

ENHANCED TRAINING MANUAL ON A
**Gender-Responsive, Child-Friendly, and
Indigenous Peoples-Relevant**
KATARUNGANG PAMBARANGAY



Funded by
the European Union

GOJUST
GOVERNANCE IN JUSTICE
A JUSTICE SECTOR REFORM PROGRAMME

THE
ATENEO
HUMAN RIGHTS
CENTER

ENHANCED TRAINING MANUAL ON A GENDER-RESPONSIVE, CHILD-FRIENDLY, AND INDIGENOUS PEOPLES-RELEVANT KATARUNGANG PAMBARANGAY



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HUMAN RIGHTS
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Editor

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The Enhanced Training Manual on a Gender-Responsive,
Child-Friendly, and Indigenous Peoples-Relevant Katarungang
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Ateneo Human Rights Center and do not necessarily reflect
the views of the European Union.

Message from the European Union (EU)

I would like to congratulate the Philippine Department of the Interior and Local Government (DILG) for the publication of the Training Manual on a Gender-Responsive, Child-Friendly, and Indigenous Peoples-Relevant Katarungang Pambarangay. We were able to support this process led by the DILG's National Barangay Operations Office (NBOO) through our Governance in Justice programme (EU GOJUST).

Because of its proximity and ease of access, the barangay represents for many people in the Philippines the first recourse in the resolution of disputes. This manual seeks to enhance Barangay Justice System officials' capacity, promote community peace, and lessen the congestion of the dockets of the judiciary. Building on existing materials used to train key officials on the BJS, the new manual aims to make those training programs more attuned to the needs of women, children, and indigenous peoples.

The European Union has been a committed partner to the Philippine Justice Sector reform since 2006. Our engagement responds to the critical role played by the justice system in enforcing and strengthening the rule of law and human rights, including affordable, relevant, and speedy modes of dispute resolution. Strengthening the Barangay Justice System is also in line with our commitment to work for peace in the Philippines, as this form of mediation provides a venue for early resolution of conflict.

Working together, we strive to make real-time justice accessible to all in the Philippines.

(sgd.)

H.E. Luc Véron

Ambassador to EU Philippines

Message from the Office of the Secretary of the Department of the Interior and Local Government (DILG)

As part of the government's continuing efforts to declog court dockets, the Department of the Interior and Local Government (DILG) conducts capability development interventions for barangays on the Katarungang Pambarangay (KP) Law.

Such activities ensure that punong barangays and lupon members are equipped to carry out their mediation, conciliation, or arbitration functions under the law.

These are being undertaken in partnership with the Department of Justice-Office for Alternative Dispute Resolution.

We are, therefore, pleased to work with the Ateneo Human Rights Center (AHRC) in the development of the enhanced version of the Katarungang Pambarangay Training Manual.

We partnered with the Governance in Justice II (GOJUST II) Grant Programme on this project.

Said manual will ably guide barangays in resolving conflicts through the lenses of gender, child-friendliness, and indigenous peoples.

Relative to this, the Department urges its Regional and Field Offices to utilize the enhanced manual in conducting Katarungang Pambarangay trainings or seminars in their areas.

We thank all stakeholders, namely GOJUST, British Council, AHRC, and the United Nations Office for Project Services, for their key role in the enhancement of the manual and other related materials.

We also extend our gratitude to the National Barangay Operations Office, Legal and Legislative Liaison Service, Bureau of Local Government Supervision, DILG-Region VII, and DILG-Region XI for their support and assistance in crafting the manual.

We remain committed to improve the capacities of Lupons on the proper implementation of the KP Law and relevant laws and procedures in handling barangay level disputes involving women, children, and indigenous people.

We also look forward to more collaborative engagements with stakeholders in pursuing a more inclusive approach in the implementation of the barangay justice system.

Let us all tread the path towards a Bagong Pilipinas where justice is equitable, fair, and accessible to all.

(sgd.)

Atty. Benjamin C. Abalos Jr.

Secretary

Message from the National Barangay Operations Office (NBOO) of DILG

The Katarungang Pambarangay plays a vital role in our communities as it provides the mechanisms for an amicable settlement of disputes in an expeditious and inexpensive manner. This system embodies the essence of peace, unity, and cooperation within the barangay as the smallest unit of government and the heart and soul of our nation.

The Punong Barangay as the Lupon Chairperson, the Barangay Secretary as the concurrent Secretary of the Lupon, and the Members of the Lupong Tagapamayapa are the key officials in the barangay who perform crucial roles in the effective and efficient implementation of the Katarungang Pambarangay, through the process of mediation, conciliation or arbitration.

Such roles can be successfully undertaken by these barangay officials if they are equipped with the knowledge and given the right information on the proper procedures in managing barangay level disputes.

Thus, the Katarungang Pambarangay-related trainings by the competent trainers, and related resource materials are vital in reinforcing the proficiency of our Lupon and in enhancing their skills to ensure the proper handling of disagreements between community members, most especially if disputes involve children, culture or the indigenous community or gender-based conflict.

