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Philippine Community Mediation, Katarungang Pambarangay

Gil Marvel P. Tabucanon, James A. Wall, Jr.,** and Wan Yan****

I. BACKGROUND

In a recent article contemplating the challenges society will face to survive the next half century, Joel Cohen surmised that one requisite for survival is finding domestic and international institutions to resolve conflicts.¹ Currently, mediation appears to be the frontrunner for domestic resolutions. It is applied to a wide variety of conflicts, including labor-management negotiations, community disputes, school conflicts, and marital problems. Moreover, there is evidence—from China, Taiwan, India, Britain, Australia, Japan, and Turkey—indicating that mediation is being utilized worldwide.²

When applied worldwide to a variety of conflicts, mediation assumes diverse forms. This article reports on a type of mediation that is probably unknown to most readers—the three-person “Katarungang Pambarangay” panel utilized in the Philippines.

First, we present a brief overview of the process, followed by a delineation of the history, purpose, operational structure, jurisdiction, venue, procedure, and time frame for this mediation approach. Finally, we report on interviews we conducted with mediators who have served on these panels. Their accounts reveal intriguing details as to how the mediation process unfolds and the benefits of this dispute resolution process.

Our goals in this article are threefold: (1) to describe this grassroots mediation approach; (2) to expand our knowledge about mediation; and (3) to reflect on the advantages of this approach so as to improve mediation in other arenas.

The report begins with a succinct overview of the Katarungang Pambarangay institution.

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1. Joel E. Cohen, *Human Population Grows Up*, SCI. AM., Sept. 2005, at 48-55.

2. DAVID W. AUGSBURGER, CONFLICT MEDIATION ACROSS CULTURES: PATHWAYS AND PATTERNS (Westminster/John Knox 1992); Dania A. Daldin, & James A. Wall, *Third Parties and Cultures*, 15 NEGOTIATION J. 381-87 (1999); James A. Wall, et al., *Mediation: A Current Review and Theory Development*, 45 J. OF CONFLICT RESOL. 370-91 (2001).

II. KATARUNGANG PAMBARANGAY: OVERVIEW

The Katarungang Pambarangay is a three-person mediation in which the mediators are drawn from volunteers in the barangay. In rural communities, “barangay” refers to “village,” while in cities “barangay” refers to the smallest political unit. Currently, in the Philippines there are 40,000 barangays and therefore 40,000 Katarungang Pambarangay mediation centers.³ This tri-party approach to mediation has its counterparts in various other countries. In India, the village panchayat—group of five—mediates in public to resolve any dispute brought before them.⁴ The chotei (conciliation) system in Japan has been the preferred method for resolving disputes since the seventeenth century.⁵ It is the favored method for reconciliation because the Japanese highly value community harmony, and taking someone to court is seen as a breach of such harmony.⁶ In Spain, labor disputes are mediated by a four-party mediation team.⁷

III. HISTORY

Like most traditional community systems in other countries, the origins of the Katarungang Pambarangay are rather uncertain; yet, for centuries, elders from neutral barangays served as mediators of conflicts arising between members of different barangays.⁸ This process was simple, perhaps crude, but it was more efficient than taking the conflict to court. In addition, the decision makers in the process were individuals who knew the customs of the people better than robed judges.⁹

The current official Katarungang Pambarangay system is based upon these time-honored traditions of amicably settling disputes among family and barangay members without court involvement. On January 27, 1978, Philippine President Ferdinand E. Marcos created, through Presidential Decree 1293, a Presidential Commission with Chief Justice Fred Ruiz Castro as Chairman.¹⁰ The Commission was charged with the responsibility of instituting a dispute resolution system, at the barangay level, which did not involve the courts.¹¹ Chief Justice Castro, in

3. The Official Web Site of the Republic of the Philippines, http://www.gov.ph/cat_localgov/default.asp (last visited Nov. 19, 2008).

4. JIM V. LOPEZ, *THE LAW ON ALTERNATIVE DISPUTE RESOLUTION: PRIVATE JUSTICE IN THE PHILIPPINES, HOW TO SOLVE LEGAL DISPUTES WITHOUT A COURTROOM TRIAL*, 59 (Rex Book Store, Inc. 2004).

