

# The Role of Mediation in Good Governance: Revisiting the Katarungang Pambarangay

Anna Mae R. Avenido\*

Gil Marvel P. Tabucanon\*\*

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## I. INTRODUCTION

Joel E. Cohen, in his Article, *Human Population: The Next Half Century*, reflected on the requisites that the global community would need to thrive in the decades ahead, when the human population is expected to add an additional two to four billion by year 2050.<sup>1</sup> He hypothesized that a requirement for survival is being able to put in place local and international institutions capable of resolving disputes.<sup>2</sup> Human choices on the resolution

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\* '20 LL.M., Macquarie University; '16 LL.B., University of San Jose-Recoletos. The Author was a Legal Assistant at the University of the Philippines Cebu.

\*\* '14 Ph.D., Macquarie University; '06 LL.M., University of Missouri; '87 LL.B., University of San Carlos. The Author is currently an adjunct Senior Lecturer of Law at Notre Dame University — Australia. He also teaches Dispute Management and Resolution courses at Macquarie Law School, Macquarie University. He graduated as a Fulbright scholar at the University of Missouri.

*Cite as* 65 ATENEO L.J. 1395 (2021).

1. Joel E. Cohen, *Human Population: The Next Half Century*, 302 SCI. 1172, 1172 (2003).
2. *See id.*

of these conflicts “will have demographic effects”<sup>3</sup> that are significant and impact not only the global society but also the local communities we find ourselves in.<sup>4</sup>

At present, mediation is at the forefront among the preferred methods in the management, de-escalation, and resolution of conflicts.<sup>5</sup> As a dispute resolution tool, it is applied in a variety of cases from neighborhood disputes and domestic conflicts involving marriage, inheritance, and inter-personal office misunderstandings to national and international border and class conflicts.<sup>6</sup> Northern Ireland’s long-standing conflict ended with the signing of the 10 April 1998 Good Friday Agreement,<sup>7</sup> brokered through a series of mediation efforts led by United States (U.S.) Special Envoy Senator George J. Mitchell;<sup>8</sup> while the resolution of the border dispute between Peru and Ecuador, one of South America’s longest running border conflict, was made possible, in part, due to a series of mediation meetings that had “[mobilized] diplomatic energies on an unprecedented scale, incorporating the first effective multilateral peace-keeping mission in South America.”<sup>9</sup>

On the occasion of the 30th anniversary of the signing of the Local Government Code of 1991,<sup>10</sup> this Article revisits one of the Philippines’ most enduring institutions for community peacemaking, the Katarungang Pambarangay, a three-person mediation panel utilized to resolve community disputes in the Philippines.<sup>11</sup> It reflects on the strengths and contributions the Katarungang Pambarangay has given towards the community peace-building

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3. Cohen, *supra* note 1, at 1172.

4. *Id.*

5. See Kenneth R. Feinberg, *Mediation — A Preferred Method of Dispute Resolution*, 16 PEPP. L. REV. S5, S5 (1989).

6. *Id.* at S21.

7. Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, U.K.-Ir., Apr. 10, 1998.

8. RICK WILFORD, ASPECTS OF THE BELFAST AGREEMENT 1-5 (2001).

9. Marcel Fortuna Biato, *The Ecuador-Peru Peace Process*, 38 CONTEXTO INTERNACIONAL 621, 621 (citing Lieutenant Colonel Kevin M. Higgins, Military Observer Mission Ecuador-Peru (MOMEP): Doing a Lot With a Little, available at <https://www.hSDL.org/?view&did=445391> (last accessed May 11, 2021) [<https://perma.cc/2KKF-S8VR>]).

10. An Act Providing for a Local Government Code of 1991 [LOCAL GOV’T CODE], Republic Act No. 7160 (1991).

11. Gil Marvel P. Tabucanon, et al., *Philippine Community Mediation, Katarungang Pambarangay*, 2008 J. DISP. RESOL. 501, 501 (2008).

process, while at the same time broaching on a broader question: What is the role of mediation towards good governance? Particularly, in what way will the Katarungang Pambarangay further not only in its avowed aim of “decongesting court dockets,”<sup>12</sup> but in promoting local peacemaking and good governance? Additionally, it reflects on possible ways the Katarungang Pambarangay can become better suited to address issues and challenges in the post-modern era.

Part I presents a brief introduction of mediation and asks whether the Katarungang Pambarangay can be given a greater role towards community peacemaking in particular and good governance in general. Part II presents an overview of the history, purpose, process, and operational structure of the Katarungang Pambarangay, and reflects on the possibility of expanding the law’s focus beyond decongesting overloaded court dockets.<sup>13</sup> It asks what good governance generally is and identifies gaps where mediation may step in to fill towards strengthening democratic capacity. Part III explores aspects of good governance and asks if mediation, and, in particular, the Katarungang Pambarangay, can be a tool for good governance. Part IV recommends that while the Katarungang Pambarangay has contributed significantly towards its twin goals of community peacemaking<sup>14</sup> and decongesting court dockets<sup>15</sup> from having to litigate thousands of local or small claims disputes, work still needs to be done in terms of: (1) the strengthening of and possibly broadening the Katarungang Pambarangay’s role and relevance towards local democratic processes; (2) re-assessment of the total lawyer-ban at Katarungang Pambarangay proceedings; and (3) training of community mediators to further enhance their skills, appreciation, and expertise in the art of mediation.

## II. THE KATARUNGANG PAMBARANGAY

### A. *Brief Historical Perspective*

“Like most traditional community systems in other countries, the origins of the Katarungang Pambarangay[, literally ‘village justice,'] are rather uncertain; yet, for centuries, elders from neutral barangays served as mediators of conflicts

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12. Office of the President, Letter of Instruction No. 956, Series of 1979 [LOI No. 956, s. 1979], ¶ 2 (Nov. 12, 1979).

13. *Id.*

14. See LOCAL GOV’T CODE, bk. 3, tit. 1, ch. VII, § 402 (b).

15. LOI No. 956, s. 1979, ¶ 2.

arising between members of different barangays.”<sup>16</sup> In ways similar to modern-day mediation, a third party takes on the role of a facilitator; unlike its modern counterparts, however, indigenous Philippine conflict resolution such as the *tongtongan* (“consultation” in Ilocano) in Benguet, the process is done before a community elder who acts as mediator.<sup>17</sup> Further, festive or spiritual rituals play a prominent role.<sup>18</sup> “Th[e] 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.”<sup>19</sup>

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.<sup>20</sup> On 27 January 1978, then President Ferdinand E. Marcos created, through Presidential Decree No. 1293,<sup>21</sup> a Presidential Commission with Chief Justice of the Supreme Court, who at that time was Fred Ruiz Castro, as Chairman.<sup>22</sup> The Commission was charged with the duty of instituting a barangay dispute resolution system,<sup>23</sup> and for the Commission’s Technical Committee to, in turn, submit its recommendation to the president.<sup>24</sup> On 11 June 1978, President Marcos signed the Technical Committee’s innovative proposal into law as Presidential

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16. Tabucanon, et al., *supra* note 11, at 502 (citing JIM V. LOPEZ, *THE LAW ON ALTERNATIVE DISPUTE RESOLUTION: PRIVATE JUSTICE IN THE PHILIPPINES, HOW TO SOLVE LEGAL DISPUTES WITHOUT A COURTROOM TRIAL 2* (2004)) (emphasis supplied).