We believe that this Enhanced Katarungang Pambarangay (KP) Training Manual, developed by the Ateneo Human Rights Center under the GOJUST Programme, will enhance the knowledge of the trainers and other stakeholders who will provide capacity-building activities for the key implementers of KP at the barangay level: the Punong Barangay, Barangay Secretary and the 10 to 20 members of the Lupong Tagapamayapa.

With this, we encourage the trainers to read this Training Manual before holding the KP training to increase their understanding on the foundational principles of gender rights, children's rights, and indigenous peoples' rights and its application to the Katarungang Pambarangay.

Let us all work together to empower our communities, promote justice, and ensure the accessibility of justice at the grassroots level. Together, we can ensure that the Katarungang Pambarangay remains to be the cornerstone of justice and harmony, with the ultimate goal of strengthening the bonds of peace and unity within our barangays.

(sgd.)

Atty. Izza Mari D. Laurio

Officer-in-Charge

Message from the Bureau of Local Government Supervision (BLGS) of DILG

Regarded as the Philippines Barangay Justice System, Katarungang Pambarangay continuous to be the effective tool on providing access to an alternative, non-judicial form of settlement of conflicts and disputes at the lowest cost and through the most accessible political unit of our government-our Barangays.

The Department of the Interior and Local Government (DILG), through the Bureau of Local Government Supervision (BLGS), is fortunate to partner with the Ateneo Human Rights Center (AHRC) as they develop an Enhanced Training Manual for Katarungang Pambarangay, focusing on a more gender-responsive, child-friendly, and indigenous peoples-relevant stance in settling KP cases. Such endeavor has been a testament that the DILG and its partners are dedicated to building the capacity of our Lurons and Barangay Officials, and that they are passionate to align existing systems and structures towards a matino, mahusay, at maasahang pamahalaang lokal.

The BLGS is optimistic that this manual will help our barangays and our Lupon Tagapamayapas nationwide in carrying out their tasks, as part of the Philippine Development Plan's (PDP) promotion of Alternative Dispute Resolution (ADR) mechanisms before judicial recourse, where we inspire trust and confidence in the local communities towards achieving an orderly, secure and peaceful community.

(sgd.)

Debie T. Torres, CESO IV

Director

Message from the Office for Alternative Dispute Resolution(OADR) of DILG

Since the creation of the Office for Alternative Dispute Resolution (OAR) under Republic Act No. 9285, or the Alternative Dispute Resolution (ADR) Act of 2004, it has been working towards the promotion and institutionalization of the effective and ethical use and practice of ADR in the country. Our commitment to promote, develop, and expand the use of ADR in the public and private sectors has led the OADR to implement various programs and activities deemed needed to ensure the fulfillment of the Agency's vision of an enlightened society that rises above conflicts.

The developments in the field of ADR and its expanding role in the delivery of speedy and impartial justice prove that ADR has become an integral part of our justice system. While it offers us a pathway to navigate disputes with efficiency, ADR mechanisms enable us to resolve disputes swiftly and amicably, allowing us to address disputes promptly and shift our resources to operational needs.

In pursuit of excellence, our commitment to professionalism and quality assurance is unrelenting, as evidenced by the courses offered by the OADR, namely, the Fundamental Course on ADR, Comprehensive Courses on Arbitration, Mediation, and Negotiation, and Course on ADR Mechanisms under the Katarungang Pambarangay (KP) Law. To date, these course offerings have enabled the OADR to capacitate 1,344 individuals and a total of 1,137 barangay officials and Lupong Tagapamayapa members nationwide. These numbers continue to expand as the Agency remains steadfast in onboarding more individuals and institutions to benefit from our ADR training program.

The implementation of the Enhanced Katarungang Pambarangay (KP) Manual as one of the Ateneo Human Rights Center's (AHRC) special access-to-justice projects is an effort to incorporate a rights-based approach in enhancing the current KP Training Manual. It is high time to augment the existing manual for resolving conflicts at the barangay level and engage stakeholders through a gender-responsive, child-friendly, and indigenous peoples-relevant approach.

I extend my gratitude to the AHRC for producing this Manual. AHRC's achievement fills my heart with joy, as I have also dedicated my career to enriching our KP law in the Philippines. This significant milestone not only strengthens our barangay justice system but also forges stronger and more peace-centric communities. We are grateful to the AHRC for trusting the OADR to be its partner in its vision to empower our barangay officials and members of Lupong Tagapamayapa together with the Department of the Interior and Local Government.

Moving forward, we remain poised to usher in a new era of strengthening ADR with AHRC. With the Agency's commitment slated in the Philippine Development Plan for 2023-2028, we can expect a more robust and strengthened ADR adoption in the country. The OADR will remain committed to promoting, developing, and expanding the use of ADR as part of the efforts of the Justice Department to declog the dockets of Philippine Courts. We assure the Filipino people that our Justice Sector will continue to uphold the rule of law, giving justice to every man, woman, and child.