5. *Id.*

6. *Id.* at 60.

7. Roberto Martinez-Pecino et al., *Labor Conflict Mediation in Andalusia*, presented at the International Association for Conflict Management Conference at Montreal on June 28, 2006. In this approach, two individuals are selected by the union and two are selected by management. *Id.*

8. LOPEZ, *supra* note 4, at 2.

9. *Id.*

10. Pres. Dec. No. 1293 (1978). This law was the precursor of the original Katarungang Pambarangay Law Pres. Dec. No. 1508 (1978).

11. *Id.* The chairman was Supreme Court Chief Justice Lorenzo R. Relova. The members were Lorna L. de la Fuente (Assistant Secretary of Justice); Brig. Gen. Samuel M. Soriano (Assistant Secretary of Defense); Gadoso C. Sosmena Jr. (Bureau of Local Government Director), Antonio G. Dumlaog (Bureau of Higher Education Director); Cecilio L. Pe (Integrated Bar of the Philippines President); and Alfredo F. Tadiar (Director of University of the Philippines Law Center). Pres. Dec. No. 1293 (1978).

turn, issued Administrative Order No. 12 appointing the leader and members of the technical committee,¹² who were tasked: (1) to study and formulate a system or systems of resolving disputes among family and barangay members, as well as among persons belonging to different barangays at the barangay level without the intervention of lawyers and the courts; (2) to determine the different categories of disputes that may be settled under the system or systems; and (3) to formulate and recommend policies, rules and regulations, and procedural guidelines that will be followed in the settlement of such disputes.¹³

The technical committee approved and submitted the final draft to the president. On June 11, 1978, President Marcos signed the innovative proposal into law as Presidential Decree 1508, otherwise known as the Katarungang Pambarangay Law.¹⁴ Since then, P.D. 1508 has been amended somewhat by Republic Act 7160, but the intent and original concept as envisioned under P.D. 1508 remain essentially the same.¹⁵

The law establishing the Katarungang Pambarangay system, Presidential Decree 1508 (as amended), does not claim to introduce a new concept of dispute settlement in the Philippines. Instead, it recognizes and formalizes the tradition of village-centered dispute resolution. The avowed purpose, expressly stated in the law itself, is to: (1) promote the speedy administration of justice; (2) implement the constitutional mandate to preserve and develop Filipino culture; and (3) strengthen the family as a basic social institution.¹⁶ The preliminary statement of the law's intent laments the indiscriminate filing of cases in the courts of justice and how this has contributed heavily and unjustifiably to the congestion of court dockets, effectively causing the deterioration of the quality of justice in the country.¹⁷ It is thus the express intent of the law to help relieve the courts of such crowded dockets and to institutionalize a system of amicably settling disputes at the barangay level.¹⁸

IV. OPERATIONAL STRUCTURE

The Republic Act 7160 relegated the administration and implementation of the Katarungang Pambarangay to the local government units, particularly the Municipal Mayor's office.¹⁹ Although the structure of the Katarungang Pambarangay varies somewhat from barangay to barangay, it essentially has the same features.

The appointment of chairman and members was formalized by Administrative Order No. 17 issued by Chief Justice Castro.

12. LOPEZ, *supra* note 4, at 13-14.

13. Although promulgated on June 11, 1978, the law became effective on December 11, 1978. Pres. Dec. No. 1508 § 19 expressly provides that the decree "shall take effect six (6) months after its promulgation."

14. *Id.* at 15.

15. An Act Providing for a Local Government Code of 1991, Rep. Act No. 7160 (1991) [hereinafter *Local Government Code*].

16. *Id.*

17. *See id.* at § 404(b).

18. Martinez-Pecino, *supra* note 7; *see also Local Government Code, supra* note 12, at § 421: ("The city or municipal mayor, as the case may be, shall see to the efficient and effective implementation and administration of the katarungang pambarangay. The Secretary of Justice shall promulgate the rules and regulations necessary to implement this Chapter.")

