its acceptability by community residents: 1) The Panay and Guimaras Experience in Barangay Justice, 2) The National Capital Region Report, and 3) Dalan sa Kalinao Mindanao: Barangay Justice Service System Project.
33 It must be indicated that in the Philippines, there are other specialised mediation mechanisms for land and property disputes, and therefore the BJS’s caseload is not heavy on these difficult issues (Abaya, A.T., 2000:a).
IV. ANALYSIS OF THE BARANGAY JUSTICE SYSTEM (BJS)

A. Strengths of the Barangay Justice System

The BJS represents an important challenge to the long centralist tradition of the Philippine state\textsuperscript{34}, being the only decentralised programme that has been recognised by law for the administration of justice at the local level\textsuperscript{35}. It is therefore the only forum in the country where family and community disputes can be amicably settled without having to go through the tedious and expensive procedures of court litigation. According to some statistical data available from the National Summary Report of the DILG, the number of complaints filed and referred to the Lupon in 1998 was of 279,115 disputes, of which 236,452 were settled (84\%) (Agra, Alberto C., 2000). This high settlement rate suggests that the BJS is effective in reducing backlog cases in higher courts.

Complementary qualitative research\textsuperscript{36} has also been conducted to analyse in more depth the citizens’ awareness and perception of the BJS and its implementers. Although most of the findings reveal important variations among regions,\textsuperscript{37} there are positive

\textsuperscript{34} When the Spanish colonial powers arrived in the islands in 1521, they found it extremely difficult to control the pre-existing Barangays. As a result, they designed a totally new political subdivision that led to a particular system of local government, known for its hierarchy and high centralism. This was retained after the Spanish left the country in 1898 until very recently.

\textsuperscript{35} The transfer of certain functions to local governments under the decentralisation framework is not absolute and universal, in the sense that devolved powers still remain under the supervisory authority of the National Government Agency concerned. It should not be forgotten that the Philippines continues to be a unitary state, and thus, not all powers are delegated or fully devolved to local governments. According to the interest of the dissertation, the administration of justice remains highly centralized with the exception of the BJS, which represents the only decentralized justice programme recognized by law.

\textsuperscript{36} In addition to statistical impact figures, many scholars and advocates believe that the quality of justice needs to be imputed in the framework for assessment of community programs (Abaya, A.T., 2000:a). In order to do this, qualitative research mainly based on interviews and Focus Discussion Groups must be promoted.

\textsuperscript{37} In the study conducted by the GRF on the Panay and Guimaras experience in barangay justice, the information obtained by the focus group discussions showed variations on the degree of awareness and understanding of the Lupon, and on their perception regarding the effect of the BJS on the people’s access to justice. However, the most common view was that: “It is a system, a means or a mechanism that settles problems or disputes at the Barangay level” (GRF, The Panay & Guimaras Experience in Barangay Justice, 2002).
experiences that denote improvements in the status of the BJS as an alternative dispute resolution mechanism to improve access to justice for all, including the poor in isolated barangays. Despite important operational weaknesses and certain unfair decisions reported, there is a widespread perception among the participants in the different studies mentioned of the role of the BJS in improving citizens’ access to justice. They emphasise that every citizen has the right to avail himself/herself of the services of the Lupon, and that it is the responsibility of the Barangay captain to attend to the needs of all the barangay members (GRF, The Panay and Guimaras experience in Barangay Justice, 2001). The absence of any allusion to the poor may suggest that the BJS is open to all the community residents, including the poor and marginalized.

In addition, the BJS is enhancing the recognition of a broader concept of justice, whose aim is to go beyond the limited traditional perspective based on the idea of “legal centralism”. As an example of alternative community justice, the BJS uses reconciliation instead of adjudication in order to preserve community peace and order, which is more adequate for small disputes at the barangay level.

Moreover, the BJS is based on a long tradition of amicable settling of disputes among family and barangay members whose origins can be traced back to the pre-colonial period. Given the hierarchical social structure of the barangays, these person-oriented methods involved interventions of go-betweens or third parties, which were usually the head of the village (datu or lakay), council of elders, or even a common friend or relative (Agnes Villaruz, Interview, 2002). These cultural traditions play a very important role in facilitating the social acceptance of informal, community-based dispute resolution.

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38 This might also be due to the fact that barangays are usually very small political units where most of the residents are connected through personal networks. Moreover, it may also respond to the ultimate goal of the BJS, which is to maintain community peace.

39 Since the barangays are the smallest political unit in the country and are primarily based on kinship ties, it is important to amicably settle any disputes among their members to guarantee the preservation of their relationships. According to Cappelletti, M., villages are ‘total institutions’ where residents are forced to live in daily contact, and therefore, a negotiated solution to their conflict of interests will certainly be more suitable than fighting in courts (see debate on ADRs, chapter II).