We will seize opportunities to achieve deep and fundamental transformations in all sectors of our society and foster our country's commitment to attaining comprehensive justice reforms. Together, let us contribute to ameliorating issues in our justice system and propelling the advancement of peaceful resolution processes towards reaching a promising future for our nation. Let us work together as a principled, accountable, and dependable community with the common objective of realizing these goals and aspirations for every Filipino.

(sgd.)

Usec. Irene de Torres Alogoc, CESO I

Executive Director V

CONTENTS

ACRONYMS	2
INTRODUCTION TO THE TRAINING MANUAL	4
PRELIMINARY SESSION: <i>Opening Program and Overview of the Training</i>	9
PART I: INTRODUCTION TO KATARUNGANG PAMBARANGAY	11
MODULE 1: The Katarungang Pambarangay as a Tool in Access to Justice	13
SESSION 1: OVERVIEW OF THE PHILIPPINE SYSTEM OF GOVERNMENT	15
SESSION 2: JUSTICE AND HUMAN RIGHTS	20
SESSION 3: ACCESS TO JUSTICE (A2J)	24
SESSION 4: ALTERNATIVE DISPUTE RESOLUTION (ADR)	28
ANNEX A <i>Access to Justice</i>	31
ANNEX B <i>Introduction to Human Rights</i>	35
MODULE 2: Overview of the Katarungang Pambarangay	37
SESSION 1: INTRODUCING THE KATARUNGANG PAMBARANGAY	39
SESSION 2: KATARUNGANG PAMBARANGAY STRUCTURE AND PROCESSES (<i>Lupong Tagamapayapa, Pangkat ng Tagapagkasundo, and Mediation, Conciliation, and Arbitration</i>)	47
ANNEX C <i>Primer on the Revised Katarungang Pambarangay Law</i>	54
ANNEX D <i>Tables of Penalties, Prescriptive Periods, and Crimes</i>	72
PART II: REALIZING HUMAN RIGHTS AND ACCESS TO JUSTICE THROUGH THE KATARUNGANG PAMBARANGAY	83
MODULE 3: What is a Gender-Responsive Katarungang Pambarangay?	85
PRELIMINARY SESSION	86
SESSION 1: FOUNDATIONAL PRINCIPLES ON GENDER	89
SESSION 2: SALIENT LAWS ON GENDER	99
ANNEX E <i>What Makes a Gender-Responsive Katarungang Pambarangay?</i>	108
ANNEX F <i>Salient Laws on Gender</i>	119
ANNEX G <i>Primer on Safe Spaces Act</i>	129
MODULE 4: What is a Child-Friendly Katarungang Pambarangay?	139
PRELIMINARY SESSION	140
SESSION 1: UNDERSTANDING CHILDREN'S RIGHTS	142
SESSION 2: SALIENT LAWS ON CHILDREN	146
ANNEX H <i>What Makes a Child-Friendly Katarungang Pambarangay?</i>	156
ANNEX I <i>Salient Laws on Children</i>	163

MODULE 5: What is an Indigenous Peoples-Relevant Katarungang Pambarangay?	183
PRELIMINARY SESSION	184
SESSION 1: FOUNDATIONAL PRINCIPLES ON INDIGENOUS PEOPLES' RIGHTS (Context and IPRA as a Landmark Legislation)	187
SESSION 2: PRINCIPLES IN PRACTICE (IPRA and the Katarungang Pambarangay)	193
ANNEX J What Makes an Indigenous Peoples-Relevant KP?	203
PART III: TOOLS IN MEDIATION, CONCILIATION, AND ARBITRATION	213
MODULE 6: Techniques and Skills in Mediation, Conciliation, and Arbitration	215
SESSION 1: LEARNING THE TECHNIQUES AND SKILLS IN RESOLVING CONFLICTS	216
SESSION 2: DEMONSTRATING TECHNIQUES AND SKILLS IN RESOLVING CONFLICTS	219
ANNEX K Techniques and Skills in Resolving Conflicts	221
ANNEX L Katarungang Pambarangay Forms	231

ACRONYMS

A2J	Access to Justice
ADR	Alternative Dispute Resolution
AHRC	Ateneo Human Rights Center
BCPC	Barangay Council for the Protection of Children
BPO	Barangay Protection Order
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CICC	Cybercrime Investigation and Coordinating Center
CICL	Children in Conflict with the Law
CSO	Civil Society Organization
CRC	Convention on the Rights of the Child
DANA	Dependent, Abandoned, Neglected, or Abused by Parents
DENR	Department of Environment and Natural Resources
DILG	Department of Interior and Local Government
DICT	Department of Information and Communications Technology
DOH	Department of Health
DOLE	Department of Labor and Employment
DOT	Department of Tourism
DPWH	Department of Public Works and Highways
DSWD	Department of Social Welfare and Development
FGD	Focus Group Discussion
FPIC	Free, Prior, and Informed Consent
GBSH	Gender-based Sexual Harassment
GBV	Gender-based Violence
GOJUST II	Governance in Justice Programme II
GST	Gender Sensitivity Training
ICC	Indigenous Cultural Communities
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IJISC	Intensive Juvenile Intervention and Support Center
IP	Indigenous Peoples
IPRA	Indigenous Peoples' Rights Act or Republic Act No. 8371
KII	Key Informant Interview
KP	Katarungang Pambarangay
LCPC	Local Council for the Protection of Children
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender/Transexual, Queer, Intersex, and Asexual+
LGC	Local Government Code
LGU	Local Government Unit
LSWDO	Local Social Welfare and Development Office