19. *See Local Government Code, supra* note 12, at § 399:

Within each barangay, a Lupong Tagapamayapa or Lupon (literally “peace congregation”) is established and composed of 10–20 members with a Punong Barangay (Barangay Captain) as chair and a secretary.²⁰ Every three years the Barangay Captain selects the Lupon, and any barangay resident possessing “integrity, impartiality, independence of mind, sense of fairness, and reputation for probity” may be appointed as a member.²¹ When serving as mediators, the Pangkat members are deemed “persons in authority” as defined in the Revised Panel Code of the Philippines.²² This official designation provides the members with power as well as status in the community. These mediators also serve without compensation, believing that conflict management within the community is their duty.²³

If a vacancy occurs in the Lupon, the Barangay Captain immediately appoints a qualified person to hold office for the unexpired portion of the term.²⁴

The functions of the Lupon are threefold: (1) to exercise administrative supervision over the mediation panels (Pangkats); (2) to meet regularly once a month to provide a forum for exchange of ideas among its members and the public on matters relevant to the amicable settlement of disputes; and (3) to exercise other powers, duties and functions as may be prescribed by law or ordinance.²⁵

To reiterate, across the Philippines there are approximately 40,000 barangays.²⁶ Each of these establishes a Lupon, or peace-congregation, which has 10–

A notice to constitute the lupon, which shall include the names of proposed members who have expressed their willingness to serve, shall be prepared by the punong barangay within the first fifteen (15) days from the start of his term of office. Such notice shall be posted in three (3) conspicuous places in the barangay continuously for a period of not less than three (3) weeks; (d) The punong barangay, taking into consideration any opposition to the proposed appointment or any recommendations for appointments as may have been made within the period of posting, shall within ten (10) days thereafter, appoint as members those whom he determines to be suitable therefor. Appointments shall be in writing, signed by the punong barangay, and attested to by the barangay secretary. (e) The list of appointed members shall be posted in three (3) conspicuous places in the barangay for the entire duration of their term of office; and (f) In barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of es through their councils of datu or elders shall be recognized without prejudice to the applicable provisions of this Code.

20. *Id.* at § 399.

21. *Id.* at § 399(a)-(b).

22. *Id.* at § 406(a).

23. *Id.* at § 406(b).

The lupon or pangkat members shall serve without compensation, except as provided for in Section 393 and without prejudice to incentives as provided for in this Section and in Book IV of this Code. The Department of the Interior and Local Government shall provide for a system of granting economic or other incentives to the lupon or pangkat members who adequately demonstrate the ability to judiciously and expeditiously resolve cases referred to them. While in the performance of their duties, the lupon or pangkat members, whether in public or private employment, shall be deemed to be on official time, and shall not suffer from any diminution in compensation or allowance from said employment by reason thereof.

Id.; see also § 422: (“Such amount as may be necessary for the effective implementation of the katarangang pambarangay shall be provided for in the annual budget of the city or municipality concerned.”).

24. *Id.* at § 401.

25. *Id.* at § 402.

26. *Id.* at § 399.

20 members.²⁷ The Lupon provides members for the mediation panels and oversees their functioning.²⁸

The Pangkat consists of three members who are to be chosen by the disputants from the Lupon's membership list.²⁹ If the disputants should fail to agree on the Pangkat membership, the selection is made by the Lupon Chairman, who randomly draws from the Lupon membership pool.³⁰

The three members constituting the Pangkat elect their chair and secretary.³¹ The chairman of the mediation panel conducts the mediation, and when doing so, he and the other members are authorized to administer oaths in connection with any matter relating to their proceedings.³² The secretary is responsible for serving notices to the parties to a dispute.³³ The secretary also prepares the minutes of the Pangkat proceedings and submits a chair-approved copy to the Lupon secretary and to the proper city or municipal court.³⁴

V. JURISDICTION AND VENUE

The power of these mediators is underpinned by the stipulation that all intra-barangay disputes must be channeled through them prior to submission to the court. Specifically, under the law, all disputes between parties actually residing in the same city or municipality are to pass through the Katarungang Pambarangay system for amicable settlement.³⁵ The prior referral of a dispute to the Katarungang Pambarangay is mandatory before a case can be filed in court.³⁶ The Supreme Court of the Philippines held that a case filed in court without compliance with prior barangay conciliation may be dismissed upon motion of the defendant, or the court may suspend proceedings upon petition of any party and refer the case to the appropriate barangay authority.³⁷

Recently, the Philippine Supreme Court expanded the Pangkats' power, by revising the Katarungang Pambarangay Law as follows: (1) the Lupon's authority to take cognizance of minor criminal offenses has been expanded from crimes punishable by imprisonment not exceeding thirty days or a fine not exceeding

27. *Id.*

28. *Id.* at §§ 402, 404.