40 Today, the selection of the members of the Lupon (conciliation panel) is also based on this traditional recognition of elders. It is interesting to highlight the difference between rural and urban areas, being the Lupon in rural communities still composed by elders, whilst in urban barangays, age and educational background have become the decisive criteria.
resolution methods, which is a highly considered background condition for success. In the Philippines, these traditions are based on two predominant cultural values that strongly influence the settlement process: “pakikisama” (comradeship) and respect for the elderly, which are conceived by the Barangay Justice officials and community residents as important facilitating factors.41

Furthermore, the BJS focuses on culture-sensitive modes of alternative dispute resolution42, which is extremely important for enabling a better access to justice to the residents of different indigenous communities throughout the country. For instance, in the southern region of Mindanao where there is a diverse population of multi-ethnic groups with the highest Muslim population in the Philippines, the Shariah Law43 has been incorporated in the operationalisation of the BJS (GRF, Barangay Justice Service System Project: Dalan sa Kalinaw Mindanaw, 2002).

Similarly, less cost and speedy disposition of cases are two other advantages of settling disputes at the barangay level. According to some of the studies conducted by the GRF in the Philippines, BJS participants insist on the economic benefit of filing cases with the Lupon44, since elevating disputes to higher courts implies the payment of multiple appearance fees and extra expenses for transportation45 for both the parties and their witnesses. Likewise, participants expressed their satisfaction with the speed of the BJS in settling disputes, in contrast to the long delays of the formal judicial system46.

41 However, not all traditions contribute positively to build trust in the amicable settling system, being the “Padrino system” and the “utang na loob” (debt of gratitude) an illustrative example of a cultural hindering value. These will be discussed in the chapter on the operational problems of the BJS.
42 The 1991 LGC also recognises the importance of using local systems of settling disputes in communities where majority of the inhabitants are members of indigenous cultural communities (Nolledo, Jose N., 1991 LGC, Sec. 399-f).
43 This can help build legitimacy of the BJS in Mindanao, but national government agencies must ensure that the implementation of the Shariah Law does not contradict any constitutional principles.
44 The average filing fee at the BJS is of P20, which in most cases represents a donation for the travel expense of the person who will bring the summons to the parties involved. On the contrary, bringing a case to court signifies the expenditure of thousands of pesos, which poor people cannot afford.
45 Hiring lawyers and using legal institutions can be very costly in themselves, but also entail opportunity costs, which for the poor often means time away from income-generating activities (Anderson, M., 2001).
46 In the BJS, cases can be settled from a minimum of an hour to a maximum of 30 days, whilst resolutions in courts can take one to twelve years (GRF, The Panay and Guimaras Experience in Barangay Justice, 2002). This data suggest that the informality of ADR processes is an important facilitating factor for the quick settlement of cases.
B. Limitations of the Barangay Justice System

Although the 1991 LGC has recognised the maintenance of the BJS as one of the eight basic functions of the barangays under the decentralisation framework, its implementation encounters certain hindrances that need to be overcome, if it is to be considered a genuine alternative to improve access to justice for the poor. A supportive legal background is extremely important, but it is not a sufficient factor to guarantee the programme’s effectiveness. As it has already been suggested in the theoretical discussion, the gap between legality and reality is often very wide, and in the case of dispute resolution practices, power and social conditions play a particularly important role. The main limitations of the BJS are closely related with the predominance of patron-client relationships in the Philippine society, the distribution of financial resources at the barangay level, the lack of high quality training and technical capacity, the scarce information and promotion of the BJS, and weak reporting and supervision systems.

1. Patron-Client Relations And Political Status of Mediators

Democratization (as a process) and democratic consolidation (as a goal related to the quality of performance of democracy) are shaped by inherent conditions within a society (Igaya, G.L., 1999). In the Philippines, and in opposition to the ideal Weberian type of bureaucracy governed by the norms of rationality, anonymity and universalism, social relationships are predominantly based on a patron-client logic, where affectivity becomes the prior guiding force. It is therefore a society that functions according to a political clientelist model, characterized by a personalized, affective and reciprocal relationship between actors with very unequal degree of resources.

This inequality reflects the need to engage in mutually beneficial transactions that serve as an explanatory indicator of the Philippine socio-political behavior. The role of local elites, as a result, is to build up and maintain ‘geographic power bases’ (Igaya, G.L., 1999) where they serve as the patrons to a local constituency, representing the intermediary layer between the central government and the voters. Moreover, it is very
important to highlight that these patron-client relations are not necessarily smooth in nature, and in many cases, violence, coercion and fraud are strongly present.

If the “padrino culture” serves to control, and even ‘buy’ political loyalties, it can be suggested that it will also have an extreme impact on the dynamics of local justice administration. Local elites at the barangay level will always have sufficient power to manipulate the dispute settlement processes, and even to discourage poor and disadvantaged people to participate from the BJS. Moreover, the political status of the Village Chairman and the Lupon members, who act as ‘neutrals,’ has rendered the process suspect (Abaya, A.T. 2000:a). Many of the surveys indicate that a majority of community residents believe the settlement of disputes is influenced by politics, which is often mentioned as one of the main concerns.