NBOO	National Barangay Operations Office
NCIP	National Commission on Indigenous Peoples
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
PCW	Philippine Commission on Women
PD	Presidential Decree
PNP	Philippine National Police
PNPACG	PNP Anti-Cybercrime Group
PPO	Permanent Protection Order
RA	Republic Act
SOGIESC	Sexual Orientation, Gender Identity, Gender Expression, and Sexual Characteristics
TOT	Training of Trainers
TNA	Training Needs Assessment
TPO	Temporary Protection Order
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNOPS	United Nations Office for Project Services
VAWC	Violence Against Women and (their) Children
WCPU	Women and Children Protection Unit

INTRODUCTION TO THE TRAINING MANUAL

About the Training Manual

The Governance in Justice Programme II (GOJUST II) aims to contribute to inclusive and sustainable socio-economic development through improved access to justice for all in the Philippines. Specifically, it aims to develop more responsive and accountable justice services. This Enhanced KP Training Manual on a gender-responsive, child-friendly, and indigenous peoples-relevant Katarungang Pambarangay was made possible through the Implementation of the Child-Friendly, Gender-Responsive, and Indigenous Peoples-Relevant Katarungang Pambarangay Project (“KP Project”) under the GOJUST II Programme facilitated by the Ateneo Human Rights Center (AHRC) in partnership with the Department of the Interior and Local Government, through the National Barangay Operations Office (NBOO), Bureau of Local Government Supervision (BLGS), Legal and Legislative Liaison Service (LLLS) and Regional Offices VII and XI.

Using the rights-based approach, the KP Project aimed to enhance and improve on the existing Katarungang Pambarangay Training Manual which was first published in 2014. Almost 10 years since its inception, the Katarungang Pambarangay Training Manual remains to be a relevant tool, yet there is a need to update its content and methodology.

The Katarungang Pambarangay Training Manual is the result of a series of consultations, key informant interviews (KIIs), focus group discussions (FGDs), workshops, writeshops, and pilot-testing among the relevant stakeholders, including the national government agency partners, the DILG trainers, the *Lupon* and barangay officials, and the civil society organizations (CSOs). This Training Manual encapsulates the training conducted for the *Lupon* and barangay officials under the Katarungang Pambarangay system to become more effective in the performance of their mediation, conciliation, and arbitration functions. This Training Manual also aims to build the capacity of the *Lupon* and barangay officials in resolving conflicts in the barangay and engaging constituents in a manner that is gender-responsive, child-friendly, and indigenous peoples-relevant.

Purpose of the Training Manual

The Katarungang Pambarangay Training Manual is intended to be the standard resource material for the capacity development of the *Lupon* and barangay officials under the Katarungang Pambarangay system. This Training Manual aims to develop and enhance their necessary knowledge and skills in handling cases involving women, people of diverse SOGIESC, children, and indigenous peoples during mediation, conciliation, and arbitration in a gender-responsive, child-friendly, and culture-sensitive manner.

Target Participants of the Training Manual

The Katarungang Pambarangay Training Manual is intended for facilitators, trainers, and resource persons on Katarungang Pambarangay, who will provide capacity-building activities for the *Lupon* and the barangay officials. The resource persons or facilitators of the training on Katarungang Pambarangay should have participated in the Training of Trainers (ToT) conducted by the Ateneo Human Rights Center (AHRC), in coordination and collaboration with DILG, and must read this Training Manual before conducting the training. The target participants of the ToT, are identified personnel from the Trainers’ Pool of the DILG Regional Offices and their counterpart personnel from partner agencies as well as resource persons from Justice Zones

Preparation of the Trainer and Resource Persons

The trainers and resource persons must be experts in the subject matter. They must have the required knowledge, skills, and attitude for the conduct of the training. They must read and understand this Training Manual.

The Training Manual comes with standardized decks that present the contents as written. The resource persons can modify activities or concentrate on a particular lesson according to the results of the training needs assessment (TNA) of the participants. The resource persons shall coordinate with the Training Coordinator on training supplies, handouts, and other logistics for the delivery of the training session.

The trainers and resource persons must be informed of the participants' profile.