29. *Id.* at § 404(a).

30. *Id.* If a vacancy occurs in the Pangkat, the parties choose a replacement from among the other Lupon members. However, if the parties cannot agree on the replacement, the Lupon chair fills the vacancy by random selection from the Lupon membership list. *Id.*

31. *Id.* at § 404(b).

32. *Id.* at § 420.

33. *Id.* at §§ 403, 404(b).

34. *Id.* at § 404(b).

35. *Id.* at § 408.

36. *Id.* The Code states:

No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached unless certified by the lupon secretary or pangkat secretary as attested to by the lupon chairman or the pangkat secretary . . . or unless the settlement has been repudiated by the parties thereto.

Id. at § 412(a).

37. *Bonifacio Law Office v. Bellosillo*, A.M. No. MTJ-00-1308. (S.C. Dec. 16, 2002) (citing Administrative Circular No. 14-93, par. IV).

P200.00 (pesos) to those offenses punishable by imprisonment not exceeding one year or a fine not exceeding P5,000.00; and (2) as to venue, disputes arising at the workplace where the parties are employed or at the institution where such parties are enrolled for study, shall be brought to mediation where such workplace or institution is located.³⁸

While the Pangkats have jurisdiction over most cases, there are exceptions in the following circumstances: (1) where one party is the government, or any subdivision or instrumentality thereof; (2) where one party is a public officer or employee, and the dispute relates to the performance of his official functions; (3) where the offense is punishable by imprisonment exceeding one year or a fine exceeding five thousand pesos (P5,000.00); (4) where there is no private offended party; (5) where the dispute involves real properties located in different cities or municipalities unless the parties agree to submit their differences to amicable settlement by an appropriate Lupon; (6) where the dispute involves parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties agree to submit their differences to amicable settlement by an appropriate Lupon; (7) where the accused is under detention; (8) where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings; (9) where actions are coupled with provisional remedies such as preliminary injunction, attachment, and delivery of personal property; (10) where the action may otherwise be barred by the statute of limitations; and (11) in such other classes of disputes where the President may so determine in the interest of justice or upon the recommendation of the Secretary of Justice.³⁹

Any objections to jurisdiction/venue are to be raised in the mediation proceedings before the barangay leader; otherwise, they are waived. Any legal question which may confront the barangay leader in resolving objections to venue are to be submitted to the Secretary of Justice, or his duly designated representative, whose ruling is binding.⁴⁰

VI. PROCEDURE

Turning from the jurisdiction and venue for the Katarungang Pambarangay, its procedural steps are as follows—any individual who has a cause of action against another individual involving any matter within the authority of the Lupon first pays a small filing fee.⁴¹ Subsequently, he or she complains orally or in writing to the Lupon chairman of the barangay.⁴² In the next working day, the Lupon chairman notifies the respondent(s) about the complaint and tells the respondent(s), the witnesses, and the complainant to appear before him for a mediation within three days.⁴³ If the chairman fails to mediate the dispute successfully with-

38. *Local Government Code*, *supra* note 12, at § 399.

39. *Id.* at §§ 408, 412(b).

40. *Id.* at § 408.

41. *Id.* at § 410(a).