17. Susan Aro, ‘Tongtongan,’ an Indigenous Conflict Resolution, *available at* <https://web.archive.org/web/20180427113345/http://ugnayan.com/ph/Benguet/LaTrinidad/article/HJH> (last accessed May 11, 2021) [<https://perma.cc/3AXY-5FP7>].

18. Eduardo R.C. Capulong, *Mediation and the Neocolonial Legal Order: Access to Justice and Self-Determination in the Philippines*, 27 *OHIO ST. J. ON DISP. RESOL.* 641, 651 (2012) (citing *A SOURCEBOOK ON ALTERNATIVES TO FORMAL DISPUTE RESOLUTION MECHANISMS* 91-92 (2008)).

19. Tabucanon, et al., *supra* note 11, at 502 (citing LOPEZ, *supra* note 16, at 2).

20. Creating a Katarungan Pambarangay Commission to Study the Feasibility of Resolving Disputes at the Barangay Level, Presidential Decree No. 1293, whereas cl. para. 3 (1978).

21. Creating a Katarungan Pambarangay Commission to Study the Feasibility of Resolving Disputes at the Barangay Level, Presidential Decree No. 1293 (1978).

22. *Id.* § 2.

23. *Id.* § 1.

24. *Id.* § 6.

Decree No. 1508 (P.D. No. 1508),<sup>25</sup> otherwise known as the Katarungang Pambarangay Law. Since then, P.D. No. 1508 has been somewhat amended by Republic Act No. 7160,<sup>26</sup> otherwise known as the Local Government Code of 1991, signed by President Corazon C. Aquino on 10 October 1991, but the intent and original concept as envisioned under P.D. No. 1508 remain essentially the same. Republic Act No. 7160 relegated the administration and implementation of the Katarungang Pambarangay to the local government units, particularly the mayor's office of the city or municipality where the barangay is situated.<sup>27</sup> The law likewise provides that budgetary appropriation for the "implementation of the [K]atarungang [P]ambarangay shall be provided for in the annual budget of the city or municipality concerned."<sup>28</sup>

This Article posits that the Katarungang Pambarangay's transfer from the Presidential Decree to the Local Government Code, as well as the relegation of its budget, control, and implementation from national to local bodies, that is, to the city or municipal mayor where the barangay is located,<sup>29</sup> is not a mere symbolical transfer of operational control. It carries with it an intent to include the Katarungang Pambarangay within the broader ambit of good governance, in particular, local governance. This Article thus rebuts the popular notion that the Katarungang Pambarangay was primarily established to decongest the courts of their heavy caseloads brought about by "indiscriminate filing of cases in the courts of justice[.]"<sup>30</sup> but rather to articulate a broader rationale for the Katarungang Pambarangay to recognize and utilize its consensus-building potential as an effective tool for local governance.

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25. Establishing a System of Amicably Settling Disputes at the Barangay Level, Presidential Decree No. 1508 (1978).

26. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160 (1991).

27. *Id.* § 421.

28. *Id.* § 422 (emphasis supplied).

29. *Id.* §§ 421-22.

30. Presidential Decree No. 1508, whereas cl. para. 2.

### B. Operational Structure

As of 30 September 2020, there are 42,046 barangays in the Philippines.<sup>31</sup> A barangay refers to the smallest political unit in the Philippines,<sup>32</sup> and literally means “village,” but may also mean a suburb or district when situated in cities.<sup>33</sup> Etymologically, the term comes from *balangay*, literally, a sailboat, the kind used by ancient settlers in coming over to the Philippines.<sup>34</sup>

The Katarungang Pambarangay is headed by the barangay captain, who is also the disputing parties’ first point of contact, that is, the first person tasked to mediate the dispute.<sup>35</sup> He is given 15 days “from the first meeting of the parties before him [to settle the dispute.]”<sup>36</sup> If the parties do not settle, the barangay captain will constitute a three-person panel of co-mediators called the *pangkat ng tagapagkasundo* (literally, “conciliation panel”), or *pangkat* in short, picked by the parties from a larger pool of mediators called the *lupong tagapamayapa* (literally, “peace congregation” in Filipino).<sup>37</sup> The *lupong tagapamayapa*, or *lupon*, is composed of the barangay captain as chairman and 10 to 20 members, and they shall be constituted every three years.<sup>38</sup>

The three members of the *pangkat* “shall be chosen by the parties to the dispute from the list of members of the *lupon*. Should the parties fail to agree on the *pangkat* membership, the same shall be determined by lots drawn by the *lupon* chairman.”<sup>39</sup> The members of the *pangkat* shall “elect from among themselves the chairman and the secretary[,]”<sup>40</sup> with the latter preparing “the

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31. Philippine Statistics Authority, Philippine Standard Geographic Code (PSGC) available at <https://psa.gov.ph/classification/psgc> (last accessed May 11, 2021) [<https://perma.cc/PCF3-NNET>].

32. Philippine Statistics Authority, Barangay available at <https://psa.gov.ph/content/barangay-1> (last accessed May 11, 2021) [<https://perma.cc/L958-F4SK>].

33. See Definitions, Definitions for Barangay available at <https://www.definitions.net/definition/barangay> (last accessed May 11, 2021) [<https://perma.cc/3PM7-CWGA>].

34. LAURA LEE JUNKER, RAIDING, TRADING, AND FEASTING: THE POLITICAL ECONOMY OF PHILIPPINE CHIEFDOMS 97 & 149 (1999).

35. Presidential Decree No. 1508, § 4 (b) (repealed in 1991).

36. LOCAL GOV'T CODE, § 410 (b).

37. *Id.* § 404 & Presidential Decree No. 1508, § 4 (b) (repealed in 1991).

38. LOCAL GOV'T CODE, § 399 (a).

39. *Id.* § 404 (a) (emphases supplied).