The 1991 LGC explicitly mentions that local officials paid from local funds shall be appointed or removed according to merit and fitness, by the appropriate appointing authority. However, still today, the Philippine public administration or bureaucracy is far from being meritocratic and based on a professional and genuine commitment to serve and protect the “public interest”. Corruption is unfortunately deeply embedded in the Filipino society, making the central and local administration a means to pay back political favors. It is therefore easy to fall into favouritisms or even use the elected post as a means to pay back political favours (‘debt of gratitude’)\(^{47}\). According to the findings of the studies mentioned earlier, there have been accounts of favour, bias, and inequity in barangay settlements, which have seriously affected the neutrality and fairness of the BJS processes\(^{48}\). Therefore, the rate of cases settled by the BJS cannot be deemed a sufficient

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\(^{47}\) According to data obtained from the research study on the Panay and Guimaras Experience in Barangay Justice, some participants mentioned cases where the barangay captains favoured relatives and persons who voted for them during the election (GRF, The Panay and Guimaras Experience in Barangay Justice, 2001).

\(^{48}\) This situation is gradually changing, especially in urban barangays, where young politicians with higher education and professionalism are being elected as barangay captains. However, in rural areas, if a barangay captain belongs to a political party that a complainant is not affiliated with, the latter will prefer to go to someone else who belongs to the same political group, either to get advice regarding his complaint or to actually seek assistance in settling the conflict.
indicator of success, since it does not provide information about the people who participate, nor about the quality and credibility of the agreements reached.49

2. Unsatisfactory Budget Distribution

The 1991 LGC explicitly mandates the annual direct transfer of financial resources of 20% of the internal revenue allotment from the central government to the barangays.50 Similarly, it establishes that barangay budgets shall dedicate 10% of their general fund to the Sangguniang Kabataan (legislative council) fund, up to 55% to Personal Services (PS), 20% to development funds, 5% for Gender And Development (GAD) and 10% for unforeseen calamities. Once the annual mandatory appropriations have been deducted, the surplus can be allocated to Maintenance and Other Operating Expenses (MOOE) or to Capital Outlays.

This information is relevant since it illustrates the absence of “mandatory” appropriation for the maintenance of the BJS, which makes its sustainability dependant on the list of priority projects identified during barangay assemblies. Moreover, most of the local development funds are spent on infrastructure projects (roads, water systems, school buildings, etc.), which are those with higher economic benefits for the community. In the short time that a local government official has to serve the community, it is important that priority be given to ‘tangible’ projects, and thus, initiatives on administration of justice are relegated to a lower rank (Ateneo School of Government, 2000).

According to the principal of local autonomy, the central state delegates the responsibility for the distribution of barangay development funds to the Barangay

49 The settlement rate is just a quantitative measure of the program’s impact. It is important to research on the quality of justice that the BJS provides. Although it is more difficult to measure and it requires a lot of resources and a longer time, this qualitative approach can provide relevant and deeper information about the process.

50 According to the formula established in the LGC, local government units shall have a share of 40% in the national internal revenue taxes, of which 20% shall be allocated directly to the barangays (Nolledo, Jose N., 1991 LGC, Sec. 284-85).
Development Councils (BDCs). However, in many cases, these BDCs\textsuperscript{51} simply play a ministerial function rather than a forum where a comprehensive multi-sectoral development plan is initiated. Likewise, partisan politics also affects the allocation of resources, goods and services, as well as the opportunities among citizens and local government units. For instance, barangay captains who are supportive of the municipal mayor or provincial governor will certainly get more resources and projects than those who are in the opposition. Therefore, when the leader behaves like a patron, the culture of dependence is reinforced and thus, there is less control over the resources available.

3. Lack of Technical Capacity

According to the Tenth Rapid Field Appraisal conducted in 2000, there is still evidence that provinces and municipalities are absorbing the deluge of training. Few barangay leaders have benefited from the different technical assistance and capacity-building programmes that have been developed under the decentralisation framework. However, since the barangays have accepted the increased fiscal resources and responsibilities provided in the LGC, the mismatch between the capacity and the skills required to manage the new demands of decentralisation is seriously affecting the quality of development planning, budgeting and service delivery.

Barangay officials frequently lack operational degree of awareness of the Code\textsuperscript{52}, and thus, their working knowledge on the BJS is very limited. Unlike other countries in the region that practice alternative community justice, the Philippine BJS has very uncoordinated and sporadic training programmes, which clearly affects the level of professionalisation.

\textsuperscript{51} Local Development Councils at the barangay level shall assist the legislative councils in setting the direction of economic and social development, and shall be composed of the punong barangay as chair, representatives of NGOs operating in the barangay (1/4 of the seats) and a representative of the congressman (Nolledo, Jose N., 1991 LGC, Sec. 107).