42. *Id.*

43. *Id.* at § 410(b).

in fifteen days from the meeting with the parties, he or she sets the date for the Pangkat mediation.⁴⁴

The Pangkat convenes no more than three days from its constitution, at the time set by the Lupon chairman, to hear both parties and their witnesses, to simplify the issues, and to explore all possibilities for amicable settlement.⁴⁵ For this purpose, the Pangkat may issue summonses for the personal appearance of the parties and witnesses.⁴⁶ If a party moves to disqualify any member of the Pangkat by reason of relationship, bias, interest, or any other similar grounds discovered after the constitution of the Pangkat, a majority vote of the Pangkat determines whether disqualification is appropriate, and this decision is final.⁴⁷

The Pangkat is to arrive at a settlement or resolution of the dispute within fifteen days from the day it convenes.⁴⁸ This period, at the discretion of the Pangkat, can be extended for another period which does not exceed fifteen days.⁴⁹ In clearly meritorious cases, a longer period may be set.⁵⁰

All proceedings for settlement are public and informal.⁵¹ That is, the proceedings are conducted in a relaxed, even friendly, atmosphere and they are not bound by rigid or technical rules of court procedure.⁵² However, in certain cases, the Lupon chairman or Pangkat chairman may exclude the public from the proceedings in the interest of privacy, decency, or public morals.⁵³

As mandated by law for the Katarungang Pambarangay proceedings, the parties must appear in person without the assistance of counsel or representatives, except for minors and people deemed incompetent, who may be assisted by their non-lawyer next-of-kin.⁵⁴

Once there is a mediated settlement, it is written in a language or dialect known to the parties, signed by the parties, and confirmed in writing by the Lupon chairman or Pangkat chairman.⁵⁵ This signed settlement has the force and effect of a final judgment of a court after ten days, unless either party repudiates the settlement or files a petition to nullify the award before the proper city or municipal court.⁵⁶

44. *Id.*

45. *Id.* at § 410(d).

46. *Id.*

47. *Id.* at § 410(d).

48. *Id.* at § 410(e).

49. *Id.*

50. *Id.* at § 410(e).

51. *Id.* at § 414.

52. *Id.* at § 415.

53. *Id.* at § 414.

54. *Id.* at § 415.

55. *Id.* at § 411.

56. *See id.* at § 416:

[T]his provision shall not apply to court cases settled by the lupon under the last paragraph of Section 408 of this Code, in which case the compromise settlement agreed upon by the parties before the lupon chairman or the pangkat chairman shall be submitted to the court and upon approval thereof, have the force and effect of a judgment of said court.

The last paragraph of § 408 states:

(g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

If a party wishes to repudiate the signed document, he or she must file a statement with the Lupon chairman.⁵⁷ Such a statement can be made if the consent was vitiated by fraud, violence, or intimidation; perceived unfairness, however, cannot form the basis of an appeal.⁵⁸

If there is no disagreement within the ten-day period, the secretary of the Lupon transmits the settlement to the appropriate city or municipal court within five days after the ten-day lapse.⁵⁹ In addition, the secretary furnishes copies to each of the parties to the settlement, as well as to the Lupon chairman.⁶⁰ The Lupon enforces the agreement within six months from the date of the settlement; after six months, the agreement may be enforced by action in the appropriate city or municipal court.⁶¹

VII. ARBITRATION OPTION

One of the unique features of the Katarungang Pambarangay system is its flexibility. Although primarily intended to help disputants reach amicable settlement through conciliation and mediation, the system can also provide arbitration should the parties so desire. If arbitration is the preferred process, all the parties must agree in writing, at any stage in the proceedings, that they will abide by the arbitration award of the Lupon chairman or the Pangkat.⁶² As with the mediated settlement, the arbitration award is made in writing in the language or dialect known to both parties to a dispute.⁶³ This arbitration award may be repudiated within five days upon certain grounds—such as fraud, mistake, violence or intimidation—prescribed by the law; if the award is repudiated, the case will go to trial.⁶⁴

The official award from the arbitration must be finalized within ten days after the five-day lapse period for repudiation.⁶⁵ The secretary of the Lupon transmits the arbitration award to the appropriate city or municipal court within five days from the date of the award and furnishes copies to each of the parties as well as to the Lupon chairman.⁶⁶ As with a mediated agreement, the arbitration award is

The court in which non-criminal cases not falling within the authority of the lupon under this Code are filed may, at any time before trial, *motu proprio* refer the case to the lupon concerned for amicable settlement.

Id. at § 408(g).

57. *Id.* at § 418.

58. *Id.*

59. *Id.* at § 419.

60. *Id.*

61. *Id.* at § 417.