40. *Id.* § 404 (b).

minutes of the *pangkat* proceedings and submit a copy duly attested to by the chairman to the *lupon* secretary and to the proper city or municipal court.”<sup>41</sup>

In terms of jurisdiction, “[t]he *lupon* of each *barangay* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of *all* disputes[,]”<sup>42</sup> except the following:

- (a) Where one party is the government, or any subdivision[,] or instrumentality thereof;
- (b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- (c) Offenses punishable by imprisonment exceeding one [ ] year or a fine exceeding Five thousand pesos (₱5,000.00);
- (d) Offenses where there is no private offended party;
- (e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;
- (f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;<sup>[ and]</sup>
- (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.

The court in which non-criminal cases not falling within the authority of the *lupon* under this Code may, at any time before trial, *motu proprio* refer the case to the *lupon* concerned for amicable settlement.<sup>43</sup>

The law’s mandate for the Katarungang Pambarangay to settle “all disputes” not falling within the exemptions<sup>44</sup> deserves analysis. Cambridge Dictionary defines *dispute* as an “argument or disagreement,”<sup>45</sup> making it synonymous with “conflict.”<sup>46</sup> By extension, dispute resolution in ordinary

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41. *Id.*

42. *Id.* § 408 (emphases supplied).

43. *Id.* (emphases supplied).

44. LOCAL GOV’T CODE, § 408.

45. Cambridge Dictionary, *Dispute* available at <https://dictionary.cambridge.org/dictionary/english/dispute> (last accessed May 11, 2021) [<https://perma.cc/47F8-AUSD>].

46. *Id.*

parlance is somewhat interchangeable with conflict resolution. Professor John W. Burton regards disputes as those short-term disagreements that may be resolved through negotiation; whereas conflicts are reserved for intractable and deeply-rooted misunderstandings which tend to be non-negotiable, or at least require huge effort and time at negotiation for their resolution.<sup>47</sup> Nonetheless, in ordinary usage, both terms have become interchangeable, with many studies substituting “conflict for dispute and dispute for conflict.”<sup>48</sup> For legal purposes, whether resolution comes in easy or not, is beside the point. The law’s remit is for the Katarungang Pambarangay to settle “all disputes.”<sup>49</sup> As this Article will argue, mediation is mandated for all disputes, conflicts, or even issues, regardless of whether any party wants or does not want to file a case in court.

Speaking of court cases, there is a long-standing myth with regard to the Katarungang Pambarangay as a mere precursor — stepping stone, that is — in the plaintiff’s crusade in seeking redress of his or her grievances from courts. This has made the Katarungang Pambarangay, in the estimation of those who are not well-versed with its full ambit, as the court’s handmaiden or servant whose primary function (at least to those intent on filing a case post Katarungang Pambarangay) is the issuance of that certificate endorsing the case to courts due to non-settlement.<sup>50</sup> That outlook does a disservice to the institution by missing out on its true function and potentialities for community peacemaking and good governance. The Katarungang Pambarangay is not just there to make the workload of court judges lighter, but its *raison d’être* goes deeper than that as this Article will demonstrate. The Authors believe the handmaiden-of-the-court myth has been unwittingly brought in part by the wording of the preliminary statements in P.D. No. 1508.<sup>51</sup> A cursory reading of P.D. No. 1508’s introduction frames the law’s purpose in decongesting court dockets, to quote —

WHEREAS, the indiscriminate filing of cases in the courts of justice contributes heavily and unjustifiably to the congestion of court dockets, thus causing a deterioration in the quality of justice;

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47. Timothy D. Keator, Conflict vs. Dispute?, at \*1, available at <https://www.mediate.com/pdf/ConflictvsDisputeKeator2.pdf> (last accessed May 11, 2021) [<https://perma.cc/4E9Z-LSM8>].

48. *Id.* at \*2.

49. LOCAL GOV’T CODE, § 408.

50. *See id.* § 412 (a).

51. *See* Presidential Decree No. 1508, whereas cl. paras. 2-3.



WHEREAS, in order to help relieve the courts of such docket congestion and thereby enhance the quality of justice dispensed by the courts, it is deemed desirable to formally organize and institutionalize a system of amicably settling disputes at the barangay level[.]<sup>52</sup>

While that may be the case, a careful analysis of the law’s text — beyond introductory statements, that is — reveals that the Katarungang Pambarangay is an independent institution designed to “bring together the parties actually residing in the same city or municipality for amicable settlement *of all disputes[.]*”<sup>53</sup> What this means is the decongestion of court dockets only forms part of the Katarungang Pambarangay’s functions, with the bulk of its mandate reserved for wider community peacemaking and furtherance of local good governance. The Katarungang Pambarangay’s mandate to settle all disputes for parties living in the same city or town,<sup>54</sup> if rightly appreciated, will open the door for collective community action by bringing together to the mediation table by way of consensus-building the disparate — if conflicting — interests within the locality on a variety of issues — from environment and sanitation, treatment of women and children, public health, and even peace-of-mind issues up to when and under what circumstances blaring karaoke machines would be allowed to operate at night.

### C. *Non-appearance of Lawyers*

It is noteworthy that in all Katarungang Pambarangay proceedings, personal appearance of the parties is required, without a party represented by another person, much less by a lawyer.<sup>55</sup> Exceptions are cases involving “minors and incompetents who may be assisted by their next-of-kin who are not lawyers.”<sup>56</sup> The non-appearance of lawyers at the proceedings has been taken as gospel truth by both practitioners and the legal community. Yet, it is argued that such exclusion needs revisiting. The current Mandatory Continuing Legal Education (MCLE) curriculum requires training of lawyers on the fundamentals of alternative dispute resolution.<sup>57</sup> In addition, based on one of

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52. Presidential Decree No. 1508, whereas cl. paras. 2-3.

53. LOCAL GOV’T CODE, § 408 (emphasis supplied). *See also* Presidential Decree No. 1508, § 2.

54. LOCAL GOV’T CODE, § 408.

55. *Id.* § 415.

56. *Id.*

57. Supreme Court, Adopting the Revised Rules on the Continuing Legal Education for Members of the Integrated Bar of the Philippines, Bar Matter No. 850 [B.M. No. 850], rule 2, § 2 (c) (Oct. 2, 2001).

the Author's personal experience working as court-annexed mediator in the Philippines for years, much of settlement success in mediation owes in part to the lawyers' flair to identify, and ability to tie up loose ends resulting in durable settlements.