Contents of the Training Manual

The Enhanced Katarungang Pambarangay Training Manual has six (6) modules:

- a. *Module 1: The Katarungang Pambarangay as a Tool in Access to Justice*
- b. *Module 2: Overview of the Katarungang Pambarangay*
- c. *Module 3: What is a Gender-Responsive Katarungang Pambarangay?*
- d. *Module 4: What is a Child-Friendly Katarungang Pambarangay?*
- e. *Module 5: What is an Indigenous Peoples-Relevant Katarungang Pambarangay?*
- f. *Module 6: Techniques and Skills in Mediation, Conciliation, and Arbitration*

The entire training is intended to last four (4) days, including the days of arrival and departure. The implementation of the modules may be customized according to training needs assessment (TNA) results and the specific context of the *Lupon* and barangay officials.

The Preliminary Session shall consist of the introduction of the participants and facilitators and the overview of the training. The overview of the training includes the objectives of the training, its rationale and training methodologies, the schedule of the activities, and the house rules.

Module 1 provides an introduction to the Katarungang Pambarangay through a discussion of the Katarungang Pambarangay as a tool for access to justice. It consists of sessions on the overview of the system of government in the Philippines, justice and human rights, access to justice, and Alternative Dispute Resolution (ADR).

Module 2 gives an overview of the Katarungang Pambarangay system. It consists of a refresher on the Revised Katarungang Pambarangay Law, its coverage and jurisdiction, and the different processes and procedures.

Modules 3, 4, and 5 discuss what makes a Gender-Responsive, Child-Friendly, and Indigenous Peoples-Relevant Katarungang Pambarangay. Each module consists of a preliminary session and a discussion of the foundational principles of gender rights, children's rights, and indigenous peoples' rights and its application to the Katarungang Pambarangay. This will be followed by a discussion on salient laws on women, people of diverse SOGIESC, children, and indigenous peoples and the manner of conducting a gender-responsive, child-friendly, and indigenous peoples-relevant Katarungang Pambarangay.

Module 6 explains and demonstrates the required skills and techniques in the conduct of mediation,

conciliation, and arbitration. Participants will undergo a simulation of case scenarios that will require the application of the lessons and skills learned in the previous modules.

Each session begins with the statement of the session description and the session objectives. Each session is introduced by an activity. The activity is meant to allow the learners to start the learning process with something they are familiar with or to test their knowledge. This will be followed by a processing exercise concerning the activity in order to deepen their understanding of the learnings that surfaced during the initial activity. The processing will be followed by the input/abstraction. Suggested materials are also provided which the resource speakers can use or share with the participants to allow for a deeper understanding of the topic.

Training Objectives

At the end of the training, the participants should be able to:

1. Explain the role of the Katarungang Pambarangay in the Philippine justice system and the rationale behind the alternative dispute resolution (ADR);
2. Explain the duties and responsibilities of the *Lupon* and barangay officials in the implementation of a Gender-Responsive, Child-Friendly, and Indigenous Peoples-Relevant Katarungang Pambarangay;
3. Discuss the salient features of various laws on women, people of diverse SOGIESC, children, and indigenous peoples as guide in performing the functions of *Lupon* and barangay officials under the Katarungang Pambarangay system as basis in managing conflicts and disputes reported at the barangay level; and
4. Demonstrate knowledge and skills in the conduct of mediation, conciliation, and arbitration as they apply to their functions in administering justice at the barangay level.

Suggested Training Schedule

<u>DAY 0</u>	
	Arrival and Check-in
<u>DAY 1</u>	
8:30AM - 9:00AM	Registration
9:00AM - 10:15AM	Preliminary Session (1 hour and 15 mins.) <ol style="list-style-type: none"> 1. Opening Program <ol style="list-style-type: none"> a) Prayer b) National Anthem c) Welcome Remarks/Opening Message d) Introduction of Program, Participants, and Facilitators 2. Overview of the Training <ol style="list-style-type: none"> a) Getting to know and expectation setting b) Training objectives c) Rationale of the training d) Training methodologies e) Schedule of the activities f) House rules