62. *See id.* at § 418:

Any party to the dispute may, within ten (10) days from the date of the settlement, repudiate the same by filing with the lupon chairman a statement to that effect sworn to before him, where the consent is vitiated by fraud, violence, or intimidation. Such repudiation shall be sufficient basis for the issuance of the certification for filing a complaint as hereinabove provided.

63. *Id.* at § 413(b).

64. *Id.* at § 413(a).

65. *Id.*

66. *Id.* at § 419.

enforced by the Lupon within six months.⁶⁷ After six months, it is enforced by action in the appropriate city or municipal court.⁶⁸

VIII. TIME FRAME

Returning to the mediation facet of the Katarungang Pambarangay, it is worthwhile to reiterate the time frame for a case. As noted above, a dispute which arises between two parties in the same barangay must go through the Katarungang Pambarangay process. It cannot go directly to court. First, the complaint is filed with the Lupon chairman, who has fifteen days to settle it. If he or she fails to do so, members of the Pangkat are selected and must meet within three days. The Pangkat, in turn, has fifteen days to mediate and, if it wishes, can take an additional fifteen days. If there is no settlement, the case is permitted to go to court. In sum, it can take forty-eight days from the day a complaint is filed until it is settled or released to go to court.

IX. KATARUNGANG PAMBARANGAY IN ACTION

The preceding description of the Katarungang Pambarangay—its history, purpose, operational structure, jurisdiction, venue, procedure and time frame—was developed from the legal literature. To enhance and complement this description, we asked eight Lupon members from different barangays to discuss several of their most recent cases. These members were identified and recruited by the first author and interviewed, in English, via telephone by the second and third authors. While we did not ask the members about their day jobs, we inferred from our conversations that they hailed from various levels of society; specifically, some were housewives, businessmen, farmers, teachers, and skilled laborers. None were attorneys. During the interviews, these mediators described the disputants, the underlying dispute, and the specific actions taken by the Pangkat members to resolve the dispute.

A. Disputes

The Pangkat members mediated a variety of cases, which seemed to include every type of dispute that could arise in a community. Specifically, the disputes included divorce, spousal abuse, child abuse, theft, assault, land disputes, contract disputes, child abandonment, public drunkenness, slander, and sexual misconduct.

As previously noted, the Katarungang Pambarangay is officially expected to handle criminal cases that could result in prison sentences of a year or less and civil cases that have a value of P5,000 or less. For example, it would handle a case in which a person inflicted physical injury upon another person, with the intent to kill, resulting in the victim's incapacitation for one month.

67. *Id.* at § 417.

68. *See id.* ("The amicable settlement or arbitration award may be enforced by execution by the lupon within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court."); *see also id.* at § 416.

B. Case Routings

Though the procedure varies from barangay to barangay, the Lupon chair first considers the case and routes the minor civil or criminal cases to a three-person Pangkat panel that specializes in “small” cases. Major criminal cases are taken directly to the police, who at times mediate them in order to settle the disputes out of court. The chairman will vigorously attempt to mediate the moderate-level criminal cases. If the mediation fails, the chairman will pass the case to the Pangkat/three-person panel. At times, the Lupon chairman will often personally mediate the large, complex, high-value civil cases. For example, in a dispute over where a land border lay, the chairman heard from the disputants, had the land surveyed, listened to witnesses, brought in an influential third party to advise the parties, and engaged in some of his own arm-twisting.

It is also worth noting here that the disputes will at times be brought to the Lupon chairman by one party, and the chairman will take several steps prior to contacting the second party. For example, when a local official brought a child abandonment case to the chairman’s attention, the chairman immediately contacted the father, the first party. In a meeting with the father, the chairman told him he was a criminal, that he was supposed to support the child, and that he was to apologize to his wife. Subsequently, during a meeting with his wife, the husband indicated he had made a mistake in abandoning his parental responsibilities, accepted his responsibility, and signed an agreement to support the child.

C. Pangkat Structure

When a dispute is channeled to the Pangkat, an extensive amount of local, grass-roots variations emerge. Officially, the Pangkat is supposed to consist of three members, but in some barangays—for unknown reasons—the number is four. This arrangement seems to function well for family disputes, as the two male mediators can place pressure on the male disputant, and the two female mediators can place pressure the female disputant.