### III. GOOD GOVERNANCE

Governance, at its most elemental, refers to all acts of governing,<sup>58</sup> be it the management or control of activities in any country or region. A distinction must be made between governance and government, however.<sup>59</sup> While government refers to "institutions," that is, the political and governing organization itself with its concomitant branches and structures, governance pertains to the "process" of rule implementation whether occurring within, or outside a governmental structure.<sup>60</sup> Democratic governance need not be undertaken solely within the parameters of a governmental institution. Rather, it draws attention to the various processes of decision-making permeating through different aspects of society.<sup>61</sup> Governance can be seen within "interactions among structures, processes[,] and traditions that determine how power is exercised,"<sup>62</sup> how citizens or interest groups are being heard, and generally how decisions are being undertaken.<sup>63</sup> When government fails or does not initiate, non-governmental segments within civil society may do the spearheading of projects, in turn, paving way for public interest partnerships, between public and private sectors. The Baguio City Eco-Walk, for instance, is a partnership involving individuals, politicians, and businesses, aimed at re-establishing "the ecosystem of a threatened watershed area."<sup>64</sup> The project is said to have been initiated by a Philippine journalist who "started with

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58. MARK BEVIR, GOVERNANCE: A VERY SHORT INTRODUCTION 2 (2014).

59. *Id.*

60. *Id.* at 2-3.

61. *Id.* at 2.

62. Petr Vymětal, Governance: Defining the Concept (A Working Papers Fakulty Aezinárodních Aztahů), at 8, available at [https://www.researchgate.net/publication/40345960\\_Governance\\_defining\\_the\\_concept](https://www.researchgate.net/publication/40345960_Governance_defining_the_concept) (last accessed May 11, 2021) [<https://perma.cc/HDJ2-7CSW>].

63. *Id.*

64. Tim Plumpre & John Graham, Governance and Good Governance: International and Aboriginal Perspectives, at 5, available at <https://www.files.ethz.ch/isn/122184/govgoodgov.pdf> (last accessed May 11, 2021) [<https://perma.cc/6QJN-QAP6>].

children visiting the forest to learn about clean water.”<sup>65</sup> Governance, therefore, is fundamentally about the wider application of power, whether by the government, civil society, or a mix of both. It is the art of bringing people towards communal decision-making and the civilized resolution of conflicts.

Nancy D. Erbe identified eight characteristics most often associated with good governance:

- (1) broad participation;<sup>66</sup>
- (2) rule of law;<sup>67</sup>
- (3) transparency;<sup>68</sup>
- (4) consensus-based mediation;<sup>69</sup>
- (5) inclusive decision-making;<sup>70</sup>
- (6) efficient use of resources;<sup>71</sup>
- (7) responsiveness to stakeholders’ interests;<sup>72</sup> and
- (8) accountability.<sup>73</sup>

Inclusive participation needs to reflect diversity within the community, including differences based on religion, ethnicity, gender, or even sexual orientation.<sup>74</sup> Rule of law suggests that every person, whether private citizens or government employees, are subject to the mandate and restraint of law.<sup>75</sup>

65. *Id.*

66. Nancy D. Erbe, *Appreciating Mediation’s Global Role in Promoting Good Governance*, 11 HARV. NEGOT. L. REV. 355, 369 (2006).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Erbe, *supra* note 66.

72. *Id.* (citing CAROLINE NELIGAN, INCREASING ACCOUNTABILITY THROUGH EXTERNAL STAKEHOLDER ENGAGEMENT 4 (2003)).

73. Erbe, *supra* note 66 (citing Paula Dobriansky, Principles of Good Governance, available at <http://igmlnet.uohyd.ac.in:8000/InfoUSA/trade/ijeeo303/dobrians.htm> (last accessed May 11, 2021) [<https://perma.cc/J3WD-GUZT>]).

74. CHARLES F. HOBSON, THE GREAT CHIEF JUSTICE: JOHN MARSHALL AND THE RULE OF LAW 57 (1996).

75. *Id.*

The term also implies that legal and constitutional protections involving freedom of association as well as the right to free speech and expression are firmly set in place.<sup>76</sup>

Transparency and accountability, in part, refer to an adherence to an open government policy whereby residents are granted access to public documents and government proceedings to allow for effective public oversight empowering citizens to review and monitor various governmental branches including their policies, plans, programs, and projects.<sup>77</sup> Notably, the 1987 Philippine Constitution guarantees the people's right to "information on matters of public concern[,]""<sup>78</sup> and adopts a policy of full disclosure of all its transactions involving public interest, subject to reasonable conditions prescribed by the law.<sup>79</sup> In line with this mandate, Executive Order No. 2 dated 23 July 2016<sup>80</sup> was signed, "[o]perationalizing in the Executive Branch the people's [ ] right to information and the [S]tate[s] policies [of] full public disclosure and transparency in the public service ... ."<sup>81</sup> Otherwise known as the Freedom of Information Order, the Executive Order outlines particular guidelines relative to matters of government transparency and full public disclosure, all of which adhere to the policy of open governance.<sup>82</sup> Government agencies are also required to display a "transparency seal" on their websites, which must contain information about "the agency's mandates and functions, the names of its officials with their position and designation and contact information[,]"" projects, budgets, and annual reports, among other things.<sup>83</sup> The transparency mandate will, at the very least, make information on the functioning and organization of the Katarungang Pambarangay

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76. *Id.*

77. See Congress of Local and Regional Authorities of the Council of Europe, Transparency and Open Government, at 10, available at <https://rm.coe.int/booklet-a6-transparency-coll-public-ethic-en/1680907906> (last accessed May 11, 2021) [<https://perma.cc/D9ZF-ZZHU>].

78. PHIL. CONST. art. III, § 7.

79. PHIL. CONST. art. II, § 28.

80. Office of the President, Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor, Executive Order No. 2, Series of 2016 [E.O. No. 2, s. 2016] (July 23, 2016).

81. *Id.*

82. *Id.*

83. General Appropriations Act, Republic Act No. 10155, § 93 (2012).

accessible to residents on a wider scale, and in particular for parties of interest to be apprised of their rights to be able to avail of the benefits and services offered by the Katarungang Pambarangay.

Accountability, beyond being couched merely in terms of answerability<sup>84</sup> and culpability, may be expanded to include an acknowledgment of responsibility for one's action or participation in a dispute, and for conflicting parties to be given the opportunity to come up with alternative avenues for the resolution of their dispute. The broader definition squarely puts mediation in the pathway towards good governance. Mediation is, after all, where people gather to not only articulate, but also to potentially settle their differences.<sup>85</sup>

It is, of course, beyond the scope of this Article to fully explicate each element of good governance. Suffice it to say, the other elements of good governance earlier identified, such as consensus-based mediation,<sup>86</sup> inclusive decision-making,<sup>87</sup> and responsiveness to interests of various interest holders,<sup>88</sup> may be regarded as common elements in both mediation and good governance. Consensus-based mediation in particular, is a sub-type of facilitative mediation where interest groups endeavor to clarify and align contentious issues by way of a mediated dialogue in the hope of arriving at a sustainable communal resolution.<sup>89</sup>

#### A. Mediation in Good Governance

Mediation (from Latin *medius*, meaning “middle”)<sup>90</sup> is a method of non-binding dispute resolution involving a neutral third party who helps disputing

84. Merriam-Webster Thesaurus, Accountability, *available at* <https://www.merriam-webster.com/thesaurus/accountability> (last accessed May 11, 2021) [<https://perma.cc/D67H-VYV7>].