Module 1: The Katarungang Pambarangay as a Tool in Access to Justice	
10:15AM - 10:30AM	<i>Pre-test</i> (Modules 1 & 2)
10:30AM - 11:30AM	Session 1: Overview of the Philippine System of Government (1 hour)
11:30AM - 12:30PM	Session 2: Justice and Human Rights (1 hour)
12:30PM - 1:30PM	Lunch
1:30PM - 2:30PM	Session 3: Access to Justice (1 hour)
2:30PM - 3:30PM	Session 4: Alternative Dispute Resolution (1 hour)
3:30PM - 3:45PM	Health break
Module 2: Overview of the Katarungang Pambarangay	
3:45PM - 4:45PM	Session 1: Introducing the Katarungang Pambarangay (1 hour)
4:45PM - 5:45PM	Session 2: Katarungang Pambarangay Structure and Processes (1 hour)
5:45PM - 6:00PM	<i>Post-test</i> (Module 1 & 2)
<u>DAY 2</u>	
8:30AM - 9:00AM	Registration
9:00AM - 9:15AM	Recap
Module 3: What is a Gender-Responsive Katarungang Pambarangay?	
9:15AM - 9:30AM	<i>Pre-test</i> (Module 3)
9:30AM - 10:00AM	Preliminary Session (30 mins.)
10:00AM - 10:15AM	Health break
10:15AM - 11:45AM	Session 1: Foundational Principles on Gender (1 hour and 30 mins.)
11:45AM - 12:45PM	Lunch
12:45PM - 1:45PM	Session 2: Salient Laws on Gender (1 hour)
1:45PM - 2:00PM	<i>Post-Test</i> (Module 3)
Module 4: What is a Child-Friendly Katarungang Pambarangay?	
2:00PM - 2:15PM	<i>Pre-test</i> (Module 4)
2:15PM - 2:45PM	Preliminary Session (30 mins.)
2:45PM - 3:00PM	Health break
3:00PM - 4:30PM	Session 1: Foundational Principles on Children's Rights (1 hour and 30 mins.)
4:30PM - 5:30PM	Session 2: Salient Laws on Children (1 hour)
5:30PM - 5:45PM	<i>Post-Test</i> (Module 4)

<u>DAY 3</u>	
7:30AM - 8:00AM	Registration
8:00AM - 8:15AM	Recap
Module 5: What is an Indigenous Peoples-Relevant Katarungang Pambarangay?	
8:15AM - 8:30AM	<i>Pre-test (Module 5)</i>
8:30AM - 9:00AM	Preliminary Session (30 mins.)
9:00AM - 10:00AM	Session 1: Foundational Principles on Indigenous Peoples' Rights (Context and IPRA as a Landmark Legislation) (1 hour)
10:00AM - 10:15AM	Health break
10:15AM - 11:45AM	Session 2: Principles in Practice (IPRA and Katarungang Pambarangay) (1 hour and 30 mins.)
11:45AM - 12:00NN	<i>Post-test (Module 5)</i>
12:00NN - 1:00PM	Lunch
Module 6: Techniques and Skills in Mediation, Conciliation, and Arbitration	
1:00PM - 1:15PM	<i>Pre-test (Module 5)</i>
1:15PM - 2:45PM	Session 1: Learning Skills in Mediation, Conciliation, and Arbitration (1 hour and 30 mins.)
2:45PM - 3:15PM	Health break
3:15PM - 4:45PM	Session 2: Demonstrating Skills in Mediation, Conciliation, and Arbitration (1 hour and 30 mins.)
4:45PM - 5:00PM	<i>Post-test (Module 5)</i>
5:00PM - 6:00PM	Closing Program

Preparations

The training secretariat shall prepare for the logistics of the three (3)-day training. Logistical preparations shall include travel arrangements for the participants and resource persons, venue, accommodation, food, training kits and handouts, and other materials.

PRELIMINARY SESSION: OPENING PROGRAM AND OVERVIEW OF THE TRAINING

The Preliminary Session establishes the tone of the entire training session. The participants and the facilitators should level off on their expectations with each other in order to facilitate interaction, sharing, and learning during the training. The Preliminary Session shall have two (2) parts: the Opening Program and the Overview of the Training.

Session Objectives

At the end of the session, the participants should be able to:

1. Match their expectations with the training objectives of the activity; and,
2. Be acquainted with their co-participants for an active interaction and clarified direction.

Methodologies: Pairwork and Group Activity

Total Recommended Duration: 1 Hour and 15 minutes

	Group Size	Recommended Duration	Materials
1 Opening Program	5-8 participants per group	30 minutes	Metacards, markers, and masking tape
2 Getting to Know and Expectation Setting	All participants in plenary	25 minutes	
3 Overview of Training	All participants in plenary	20 minutes	

Suggested Session Outline

1. **Opening Program**
 - a) Prayer
 - b) National Anthem
 - c) Welcome Remarks/Opening Message
 - d) Introduction of Program, Participants, and Facilitators
2. **Activity 1: Getting to Know and Expectation Setting**

**Activity 1: Getting to Know
and Expectation Setting****Procedures:**

- 1) Ask the participants to look for a partner whom they do not know personally.
- 2) Within five (5) minutes, the partners shall interview each other and share the following:
 - a) Name
 - b) Barangay
 - c) Designation in the barangay
 - d) Have you previously attended any training on the Katarungang Pambarangay?
 - e) What are the expectations from the training?
- 3) Each pair is given 5 minutes to introduce their partner to the other participants.
- 4) Ask participants to write their expectations on the metacard.
- 5) The facilitator will collect the metacards after the activity and these will be posted on the wall.

Processing:

- 1) What are the common expectations of the participants?
- 2) Are these expectations aligned with the training objectives?
- 3) Which expectations are not covered by this training?