A second detour from the official rules is evident in the selection of the Pangkat panel. Officially, the disputants are supposed to choose the Pangkat panel members from the Lupon pool. Our interviews indicate that frequently, the Pangkats are previously established panels that handle the cases routed their way. They are not formed, or reformed, for each dispute.

D. Pangkat Procedure

After the case has been filed with the Lupon chairman and the chairman has attempted, unsuccessfully, to mediate the case, the case is assigned to the Pangkat. The Pangkat secretary then schedules the case for mediation. Prior to the appointed hour, the Pangkat meets, learns which cases will be heard, and in some cases, prays. Typically, the prayer is that the Holy Spirit will be present, guide the mediators, and give enlightenment to the disputants. Once the disputants have arrived (without lawyers), the chair of the Pangkat explains the role of mediators and the mediation rules. He may call for a prayer, and then he asks the plaintiff to state his case. Subsequently, the panel members may ask any questions they like.

While the plaintiff is speaking, the defendant waits outside the room or remains silent in the room.

When the mediators feel they adequately understand the plaintiff's side and background, they call upon the defendant to give his or her version of the dispute. As the defendant does so, the plaintiff is to remain silent. However, the party that is to remain silent sometimes interrupts and becomes very emotional. Therefore, the mediators may have to raise their voices to bring the situation under control.

After both sides have stated their case, the mediators perform their own legal sorting. Most property cases are sent to court because of their complexity, but for the simple property cases, a survey may be ordered and the case retained by the Pangkat. Physical injury, automobile, torts, insults, minor thefts, property damage, family relations and irritating neighbor cases are retained by the Pangkat.

In these latter cases, the Pangkat panel proceeds with two general strategies to resolve the dispute—it informs the disputants, by comparing mediation to the court system, why Pangkat mediation is preferable, and it determines which party is right and which is wrong.

E. Strategies

The “comparison to the courts” strategy is quite simple. The mediators emphasize to the disputants that the delay, irritation, cost, and embarrassment of going to court makes the court option less favorable than a mediated settlement. Resorting to the court is also criticized as foolish because, instead of controlling their own fate, the disputants are placing their futures into the hands of strangers who may not understand the problem or their customs. There is the risk that anything can happen in court. And there is one's obligation to society—if all people take their cases to court, it causes delay and a lower quality of justice for everyone.

The second mediation strategy is to determine who is right and who is wrong. To Western ears, this strategy assigns labels of “winner” and “loser.” But to the Pangkat mediators, this method has a different connotation. The mediators often determine who is right so he or she can be pressed to modify his or her legitimate claims and forgive the loser. The loser is to be identified so that he or she can apologize, have his or her guilt alleviated, and perhaps have his or her obligations reduced. Therefore, in the Pangkat mediation, the winner becomes a loser; the loser becomes a winner; and both are winners because they do not need to litigate their dispute.

After determining who is right and who is wrong, the mediators will sometimes announce that there is a win-win resolution. For example, in a case where a loan had not been repaid, the mediators acknowledged that the lender deserved to be repaid the interest on the loan but persuaded the lender to accept the return of the principal but to forgo the accumulated interest. Therefore, the borrower won because he did not have to pay the interest, and the lender won because he received the principal.

When pursuing either strategy—comparing mediation to court and determining who is right or wrong—the mediators perform an evaluative function, utilizing moral and religious standards, in addition to laws, to evaluate the disputants' behaviors. But when they find a legal violation or standard, they unequivocally

emphasize the law, with comments such as, “you committed a felony assault and could spend almost a year in prison for what you did.”

Interestingly, the Pangkat members will often take their mediations outside the mediation room. For example, in one case, the female plaintiff refused to settle in the mediation. Therefore, the panel extended the case by fifteen days. Prior to the next mediation, a female member of the Pangkat approached the plaintiff at church and urged her to be charitable by consenting to a settlement.

X. SUMMARY AND DISCUSSION

As noted in the introductory paragraphs, one of the goals of this article is to describe Katarungang Pambarangay in order to expand our knowledge about mediation.