85. See Alessandra Sgubini, et al., Arbitration, Mediation and Conciliation: Differences and Similarities from an International and Italian Business Perspective, *available at* <https://www.mediate.com/articles/sgubiniA2.cfm> (last accessed May 11, 2021) [<https://perma.cc/S8NH-YZXB>].

86. Erbe, *supra* note 66.

87. *Id.*

88. *Id.* (citing NELIGAN, *supra* note 72, at 4).

89. See Erbe, *supra* note 66, at 369 & n. 55.

90. Online Etymology Dictionary, Mediation, *available at* <https://www.etymonline.com/word/mediation#:~:text=late%2014c.%2C%20mediacioun%2C%20%22,medhyo%2D%20%22middle%22> (last accessed May 11, 2021) [<https://perma.cc/5KUT-H8G6>].

parties reach a mutually agreeable solution.<sup>91</sup> The mediator “assists the parties in their efforts to reach a settlement but does not try to compel either party to make a concession ... [the mediator] must persuade both parties to trust the process[,] and[ ] eventually[,] one another.”<sup>92</sup> Mediation, as a type of assisted negotiation, is considered the most voluntary of the various dispute settlement systems.<sup>93</sup> Nevertheless, as any experienced mediator will attest, mediation’s non-binding nature,<sup>94</sup> rather than being a weakness instead contributes to its strength. This is so as binding decisions are not written down for the parties by a third party judge or arbiter; rather, it is the parties themselves, through a process involving much self-reflection and self-determination, who determine the outcome and resolution of their conflict.<sup>95</sup>

Mediation has been around since ancient times, and in different societies around the world. The Bushmen of Kalahari, indigenous peoples in Southern Africa, have retained their traditional system for resolving disputes.<sup>96</sup> Rivalries over mates or resources such as food and land are settled through intercession.<sup>97</sup> When a dispute arises, “they bring others around to hear out both sides.”<sup>98</sup> And if small scale intervention will not help, the “whole group is brought into the process”<sup>99</sup> with some members of the tribe appointed to hide the disputants’ poison arrows — obviously an “early form of gun control.”<sup>100</sup> Hawaiians of Polynesian ethnicity practice the *ho’oponopono*, where a family comes together to “discuss inter-personal problems under the guidance of a leader.”<sup>101</sup>

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91. BLACK’S LAW DICTIONARY 3113 (8th ed. 2004).

92. ROBERT COULSON, PROFESSIONAL MEDIATION OF CIVIL DISPUTES 7-8 (1984).

93. *Id.*

94. World Intellectual Property Organization, Mediation: Frequently Asked Questions, available at <https://www.wipo.int/amc/en/mediation/guide> (last accessed May 11, 2021) [<https://perma.cc/AW6U-NAJF>].

95. *See id.*

96. JEROME T. BARRETT & JOSEPH P. BARRETT, A HISTORY OF ALTERNATIVE DISPUTE RESOLUTION: THE STORY OF A POLITICAL, CULTURAL, AND SOCIAL MOVEMENT 2 (2004).

97. *Id.*

98. *Id.*

99. *Id.* at 2-3.

100. *Id.*

101. *Id.* at 3.

Albeit rhetorical, still, the question needs to be asked if mediation has a role in good governance, and if so, to what extent? It is worth noting that the United Nations Economic and Social Commissions for Asia and the Pacific includes mediation in defining governance as “the complex mechanisms, processes, relationships[,] and institutions through which citizens and groups articulate their interests, exercise their rights and obligations, and mediate their differences.”<sup>102</sup>

The ability of mediation to settle differences and promote consensus-building among various interest groups<sup>103</sup> puts mediation in the center of democratic community building, and by extension, governance. Citizen participation and input into governmental affairs, among others, is increasingly being recognized as a component of good governance.<sup>104</sup> At the core of modern governance is the increasing recognition of the “transfer of powers, responsibilities, and rights from governments to civil society’s groups and movements, requiring collective action around shared interests.”<sup>105</sup> The said definition which is alternatively termed “associative governance”<sup>106</sup> or “state-society synergy,”<sup>107</sup> goes into the core functions of both mediation and good governance.

In Latin America, particularly, Colombia’s state-sponsored Conciliation Program,<sup>108</sup> Peru’s Justice of the Peace system with local peace justices acting as mediators,<sup>109</sup> and Bolivia’s indigenous Aymara population supporting a traditional form of mediation called “sponsorship,”<sup>110</sup> citizens are provided with “a place and a process for the peaceful resolution of their disputes.”<sup>111</sup> Consequently, mediation generally became a catalyst for judicial reform and

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102. United Nations Development Programme, *Corruption and Good Governance*, at v, DP(05)/D611/no.3 (July 1997).

103. See Feinberg, *supra* note 5, at S18-19.

104. Vinay Bhargava, *Engaging Citizens and Civil Society to Promote Good Governance and Development Effectiveness*, GOVERNANCE BRIEF, August 2015, at 2.

105. Erbe, *supra* note 66, at 363.

106. See Chris Ansell, *The Networked Polity: Regional Development in Western Europe*, 13 GOVERNANCE 303, 304 (2000).

107. *Id.* at 303.

108. Thomas J. Moyer & Emily Stewart Haynes, *Mediation as a Catalyst for Judicial Reform in Latin America*, 18 OHIO ST. J. DISP. RESOL. 666, 663 (2003).

109. *Id.* at 664.

110. *Id.* at 666.

111. *Id.*

of good governance, as it reduced inefficiency in the judicial system, and in addition fostered a more inclusive society where people, through their respective mediation centers, became better educated in utilizing alternative methods of participatory communication and dispute resolution.<sup>112</sup>

*B. The Katarungang Pambarangay and Good Governance*

1. Reconceptualizing Towards Broader Mandate

As the country's primary community mediation center, the Katarungang Pambarangay stands in a unique position to generate significant inputs in matters involving domestic and local peacemaking, and more broadly, consensus-building among interest groups and stakeholders in the community.<sup>113</sup> This means the Katarungang Pambarangay, to make it even more relevant, needs to reconceptualize itself not just as venue to settle small claims and small cases<sup>114</sup> about to be filed in court, but rather set its sights to greater heights and reposition itself as the country's primary basic instrument for community peacemaking, inclusive consensus-building, and as a platform for threshing out conflicting interests, to further aid and strengthen local governance.