\textsuperscript{52} Knowledge of the law is sometimes hindered by the lack of access to current legal materials, such as some isolated and remote barangays, where BJS officials do not even have a copy of the LGC (Nierras, R.M., Interview, 2002).
competence of its implementers. In Panay Island for instance, barangay captains are elected at large by communities without regard for specific educational attainment or technical qualifications (GRF, The Panay & Guimaras Experience in Barangay Justice, 2001). Similarly, community residents in the National Capital Region perceive the lack of knowledge on the BJS programme as one of the main operational problems, and suggest more and better training for both the barangay captain and Lupon members (GRF, The National capital region experience in Barangay Justice, 2000).

Moreover, the Lupon does not function as effectively as it has been designed under the law, and in some areas none of the interviewed expressed awareness of the conciliation panel—Pangkat—since it may have never been activated in their communities. Likewise, in areas where the Lupon is organised, many people perceive it as “a mouthpiece of the barangay captain, reechoing his decisions” (GRF, The Panay & Guimaras Experience in Barangay Justice, 2001). This is certainly a result of the lack of knowledge of the Code and the BJS law.

The training of BJS mediators is crucial not just in imparting the spirit and goals of the system, the techniques and ethics of mediation, but also in establishing credibility for the practitioners. Although the content and methods of training are still the subject of study and debate, it appears to be a consensus on the need for mediators to understand the process and to imbibe techniques that can facilitate communication and agreement (Abaya, A.T., 2000a). Therefore, more efforts should be made to achieve standard, consistent, sustained and monitored training.

In addition, the LGC establishes that the secretary of the Lupon shall record the results of mediation and conciliation proceedings and submit a report thereon to the proper city or municipal court (Nolledo, Jose N., 1991 LGC, Sec. 403). This regular recording of cases and agreements is seldom exercised (mainly because of lack of knowledge on the BJS Monitoring Unit), but it is extremely important to develop a

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53 This lack of high quality training is closely related to the political status of BJS officials who, as political appointees, are not expected to obtain the qualifications they are required to have as technicians and
historical documentation of the complaints filed, which can help assess and monitor the effectiveness of the programme.

Further, the provision in the LGC that indicates the possibility for the Lupon to get legal advice on matters involving questions of law from provincial, city or municipal legal officers is not actually used\textsuperscript{54}. Lupon members will only approach legal officers in extreme situations, which makes it very uncommon to find a regular and constant flow of communication between the different sub-national levels on issues regarding the BJS.

4. Lack of Information and Limited Outreach

Community residents lack knowledge and appreciation of the BJS as a consequence of weak education and advocacy programmes. The efforts oriented towards an effective penetration of the target sectors have not been consistent or sufficient. This can be due to the confidence derived from the thinking that a dispute will inevitably bring people to the BJS.\textsuperscript{55} However, there are still a great number of stakeholders or potential users and advocates that do not know about the BJS, its procedures and benefits. For instance, according to the findings of the National Capital Region Report, almost 20\% of the participants were not aware of any services offered by the Lupon. Hence, despite the lack of empirical data on people’s awareness of the BJS in other regions, it is possible to suggest that in more isolated areas the lack of information will be higher than in the capital region\textsuperscript{56}.

5. Weak Reporting and Supervision Systems

As with the training experience, the BJS reporting and supervision system focuses on the mandate of the law, which implies the absence of specific programmes where professionals (Abaya, A.T., 2000:a).

\textsuperscript{54} Moreover, the link between BJS implementers and city/municipality legal officers would not necessarily solve the problem of the lack of legal knowledge, because legal officers are part of the formal judicial system, and therefore, they are not informed about ADR mechanisms (Rose Marie Nierras, Interview, August 2002).

\textsuperscript{55} As it has been mentioned in Chapter III, the law mandates compulsory mediation before filing a case to the courts.
reporting and supervision are prescribed and monitored. Civil society organizations involved in the consortium of Centres for Local Governance (such as the ALGs and the GRF) have introduced strict monitoring systems in the barangays that are part of their paralegal programmes. However, most of the BJS throughout the country still make little use of the different reporting functions established in the LGC. According to the National Capital Region Report, more than 35% of the Lupon members interviewed were not aware of specific forms used in reporting, and 29% did not know where the KP reports were supposed to be submitted. This implies the difficulty in assessing and monitoring the effectiveness of the BJS.

Moreover, the recent proposal of the Alternative Dispute Resolution Law of 2002 (Bill No 5004) that seeks, among other issues, the creation of the Philippine Centre for Alternative Dispute Resolution suggests that there is no efficient supervision and monitoring systems.

C. Civil Society Initiatives under the Democratic Decentralisation Framework: A Promising Channel to Improve the Operationalisation of the BJS

The devolution of powers and functions from the central government to the barangays responds to the belief that decentralization can empower the communities to advance self-determination over their development course and direction (Ateneo School of Government, 2000). The main limitation, however, is that local officials are not technically prepared to manage and administer all those challenging powers, and therefore, the mismatch between their competencies and responsibilities is hindering the quality of development planning, budgeting and service delivery. For this reason, civil society organisations are increasingly using the new democratic spaces provided by the Constitution and the LGC to actively participate in development activities and local governance.