3. Input

- a) Acknowledge and match the expectations of the participants with the training objectives.
- b) Acknowledge the expectations that are not in line with the training objectives and clarify that those expectations may be subject to a different program.
- c) Discuss the overview of the training, specifically: training objectives, rationale of the training, training methodologies, schedule of the activities, and house rules.

**PART I:
INTRODUCTION
TO KATARUNGANG
PAMBARANGAY**



MODULE 1: The Katarungang Pambarangay as a Tool in Access to Justice

As the first of six (6) modules, this module aims to deepen the understanding of the Lupon and barangay officials of the place and importance of the Katarungang Pambarangay in the Philippine justice system.

Module I consists of sessions on the overview of the Philippine system of government, justice and human rights, access to justice, and Alternative Dispute Resolution (ADR).

SESSION 1: OVERVIEW OF THE PHILIPPINE SYSTEM OF GOVERNMENT

This session seeks to re-introduce to the Lupon and barangay officials the branches of the Philippine government and their functions. This is the first stroke in painting the Katarungang Pambarangay's role in the State.

Session objectives

At the end of the session, the participants should be able to:

1. Identify the three (3) branches of the Philippine government and their respective roles;
2. Explain the principles of separation of powers, the co-equality of branches, and the principle of checks and balances; and
3. Situate the Katarungang Pambarangay in the system of government and the part it plays in terms of providing access to justice to the community.

Methodologies: Group Activities and Input

Total Recommended Duration: 1 Hour

	Group Size	Recommended Duration	Materials
1 Group Activity	5-8 participants per group	15 minutes	Metacards, markers, Manila papers, and masking tape
2 Input	All participants in plenary	15 minutes	
3 Group Activity	All participants in plenary	20 minutes	
4 Input	All participants in plenary	10 minutes	



Key learnings

- The government is one of the elements of a State.¹ There is no government without the people. The government exists because of and for the people.
- The 1987 Philippine Constitution divides governmental power into three (3) co-equal branches: the legislature, the executive, and the judiciary. "It delineates the powers of the 3 branches: the legislature is generally limited to the enactment of laws, the executive department to the enforcement of laws, and the judiciary to their interpretation and application to cases and controversies."²
- Despite the common perception of the existence of a hierarchy in government, the 3 branches are, in fact, co-equal. In order to avert excesses or abuse in wielding government authority, certain powers are given to each of the branches as a way of balancing and checking each other.
- As one of the 3 branches of the government, the judiciary's role is important because its main function is to interpret the laws and its application to cases and controversies.
- Interpreting the law does not only mean deciding who is right and who is wrong. It means explaining what the law means and the implications arising from such a law. Where rights are violated or there is a cause of action, remedies may be pursued and granted. This is the role of the judiciary and the courts.
- The Philippine Judicial System follows a hierarchy - from the lower courts up to the highest

¹ There are four (4) elements of a State: (1) sovereignty, (2) territory, (3) government, and (4) people.

² Anak Mindanao Party-List Group v. Executive Secretary, G.R. No. 166052, 29 August 2007.

court of the land, the Supreme Court of the Philippines.

- Before cases reach the lower courts, some cases need to undergo the Katarungang Pambarangay system.
- The Katarungang Pambarangay is crucial because while it is under the Executive branch under the DILG, certain cases need to pass by the Katarungang Pambarangay first before it can be heard by the Judiciary.
- Heads of the Executive, Legislative, and the Judiciary, in general, would have a bird's eye view of the situation in the entire country, but it is the barangay that has the direct and immediate contact with the people and the first opportunity to address the needs of the community.

Suggested Session Outline

This session will consist of four (4) parts and will be undertaken as follows:

1. Group Activity

The activity aims to test the knowledge of the participants on the three (3) branches of the Philippine government and their functions.

Activity 2: I-level mo 'to!

Procedures:

- 1) Divide the participants into equal groups.
- 2) Give the groups three (3) metacards, each bearing the name of a government branch.
- 3) Give them 10 minutes to discuss what the functions of the 3 branches are and rank them in accordance with their power.
- 4) After 10 minutes, ask the groups to depict their ranking, if any, by sticking the metacards on the board/wall.
- 5) Give the participants time to observe all outputs.

Processing:

- 1) Call a representative from each group. Give them a maximum of 3 minutes to share their group discussion. In case of a large volume of participants, just ask one or two (1-2) representatives from groups with common outputs.
- 2) Use the following guide questions:
 - a) How did you come up with this hierarchy?
 - b) What factors affected your group's perception of the branches of the government as to hierarchy?

2. Input

- a) Why do we have a government?³
- b) Validate the correct functions attributed by the participants to the respective branches.
- c) What are the 3 branches of government?

Legislative Department

- The Legislative department (or, the legislature) makes laws, alters, and repeals laws.⁴
- The law-making power is vested in the Philippine Congress, which is composed of the Senate (24 senators) and the House of Representatives (not more than 250

3 "The government is the agency or instrumentality through which the will of the State is formulated, expressed, and realized." (US v. Dorr, 2 Phil. 332).