This recommendation is anchored from a deeper reading of the Katarungang Pambarangay's mandate under the law to resolve "all disputes" with particular exceptions.<sup>115</sup> Notably, it is not within the exception for the Katarungang Pambarangay to mediate conflicts or issues involving matters of significant local concern such as issues involving garbage, access to water and irrigation, sanitation issues, fishery questions, and the like.<sup>116</sup> The Katarungang Pambarangay need not limit its coverage on small cases as in fact its mandate, properly understood, is broad.<sup>117</sup>

This means the institution needs to reposition itself towards the community and *sell* its services, so to speak, not just in matters involving potential court cases, but in any broad-ranging community concern or issue involving divergent opinions. As the locality's prime mediation center, where else will interest groups find a ready venue for local consensus-building?

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112. *See id.* at 666-67.

113. Tabucanon, et al., *supra* note 11, at 512.

114. LOCAL GOV'T CODE, § 408.

115. *Id.*

116. *See id.*

117. LOCAL GOV'T CODE, § 408.



A strength of the Katarungang Pambarangay is that it combines elements of state law with elements of traditional as well as indigenous dispute resolution processes.<sup>118</sup> As a traditional process, it relies on community leaders, the barangay officials, that is, to settle disputes among various residents, which in a way makes the modern-day officials take on the role of community peacemakers formerly dispensed by traditional village elders.<sup>119</sup> G. Sidney Silliman notes how ancient Filipinos value amicable settlements done through either or both of the two processes: *hilot*<sup>120</sup> and *husay*.<sup>121</sup> To do a *hilot* (Cebuano word for “massage”)<sup>122</sup> means to repair or straighten minor differences, brought about by miscommunication<sup>123</sup> or a crushed *amor proprio*, meaning wounded personal pride and self-esteem.<sup>124</sup> This is usually done through a process of *alam-alam* or reassurance, by invoking how the two disputants used to be close friends and how the hurt was unintentional. *Husay* (Cebuano word for “order”) is to settle more serious differences using peaceful means and usually through a third-party intermediary.<sup>125</sup> This way conflicts are channeled through non-violent means with disputants not taking the law into their own hands.

Religion also plays an important role in Philippine dispute settlement. Unlike community mediation in Western countries, Katarungang Pambarangay processes expressly incorporates religious components. A typical meeting before the *pangkat* usually involves prayers.<sup>126</sup> The prayer is for “the Holy Spirit [to] be present, [to] guide the mediators, and [to] give enlightenment to the disputants.”<sup>127</sup> While this may not present a problem in a country that is 80.6% Roman Catholic, and 8.2% Protestant with another

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118. Steven G. Olive, *The Coastal Resources of Sarangani Bay, Philippines: Property Rights, Competition, and Dispute Settlement*, at 102 (Dec. 1995) (Ph.D. dissertation, University of Hawaii) (on file with the University of Hawaii).

119. *Id.*

120. G. Sidney Silliman, *A Political Analysis of the Philippines' Katarungang Pambarangay System of Informal Justice through Mediation*, 19 L. & SOC'Y REV. 279, 296 (1985) [hereinafter Silliman, *Katarungang Pambarangay System*].

121. G. Sidney Silliman, *The Folk Legal Culture of the Cebuano Filipino*, 10 PHIL. Q. CULTURE & SOC'Y 225, 237 (1982) [hereinafter Silliman, *Folk Legal Culture*].

122. Silliman, *Katarungang Pambarangay System*, *supra* note 122, at 296.

123. *See id.*

124. *See* Silliman, *Folk Legal Culture*, *supra* note 121, at 231.

125. Silliman, *Folk Legal Culture*, *supra* note 121, at 237.

126. Tabucanon, et al., *supra* note 16, at 510.

127. *Id.*

3.4% described as “other Christian[.]”<sup>128</sup> cultural respect and sensitivity still needs to be done in the choice of the prayer’s wording for instance, as one or both of the disputants may not be Christians or do not subscribe to religious beliefs. Particularly in urban centers, it might be a better practice to ask parties if they agree to a particular religion-based prayer prior to the proceedings. Alternatively, it may be prudent to adopt a universally oriented prayer than using one associated with a particular group or sect. This way no one feels othered or marginalized.

## 2. Revisiting the Non-Lawyer Participation Policy — Is This Still Relevant?

The Local Government Code mandates that “[i]n *all* [K]atarungang [P]ambarangay proceedings, the parties must appear in person without the assistance of counsel or representative[.]”<sup>129</sup> Minors and incompetents “may be assisted by their next-of-kin who are not lawyers.”<sup>130</sup> In the second Author’s more than 20 years of practice as litigation attorney in the Philippines, the lawyer ban was never questioned and its assumptions undisturbed. This Article revisits such ban and recommends — that all steps remain as is, but that prior to releasing the certificate to file action, an additional session may be organized, this time with the assistance of lawyers.

It is high time lawyers make their presence and expertise felt in the Katarungang Pambarangay. For one, the establishment of the Katarungang Pambarangay was enacted long before lawyers were trained with the rudiments of alternative modes of dispute resolution, including mediation. It took some 22 years, for instance, from the June 1978 signing of the Katarungang Pambarangay Law, before Bar Matter No. 850,<sup>131</sup> prescribing rules for MCLE for members of the Integrated Bar of the Philippines, was passed on 22 August 2000.<sup>132</sup> The MCLE requirement is a game changer for many lawyers, including the second Author. For one, the rules require all members of the IBP (unless exempt) to “complete, every three [ ] years, at least [ ] 36 hours of continuing legal education activities approved by the

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128. Central Intelligence Agency, Philippines, *available at* <https://www.cia.gov/the-world-factbook/countries/philippines> (last accessed May 11, 2021) [<https://perma.cc/ETA6-F65G>].

129. LOCAL GOV’T CODE, § 415 (emphasis supplied).

130. *Id.*

131. Supreme Court, Adopting the Rules on Mandatory Continuing Legal Education for Members of the Integrated Bar of the Philippines, Bar Matter No. 850 [B.M. No. 850] (Aug. 22, 2000).