56 This may soon change as a result of numerous civil society interventions to promote the BJS in different parts of the country, as it is the case of the national-wide project conducted by the GRF.
In the Philippines, developmental NGOs involved in local governance issues are working in partnership with local government units and other national government agencies (particularly the DILG and the DOJ) to strengthen the BJS and try to overcome some of the main operational limitations such as training, legal assistance, and information and education on the BJS.

Moreover, a genuine partnership between LGUs and NGOs can improve the performance of barangay officials, and can also mitigate the negative consequences of the culture of patronage in the delivery of justice. Moreover, NGOs can help improve the distribution of local budgets by getting actively involved in catalysing the selection of development priorities, and relevant legislation regarding social issues and concerns.


The extended participation in the formulation of the 1987 Constitution introduced the importance of citizen empowerment into the political discourse that, together with the reestablishment of civic and political rights after fourteen years of dictatorial rule, led to a particularly positive policy environment of the Aquino administration for the development of NGOs and other civil society organizations. The new revolutionary government of Aquino gave its blessing to NGOs as vehicles to democratise political power (Melegrito, Ma. L.F. & Mendoza, D.J., 1999:242), and translated it into a constitutional principle:

“The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation” (Nolledo, Jose N., The 1987 Constitution of the Philippines, Article II, Sec.23).

In addition, the passage of certain laws that mirrored the principles for people’s participation reaffirmed the role of NGOs as legitimate representatives of popular interests. And it was the enactment of the 1991 Local Government Code (LGC)\(^{57}\) that really formalized the active involvement of civil society organizations in the structures

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57 The LGC was formulated during Aquino’s Presidency, even if it was finally implemented in 1992 under F. Ramos administration.
and processes of local governance. Therefore, apart from promoting partnerships between local governments and NGOs, the Code provides rules to ensure citizens’ representation in the different special local boards and councils. Besides, civil society organizations have also developed monitoring and reporting systems that help maintain local governments accountable and transparent. All these new spaces created within the decentralization process reflect the influence of deliberative democracy and citizen empowerment in the Philippines, whereby citizens are invited to participate in the decision-making of policies that directly affect their lives. It represents the desire of many Filipinos to go beyond the boundaries of representative democracy towards a more popular and participatory system that promotes “the direct intervention of social actors in public activities” (Gaventa, J. & Valderrama, C., 1999).

As a result, from 1986 onwards, there have been strong efforts to translate democracy into a ‘more meaningful way of life’ (Diokno, Ma.S.I., 1997), and to redefine the role of citizens and their relationship with state institutions, both at the national and local level.

2. NGOs Paralegal Work In The Philippines

The constitutional recognition of civic and political rights in the transition to democracy meant a shift towards an increasing concern on socio-economic rights and governance issues in the 1990s, which pushed civil society organizations to undertake a more development-oriented work in partnership with government agencies. Thus, there has been an important change in the role of NGOs and POs from complementary components of political movements in the 1960s to legal interventions primarily based on

58 NGOs have been in the forefront of advocacy for local governance, and pushed for speedier implementation of the Code.
59 Empowered citizens can actively demand for quality delivery of basic services, among which justice represents an important service to guarantee community peace and development. Therefore, raising citizens’ awareness of their legal rights is a crucial step towards the improvement in access to justice.
60 This trend is closely associated to the critics against the limited liberal ideal that everyone is equal before the law, without considering that similar legal rules and institutions have dramatically different consequences for differentially situated groups (Houtzager, P., 2001: 8). Due to the complexity of social reality, it is necessary to go beyond the traditional liberties and analyze how the creation and interpretation of legal rules is very much influenced by existing power relations in a particular society (See theoretical discussion, Chapter, II).
community organizing at the local level in the 1970s, and the preparation for an anti-
dictatorship struggle in the 1980s. Moreover, in recent years NGOs have expanded
beyond the frames of localist work, building complex networks and actively intervening
in national advocacy issues (Constantino-David, K., 1997).

Following this historical evolution of the role of civil society groups, it is
interesting to observe how it can be equally applied to the history of paralegal work in the
Philippines. Taking the example of Alternative Law Groups (ALG)\(^{61}\), it is easy to
illustrate the big changes occurred in the last two decades. When the first ALG were
founded in the early 1980s, they played an influencing role in the defence of human
rights during the dictatorship, as well as in the post-Marcos legal reforms. Likewise, as
part of the People’s Power movement that fought for the reestablishment of a democratic
system in the Philippines, ALG participated in the incorporation of a new political
discourse, where people empowerment\(^{62}\) became a central issue. Further, and considering
the weakness of the Philippine state and the bureaucratic incapacity to make good rules
and enforce them uniformly\(^{63}\), these legal NGOs have been trying to make justice more
responsive to the needs and priorities of the poor. For this purpose, they promoted
popular participation in lawmaking, policy development and other government actions,
working together with other NGOs and disadvantaged communities.