Our research indicates that the Katarungang Pambarangay is a highly structured grass-roots community mediation process instituted to enhance the quality of justice in the Philippine legal system by reducing congested court dockets. It also promotes justice by allowing people to amicably resolve their own disputes with the assistance of barangay neighbors.

When compared to community mediation approaches elsewhere in the world, the Katarungang Pambarangay has three unique characteristics. First—and most obvious—it utilizes three mediators, whereas most mediations rely upon one. In most societies, the reason for a single mediator is somewhat self-evident—the mediations tend to be quicker. Also, it is easier for the disputants to take the conflict to one person rather than round up a team of mediators. Single-person mediations also tend to be less expensive. And mediators, it seems, prefer to work alone, because it is easier to handle the dispute between parties rather than to broach the two-fold task of handling the disputants’ disagreements and coordinating efforts with another mediator.

The second rather unique aspect of the Katarungang Pambarangay system is that it is compulsory. In most societies, disputants seek out mediation on their own because it is the traditional way to solve disputes, it is less expensive than adjudication, it is less time-consuming, and it is less embarrassing than going to court.

Lastly, perhaps the most interesting aspect of Katarungang Pambarangay is that attorneys are banned from the mediation, whereas in most societies they are permitted. The purpose of banning lawyers is not addressed in Philippine law. Perhaps the legislators wished to empower and encourage the disputants to solve their own conflicts, or perhaps the goal was to reduce costs.

The combination of these unique features provides three benefits for the Philippine legal system. First, the mediation process is efficient, in that the mediations are conducted quickly and inexpensively. Second, few disputes go to trial. The rigidity of the system more or less dictates this because the rules require that almost all cases go to mediation prior to trial. Once in mediation, the three Pangkat mediators are narrowly focused on the settlement goal, and they want very few cases to work their way to the court docket. In fact, there are even competitions among barangays, with awards given to those who resolve the most disputes. The power structure underpins the dogged pursuit of this goal by giving the mediators considerable power over the disputants. However, the system is also flexible, because the disputants can determine what the agreement will be. Therefore, they

feel empowered, amicably disposed toward the mediators as well as their opponent, and committed to implementing the agreement.

The third, and perhaps most valuable benefit, is the absence of a win-lose context in which the disputants feel like winners or losers. As we noted earlier, the losers become winners. The disputants may feel mistreated in the process, but usually they perceive that the opponent received similar treatment. In U.S. and other civil mediations, the disputants, despite the best efforts of the mediators, often perceive that there is a winner and a loser. With this perception, both of the disputants are likely to feel somewhat dissatisfied with the mediation.

While the Katarungang Pambarangay has multiple advantages and functions well in the Philippines, it would be difficult to implement in the United States because of three cultural differences. The first dissimilarity is that people in the U.S. value their privacy; therefore, they take a dim view of having community members' being informed about their disputes and publicly proffering resolutions.

A related difference is that Americans view themselves as individuals—not as members of a larger collective—who own their disputes and have the right to resolve them.

A third cultural difference is that U.S. citizens have a very strong tradition of taking disputes to court. Enthusiastically, they enter, embrace, and battle within the adjudicative process. The primary motivator for doing so is their perception that adjudication is a type of legal contest in which each disputant has an opportunity to prove that he or she is right. In the courts, one can compete with and beat the opponent, rather than negotiate or participate in a mediation, which might appear weak.

Given that the Katarungang Pambarangay probably cannot be implemented in the U.S. judicial system, what steps could be taken to achieve some of its advantages? Simply requiring more cases to go to mediation is not the answer, for this dictate would overwhelm the current mediation system. Appealing directly to disputants also seems inadvisable because most parties want to have their day in court, and they associate mediation with timidity.

A better approach is to focus on attorneys in order to educate them about the advantages of mediation and to have law students and even practicing attorneys attend mediations. An effective educational approach would be for mediators to experiment with a procedure in which the disputants attend first, without lawyers present, to see if this improves the quality of the agreement as well as the agreement rate.

Eliminating the win-lose mentality in mediations is a more daunting task. We are open to suggestions, but believe as long as an adversarial environment prevails in the courtroom, it will also abide in civil mediations.