132. *Id.*

MCLE Committee[.]”<sup>133</sup> and of the 36 hours, “[a]t least five [ ] hours shall be devoted to alternative dispute resolution.”<sup>134</sup> It was during an MCLE session on alternative dispute resolution that the second Author eventually decided to apply for, and was accepted to do, a Master of Laws in Dispute Resolution at the University of Missouri. While it is beyond the scope of this Article to point exactly how many lawyers were enabled to do a paradigm shift from a rights-based or adversarial mind-frame to an interest-based orientation which attempts to reconcile and integrate the different interests of the parties, it is safe to assume that there are many out there.

Lawyers, far from being liabilities or stumbling blocks, are in fact assets to settlement. They are used to working in conflict situations, for one.<sup>135</sup> Tempers flare during mediations, and lawyers’ exposure with courtroom histrionics when transported into a mediation arena, help them “keep a cool head [enough to] persuade the parties [to consider] a simple, impartial[,] and less hostile resolution.”<sup>136</sup> Further down, lawyers are trained to pay attention to details, the kind that “absorbs and assimilates [ ] intricate details”<sup>137</sup> and arguments from both sides.<sup>138</sup> If used collaboratively, this skill enables him or her to “steer negotiations towards a well-reasoned outcome acceptable to each party.”<sup>139</sup>

It is not easy to second-guess the assumptions of the lawyer ban in the Katarungang Pambarangay. One can only hypothesize it may be due to the lawyer’s penchant for vigorous, albeit adversarial, advocacy for his or her client that brings with it a mindset that potentially stifles non-adversarial proceedings such as mediation. Yet, values change, and the legal worldview is no exemption. As earlier identified, a sea-change of attitudes in the judicial system occurred in the early 2000s with MCLE mandating compulsory alternative dispute resolution for lawyers.<sup>140</sup> Further, on 16 October 2001, the Supreme

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133. *Id.* § 2.

134. *Id.* § 2 (c).

135. Anwar Kashif Mumtaz, *Why Are Lawyers Good Mediators?*, available at <https://www.mediate.com/articles/kashif-lawyers-mediators.cfm> (last accessed May 11, 2021) [<https://perma.cc/UC7J-TMXK>].

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. B.M. No. 850, § 2 (c).

Court promulgated Administrative Matter No. 01-10-5-SC-PHILJA,<sup>141</sup> which institutionalized and implemented a court-annexed mediation program in the Philippines, aimed at decongesting court dockets.<sup>142</sup> This court-annexed mediation in the Philippines, is a part of pre-trial.<sup>143</sup> During the pre-trial of cases subject to mediation, the judge shall at once direct the parties to appear for mediation before the nearest Philippine Mediation Center branch.<sup>144</sup> It is noteworthy that unlike in Katarungang Pambarangay proceedings, lawyers may appear in court-annexed mediations.<sup>145</sup> If the Supreme Court's example will be followed, lawyers should already be allowed to appear at mediations in the Katarungang Pambarangay.

### 3. Training of Katarungang Pambarangay Mediators

As already stated, it is hard to guess the assumptions behind the ban on lawyers appearing before Katarungang Pambarangay proceedings. The previous section hypothesized that one reason could be obduracy on the lawyer's part in shifting from an adversarial to a collaborative paradigm. Carrie Menkel-Meadow herself expressed concern that lawyers' involvement in alternative dispute resolution processes such as mediation would result in such processes

141. Supreme Court, Re: Various Resolutions of the Board of Trustees of the PHILJA Approved During its Meetings on 18 September and 1 October 2001, Administrative Order No. 01-10-5-SC-PHILJA [A.M. No. 01-10-05-SC-PHILJA] (Oct. 16, 2001).

142. *Id.* pt. ii. The mediatable cases covered by the program are as follows:

- (1) All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised (e.g., Annulment of Marriage);
- (2) Cases [cognizable] by the Lupong Tagapamayapa under the Katarungang Pambarangay Law[;]
- (3) [The] [c]ivil aspect of Batas Pambansa [ ] [Blg.] 22[;]
- (4) The civil aspect of quasi-offenses under Title 14 of the Revised Penal Code[; and]
- (5) Civil aspect of Estafa and Libel cases where damages are sought.

*Id.* pt. ii, ¶ 1 & Supreme Court, Re: Revised Upgrading Schedule of the Legal Fees in the Supreme Court and the Lower Courts under Rule 141 of the Rules of Court, Administrative Matter No. 04-2-04-SC [A.M. No. 04-2-04-SC], § 9 (A) (2) (July 20, 2004).

143. A.M. No. 01-10-05-SC-PHILJA, pt. ii, ¶ 12.

144. Supreme Court, Monthly Inventory and Referral of Cases for Mediation, Administrative Circular No. 20-2002 [SC Admin. Circ. No. 20-2002], ¶ 2 (Apr. 24, 2002).

145. A.M. No. 01-10-05-SC-PHILJA, pt. ii, ¶ 5.

becoming adversarial.<sup>146</sup> While that may be true in the early years of the Katarungang Pambarangay, events in the past 20 years have witnessed a proliferation of opportunities for lawyers becoming interest-based and collaborative in their methods. It also helps that on 2 April 2004, Congress passed the Alternative Dispute Resolution Act of 2004,<sup>147</sup> a law which establishes an office for alternative dispute resolution, and institutionalizes the use of such a system in the Philippines.<sup>148</sup> In that law, it is declared the “policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes.”<sup>149</sup> In parallel with the Katarungang Pambarangay Law, and the Supreme Court’s mandate on court-annexed mediation, the Alternative Dispute Resolution Act of 2004, seeks to promote alternative dispute resolution processes as means to “achieve speedy and impartial justice and [to] declog court dockets.”<sup>150</sup> Unlike the Katarungang Pambarangay Law, the Alternative Dispute Resolution Act of 2004 expressly allows lawyers to participate in the proceedings.<sup>151</sup> Section 14 allows any party to “designate a *lawyer* or any other person to provide assistance in the mediation[.]”<sup>152</sup> As earlier argued, it is high time to amend the Katarungang Pambarangay Law, and allow lawyers into the proceedings. If — and again, this is only a conjecture — the reason for the lawyer ban is the possibility of barangay mediators being stricken in awe at the lawyers’ better training in law and evidence, then the solution is not to exclude lawyers but to better train *lupon* and *barangay* officials in the art and skills of mediation.

In a series of phone interviews undertaken by the first Author with *barangay* and *lupon* officials,<sup>153</sup> what surfaced was a general paucity of training among officials in the rudiments and finer skills of facilitation and mediation techniques, an aspect that definitely requires more attention. A *lupon* member

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146. Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or “The Law of ADR”*, 19 FLA. ST. U. L. REV. 1, 5 (1991).

147. An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes [Alternative Dispute Resolution Act of 2004], Republic Act No. 9285 (2004).