Moreover, the Gerry Roxas Foundation (GRF) is probably the most
paradigmatic example of an NGO supporting and promoting ADR systems in the
Philippines. Although it does not have any paralegal tradition, it represents a

\(^{61}\) Alternative Law Groups is a consortium of legal NGOs founded in the early 1980s, whose network is not
monolithic in terms of its members’ perspectives and operations, but which they nevertheless share some
goals and strategies. They usually adopt tasks that are beyond the interest of many governmental personnel
or traditional lawyers. Moreover, although they all have lawyers among their staff, they work together with
other development professionals and even paralegals, to which they provide with basic legal training
(Golub, S., 2000). ALGs have been funded by the Ford Foundation since 1986, first in their struggle
against human rights violations, and later in their civil society and governance work.

\(^{62}\) People empowerment refers to the process of making people aware of their rights by providing free legal
assistance and training.

\(^{63}\) This is due to corruption and easy capture of public officials to narrow, vested interests. According to
action, whether overtly, informally, or corruptly” (pp.201)
breakthrough in government-NGOs relations regarding the promotion of challenging judicial reforms and delivery of public goods. It is the first NGO, which, under the new democratic spaces provided by the 1991 Local Government Code, launched a project to strengthen the Barangay Justice System with the collaboration of state agencies involved in the administration of justice.

The project, known as the People’s Access to Justice: Barangay Justice Service System, funded by the U.S. Agency for International Development, has been designed to strengthen the Barangay Justice System as mandated by law, and other integrated justice-related services in the community. Among its principal goals, the project is making important efforts to develop strong community leaders, to enhance support systems in the Barangay through the mobilization of community volunteers (The Barangay Justice Advocates-BJAs), to empower citizens through massive public information campaigns especially targeted to the poor and marginalized, and to improve the BJS delivery of justice by providing legal literacy and mediation skills to Punong Barangays and members of the Lupon.

This initiative started in 1998 for a period of three years and divided into three different phases, being first piloted in 65 Barangays in the Islands of Panay and Guimaras. However, the positive results inspired some LGUs that decided to contribute to the replication of the project, providing local funds to cover more Barangays. For this reason, the actual coverage of the BJSS project is 213 Barangays, and 1,150 BJAs who have been trained on the 4-Module BJSS Training Course together with 3,799 Punong Barangays, Barangay Secretaries and Lupon members (Annie, interview 2002).

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64 It is important to bear in mind that paralegal work in the Philippines has been predominantly characterized by its antagonistic relation to the state.
65 The initial phase seeks to mobilize civil society support at the Barangay and provincial level, and to obtain mandates from national agencies for project implementation. In phase two, the project will be implemented in 50 Barangays from 10 municipalities in five provinces to try to innovate and improve the current BJS. And in phase three, positive results will be modeled and used to seek sustained legislative reform.
66 Of the 213 Barangays, only 170 have been funded by the project. Therefore, the partnership between the GRF and Local Government Units has enabled the expansion of the project, which will certainly still increase after the agreement signed between the Foundation and relevant government agencies.
67 These 4 Modules are KP, Paralegal, Counseling and Mediation.
The signing of the *Memorandum Of Agreement* (MOA) by the Department of Justice (DOJ), the Department of Interior and Local Government (DILG) and the GRF signifies a serious commitment to promote the Barangay Justice System as an effective alternative to empower people towards the attainment of justice, and to decongest courts dockets. At the same time, it represents a genuine interest of these institutions to work in partnership with “other sectors engaged in promoting innovative approaches in dispute resolution” (Memorandum of Agreement, 2002), by building and sustaining a strong network among NGOs, public offices, business and academe at the national and local levels. The final motivation behind this agreement has been to complement efforts in sustaining the gains obtained from the BJSS project\(^6^8\).

The intense work and the progressive initiatives that the GRF is providing to improve and strengthen the BJS represents a very important example of a civil society organization that has made use of the new opportunities provided by the Law, and the positive contribution of working in cooperation with the government.

\(^6^8\) The MOA facilitated in January 2002 additional funding for Phase IV covering expansion sites in Luzon, Visayas and Mindanao. In April 2002 this new Phase has been launched in Davao City.
V. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

The negative perception among ordinary Filipinos (especially the poor) of a formal judicial system that has showed its incapacity to successfully fulfil its function and responsibility of delivering justice equitably has led to an increasing interest in alternative forms of dispute resolution, and further, to the legal and political recognition of the BJS.

The BJS appears as an acceptable mechanism to the poor because, apart from being an institutionalised system mandated and enforceable by law, it is localized in the community and administered by local officials, who, despite their political status, are considered to be more understanding of community needs and values than formal judges. It is also an informal system aimed at an amicable settling of emerging disputes, instead of at adjudicating in concordance with standardized provisions established by law. Disputes are addressed in a comprehensive way, where other factors beyond the strict provision of the law are taken into account. Although this individualization of justice may reveal certain limitations, people feel more satisfied with flexible processes in which they are allowed to negotiate and confront their disputes, making them responsible for the final outcome.

Definitively, the BJS, as an ADR system, has proved to be quickly doable, less expensive, and immediately impactful in responding to the issues of delay, access to justice, and corruption. According to some of the data already mentioned in the analysis, in 1998 279,115 barangay disputes were recorded, of which 236,452 (84%) were settled. In addition, qualitative research studies conducted by the GRF also reflect a positive

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69 The Supreme Court and the Department of Justice have also identified the use of mediation as part of their judicial reform, partly because of the growing success of the BJS in resolving certain ‘less serious’ disputes (Abaya, A.T., 2000:b).
perception among community residents that the BJS actually improves access to justice for all barangay residents.

As a result, the BJS initiative is providing a different and more accessible channel for poor people to realize their right to resolve their disputes at the community level. The limitations and operational gaps should not darken the positive impacts that the system is having on the overall progress in the administration of justice in the Philippines. Therefore, and answering to the core question of this paper, the BJS can be considered an effective alternative to improve access to justice, particularly for the poor who are usually the most affected by the deficiencies of the formal judicial system. However, there are various operational problems that must be overcome in order to improve its effectiveness, and thus its responsiveness to the poor. The next section will propose the final recommendations that have emerged from the analysis of the main problems identified in this paper.

B. Policy Recommendations:

1. Strengthening Institutional & Legal Support to Guarantee ‘Sufficient’ Budget to the BJS

In recent years the Philippines has gone through an extraordinary experience of legislative initiatives, whose main aim was to facilitate decentralization and citizen participation, as a strategy for economic development. The progressive devolution of power and responsibilities from the central government to the different sub-national levels, and the recognition of the role of the private sector in policy planning and implementation, has signified a serious challenge to the centralized tradition in the country. However, even if the Philippine legislation is very advanced on paper, there are still great limitations in the implementation of the new frameworks. An efficient administration of justice cannot be fully implemented without the integration of the three institutions of justice: the National Government, the Local Governments and Civil Society. Thus, it is important to promote institutional support in
the form of inter-governmental (municipal and national government agencies) and civil society collaboration to educate and raise awareness among barangay officials and community residents on the importance of the BJS, which is anyway one of the responsibilities mandated by law. This will help achieve greater recognition of the programme in barangay planning and budgeting councils, which will probably ensure a better share in the budget distribution without jeopardising the principle of local autonomy.

2. Development of a more sustained education and advocacy program

Since the law does not include any provision on education programmes, greater efforts shall be put in place to develop efficient information dissemination campaigns to improve the knowledge and appreciation of the BJS. Civil society organizations can contribute to this goal with their networks and mobilizing expertise, especially to reach the poor and disadvantaged sectors. This is an extremely important action since the success of any development project depends on the sustained participation of community residents as active stakeholders (GRF, Dalan sa Kalinaw Mindanaw, 2000). For this purpose, extensive public information campaigns shall be conducted, focusing on legal and civic education as ways to increase citizens’ information about their rights to better government and about how public services are supposed to work, enabling them to monitor and watch over barangay officials. Similarly, the GRF initiative of training Barangay Justice Advocates (BJAs)\textsuperscript{70} can be reinforced as an efficient strategy to increase community mobilization and awareness of the system. These local advocates can be selected from existing community leaders of local organizations, and can help BJS officials in their functions regarding the administration of justice.

Following the good results achieved by certain policy reforms in Ceará state\textsuperscript{71}, Brazil, local governments and NGOs could also contribute to the promotion of the BJS by providing prizes for good performance and public screening methods for new recruits, as well as by boasting about the program’s successes. All these strategies would help

\textsuperscript{70} See Chapter IV Sec.C for further information.
create a strong sense of recognition of the BJS and its workers, enhancing the respect and outreach of the program.

3. Capacity building through systematic and regular training & Depolitisation of the Recruitment Process of Mediators

Within the framework of decentralization, the division of labour between the local and more centralized units of government will be based on the “comparative advantage” of each. In this sense, the more centralized part of government\textsuperscript{72} should make good use of its “superior finance-raising and regulatory powers, guaranteeing capital intensive facilities, technical expertise, funding, oversight and training” (Tendler, J., 1997: 23). Instead, local governments and NGOs can increase their efforts in ensuring the outreach and responsiveness of BJS services to poor community residents\textsuperscript{73}.

Moreover, it is important to de-politicise the BJS by introducing a remarkable process of merit hiring for the Punong, Lupon members and Lupon Secretary. In the Philippines, as in many other developing countries where clientelism is the basis of social and political life, good public managers who attempt to use merit as a criterion for hiring will have to overcome numerous obstacles. The merit-hiring process should take into consideration the commitment of applicants to improve community peace and their sense of ‘public good’, rather than their educational level,\textsuperscript{74} since education is something that the job can provide as a reward for those who have been “chosen.”