148. *Id.*

149. *Id.* § 2.

150. *Id.*

151. *Id.* § 14.

152. *Id.* (emphasis supplied).

153. The names of the interviewees have been omitted for privacy reasons.

for 15 years from Cebu reports that training is only done “rarely,”<sup>154</sup> sometimes “annually” and the training usually takes “three hours.”<sup>155</sup> A barangay captain for almost nine years from Lanao del Norte said their training comes once every term, that is, once every three years, and there were times the usual training of two days was “shortened to one day.”<sup>156</sup> In one of these trainings, the barangay captain said, “I was recently invited to do the opening message for this training, and the training was only for half a day.”<sup>157</sup> When asked on what they talked about during the training, the respondent said it was about “cases that Katarungang Pambarangay has jurisdiction,” and added that “not all problems will be entertained by the barangay — like [if] the complainant [ ] is not a resident here, his complaint will not be received. The parties should live in the same municipality.”<sup>158</sup> A barangay captain for two years from Bohol said their trainings were “not about the Katarungang Pambarangay only.”<sup>159</sup> They were “a package — we were also taught on [ ] handling the financial aspects, as well as on our functions as elected officials.”<sup>160</sup> When asked whether she was trained on mediation, she said, “We had a seminar before. We were told of our responsibilities. There was no actual mediation. We were not taught of procedures how to do one. I just research about it through the net. I searched mediation on Google and [watched] YouTube videos. I learn [about] mediation that way.”<sup>161</sup> From the responses, what emerged were that trainings are rare and far between, tended to be of short duration, and did not specifically focus on mediation techniques. The qualitative data presented here does not of course claim to be representative. Yet, one wonders how many *barangay* or *lupon* officials out there are like the respondents, in the sense of wanting and waiting to be trained in the art and nuances of mediation.

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154. Interview *with* Lupon Member from Cebu, Philippines, *through* phone call (Jan. 13, 2021).

155. *Id.*

156. Interview *with* Lupon Member from Lanao del Norte, Philippines, *through* Facebook Messenger (Feb. 2, 2021).

157. *Id.*

158. *Id.*

159. Interview *with* Lupon Member from Bohol, Philippines, *through* phone call (Feb. 16, 2021).

160. *Id.*

161. *Id.*

Considering mediation's potential as a tool for good governance, it becomes necessary to train barangay and *lupon* officials not just on budgetary and jurisdictional matters, but also on:

- (1) understanding mediation at a deeper level: what it is, its elements, and what its different sub-types are. For instance, knowing the differences between facilitative and evaluative mediation styles<sup>162</sup> helps one decide when it is best to use either style. Further down, one may even use the empowering principles of transformative mediation,<sup>163</sup> for optimum mediation results. It is beyond the scope of this Article to discuss mediation's sub-types, their strengths, and downsides. Suffice it to say, our community mediators at the barangay level need to be acquainted with the basic principles and concepts and styles behind mediation if we expect to empower them and make mediation more helpful as tool for democratic governance;
- (2) equipping community mediators with basic mediation skills such as active listening,<sup>164</sup> paraphrasing,<sup>165</sup> reflecting,<sup>166</sup> and reframing,<sup>167</sup> as well as skills on how to manage an impasse,<sup>168</sup> how to discover reservation values (bottom lines)<sup>169</sup> during private sessions (or caucuses),<sup>170</sup> the role of best alternative to a negotiated settlement or BATNA,<sup>171</sup> and the importance of

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162. See Joseph B. Stulberg, *Legislative Versus Evaluative Mediator Orientations: Piercing the "Grid" Lock*, 24 FLA. ST. U. L. REV. 985 (1997).

163. See Brad Spangler, *Transformative Mediation*, available at [https://www.beyondintractability.org/essay/transformative\\_mediation](https://www.beyondintractability.org/essay/transformative_mediation) (last accessed May 11, 2021) [<https://perma.cc/9SBV-LWE7>].

164. Northern Virginia Mediation Service (NVMS), *Mediation Skills and Process*, at 58, available at <https://nvmsus.files.wordpress.com/2016/01/complete-manual.pdf> (last accessed May 11, 2021) [<https://perma.cc/NWV8-44FN>].

165. *Id.* at 59.

166. *See id.* at 66.

167. Northern Virginia Mediation Service (NVMS), *supra* note 164, at 61.

168. *Id.* at 72.

169. See Successful Negotiators Club, *Basic Negotiation Terminology: BATNA, Reservation Value, ZOPA*, available at <http://www.successfulnegotiators.com/negotiators-blog/2017/1/16/basic-negotiation-terminology-batna-reservation-value-zopa> (last accessed May 11, 2021) [<https://perma.cc/NGK3-6A7Q>].

170. Northern Virginia Mediation Service (NVMS), *supra* note 164, at 61.

171. *See* Successful Negotiators Club, *supra* note 169.

knowing the zone of possible agreement or ZOPA,<sup>172</sup> and the like. We are not saying the current cohort of mediators do not know these. Nonetheless, having a few or some mediators know these skills is different from ensuring that each and every mediator serving in the *pangkat* throughout the 42,000 barangays in the country<sup>173</sup> is systematically taught the various techniques, art, and skills of settling disputes through mediation; and

- (3) understanding the various connections between mediation and good governance. Simply put, this means a clarity of purpose that the Katarungang Pambarangay, within its structure, already contains a built-in infrastructure for community consensus-building.

To recapitulate, the dialogues occurring within barangay mediations need not be viewed solely within a narrow court-focus, which is to regard barangay mediations primarily as a means to declodge court dockets,<sup>174</sup> or else looking at the Katarungang Pambarangay as an issuer of certificates to file an action in the event mediation fails.<sup>175</sup> It is to understand that the institution goes beyond that, for it can be a tool for wider peacemaking and democratic collaboration among different interest groups. This is a tall task that requires more than training but also in *selling* the Katarungang Pambarangay's inclusive potentialities to the community.

#### IV. CONCLUSION

Overall, this Article looks into the role of mediation in contributing to better and sustainable governance. A wider opening of those channels of dialogue among conflicting interests and stakeholders will lead to alternative models of engagement for the community. Local communities have bigger and broader issues beyond small town claims and small court cases. Divergent issues on human rights, sanitation, the environmental issues, and even arts and culture deserve an integrative forum where the community can have a solid voice. Properly understood, the Katarungang Pambarangay may be just the forum.

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172. *Id.*

173. See Philippine Statistics Authority, *supra* note 31.

174. Alternative Dispute Resolution Act of 2004, § 2.

175. LOCAL GOV'T CODE, § 412 (a).