Hence, it is an essential factor to professionalise the system and guarantee a sustained high quality training of neutrals (mediators and conciliators), in order to improve satisfaction with service quality. Similarly, the recognition and respect attributed to the program and its workers will contribute to a stronger commitment and better

\textsuperscript{72} In the Philippines this can refer to the DOJ, DILG, and even the city or municipal governments to which the barangays belong.

\textsuperscript{73} There is a strong debate among decentralization experts about the view that local governments are closer to the people than other levels of government. However, and despite existing local power relations, it seems that this assumption is gaining acceptance within the development community. Therefore, even if decentralization can imply certain dangers, the creation of efficient mechanisms to fight corruption and patronage at the local level can help mitigate the risks, and thus improve access to justice for the disadvantaged sectors.
performance. Complete knowledge of the law and the BJS, and skills in dispute settlement procedures are perceived as key training issues to attain qualified paralegals at the Barangay level. In addition, law students should be stimulated, and even required, to provide legal training to the BJAs and BJS officials and to assist them in the execution of BJS functions. Therefore, the Lupon could still be composed of respected people in the community, but it should not participate in the conciliation panel, which could be eventually integrated by BJAs and law students. This would give the settling process more independence and neutrality, whilst the Lupon members would have more legitimacy to “exercise supervision over the conciliation panels.” If this is achieved, trust and confidence in the system will increase, and consequently, complainants will reconsider elevating complicated cases to higher courts.

4. Improving Supervision mechanisms

The Philippine decentralized system is presented as an obstacle for a well-delineated organization that can monitor its goals and achievements, and detect and rectify its errors (Abaya, A.T., 2000:a). The central supervising body - the Bureau of Local Supervision- does not have the staff to exclusively monitor and supervise the BJSs, since it merely accesses the Department’s field officers to secure data and relay information to the 42,000 BJSs in the country. As a result, a meaningful evaluation on a national scale is difficult to make, as there is no central nerve by which experiences are documented and analysed. Therefore, the current proposal to establish the “Alternative Dispute Resolution Law” (Bill No 5004) and its especial provision for the creation of the Philippine Centre for Alternative Dispute Resolution, to which civil and minor criminal cases will be referred before they are sent to the courts and the prosecutors office, can help strengthen the supervision of the BJS (Agnes Villarruz, Interview, 2002).

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74 This contrasts with most elite civil hiring procedures, where educational level is the precondition for success.
75 This alternative lawyering would help students to develop a stronger social awareness and to prepare for the Bar examinations (GRF, Policy Paper on BJS, pp.5). Similarly, it can provide further training on particular legal issues to BJS workers.
76 As it is structured now, conciliation panels consist of 3 members who shall be chosen by the parties to the dispute from the list of members of the Lupon (Nolledo, J.N., 1991 LGC, Sec. 404).
77 One of the purposes of the Philippine Alternative Dispute Resolution Centre is “to supervise, oversee, promulgate guiding rules and regulations, monitor, evaluate, regulate, and institute changes as necessary to the PMC, ODR, KP Coordinating Council for the purpose of developing, strengthening, aligning,
5. Strengthening Documentation & Reporting Functions

The individualization of justice that ADR mechanisms represent makes it difficult to analyse and evaluate the different cases filed and the respective agreements reached, unless there is an efficient reporting and documentation system. Apart from high quality trainings, BJS implementers need a ‘frame of reference’ concerning the history of cases dealt over time in order to improve their knowledge and effectiveness in their mediation functions.

Although it is a direct mandate of the law that the Lupon Secretary shall keep and maintain a detailed record book of all the complaints filed with the Punong Barangay, this function is often violated. It is important to strengthen this mandate and include it in the trainings designed for the Lupon Secretary, since efficient reporting is necessary to guarantee a well-organised documentation system. This can serve to establish ADR jurisprudence, based on past processes that may be extremely useful in orienting mediators and conciliators, and in facilitating the evaluation of community problems in the country.

The LGC also states as a function of the Lupon to “meet regularly once a month to provide a forum for matters relevant to the amicable settlement of disputes, and to enable various conciliation panel members to share with one another their observations and experiences in effecting speedy resolution of disputes” (Nolledo, J.N., 1991 LGC, Sec. 402:b). However, this rarely happens, especially if we consider that numerous barangays do not even constitute a Lupon. Hence, new enforcement mechanisms should be put in place to ensure the election of a Lupon, and its compliance with all its function mandated by law.
6. Improving inter-barangay coordination and communication: exchange of experiences and BJS officials

The creation of a network across different barangays to exchange experiences and staff for the administration of justice can complement other training practices, and thus help improve the functioning of the system. Both the Constitution and the LGC\(^{78}\) authorise (without compelling) local governments to enter into coordinative and collaborative undertakings, but the possibility has not been properly utilised. Civil society organisations are attempting to build links among different local government units through their networks, but this should be complemented with initiatives from local government officials. Different barangays could organise themselves in broader ‘corporations’ to share funds and expertise, facilitate cross-visits and implement common projects.

\(^{78}\) Nolledo, Jose N., 1991 LGC, Chapter 1, Sec. 3-f
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