4 PHIL. CONST. art. VI, § 1.

- members, composed of district and party-list representatives).⁵
- Essentially, this branch makes the laws in the country.

Executive Department

- The executive power is vested in the President of the Philippines, who is both “the head of State” and “Chief Executive.”⁶
- The Executive department is headed by the President. The 1987 Constitution grants the President authority to appoint his/her/their Cabinet. These departments form a large portion of the country’s bureaucracy.
- Ultimately, this branch enforces or implements the laws in the country.

Judicial Department

- Judicial power is rested in the Supreme Court and in lower courts as may be established by law.
- The Judicial department (or, the Judiciary) holds the power to settle controversies involving rights that are legally demandable and enforceable.⁷ This branch determines whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part and instrumentality of the government.⁸
- The Judiciary is made up of a Supreme Court, which is the highest court of the land and lower courts.
- In fine, this branch interprets the laws.

- d) Discuss the principles of separation of powers, the co-equality of branches, and the principle of checks and balances.

Principle of separation of powers

- Each of the branches of government - the legislature, the executive, and the judiciary - is considered separate and independent from each other and is supreme within its own sphere.⁹ This is to prevent the concentration of authority in one person or group of persons that might lead to abuse.
- The encroachment of one branch over the other is to be avoided at all costs.

Principle of co-equality of branches

- There is no hierarchy between the branches of the government. Ours is a democracy with 3 co-equal branches that co-exist with one another.

Principle of checks and balances

- In order to avert excesses or abuse in wielding government authority, certain powers are given to each of the branches as a way of balancing and checking each other.
- Example:* While it is the President that has the power to declare Martial Law when there is actual invasion, rebellion, and public safety requires it, the Senate and the House of Representatives, voting jointly, may revoke such proclamation.¹⁰ The

5 PHIL. CONST. art. VI, § 1. *See also* art. VI, § 2 & 5.

6 Some of the powers of the powers of the President include: (1) power of control over all executive departments, (2) power to execute laws, (3) appointing power, (4) commander-in-chief clause, (5) power to grant reprieves, commutations, and pardons, (6) power to grant amnesty (with the concurrence of Congress), (7) power to contract or guarantee foreign loans, (8) power to enter into treaties or international agreements, and (9) power to submit budget to Congress, and (10) power to address Congress among others. *See* PHIL. CONST. art. VII, § 1.

7 PHIL. CONST. art. VIII, § 1.

8 PHIL. CONST. art. VIII, § 1.

9 *Biraogo v. Philippine Truth Commission*, G.R. No. 192935, 7 December 2010.

10 PHIL. CONST. art. VII, § 18.

Supreme Court may determine the sufficiency of the basis of the declaration and may nullify it.¹¹

- e) Explain that despite the common perception of the existence of a hierarchy, the 3 branches of the government are, in fact, co-equal. This co-equality allows them to perform checks and balances.
- f) In relation to the discussion of the function of the judiciary, explain that interpreting the law does not only mean deciding who is right and who is wrong. It means explaining what the law means and the implications arising from such law. Where rights are violated or there is a cause of action, remedies may be pursued and granted. This is the role of the judiciary and the courts.
- g) Provide an overview of the Philippine Judicial System.
 - The Philippine Judicial System is made up of the (1) Supreme Court (SC), (2) Court of Appeals (CA), (3) Court of Tax Appeals (CTA), (4) Sandiganbayan, (5) Regional Trial Court (RTC), (6) Municipal Trial Court (MTC)/Metropolitan Trial Courts (MeTC)/Municipal Circuit Trial Court (MCTC), and (7) Shari ‘a District and Circuit Courts.
- h) Emphasize that the Philippine Judicial System follows a hierarchy - from the lower courts up to the highest court of the land, the Supreme Court of the Philippines. Before cases reach the lower courts, some cases need to undergo the Katarungang Pambarangay system.

3. Group Activity

The activity aims to deepen the understanding of the participants on the roles of the branches of the Philippine government and illustrate the principle of checks and balances in practice.

Activity 3: Power Problems

Procedures:

- 1) Prepare the Manila paper with the following matrix (NOTE: An answer key is provided below.):

Power	Use of Power	What's the problem?	What check would prevent this from happening?
Congress has the power to make laws.	Congress makes a law requiring everyone to wear blue on Mondays.	(e.g., The law would violate people's rights to freedom of expression.)	(The President has the power to veto a bill. The Supreme Court can declare the law unconstitutional.)
The President has the power to appoint government officials as part of his/her cabinet.	The President appoints his/her brother, who has no experience in Health, as Secretary of Health.	(e.g., The brother might not be qualified to be the Secretary of Health.)	(The Congress, through the Committee on Appointments, may reject/not confirm the appointment.)
The President has the power to enter into treaties with other countries.	The President enters into a treaty with Malaysia to give a part of the Bangsamoro to them.	(e.g., This would be unfair to the people of Bangsamoro, whose lives are directly affected.)	(The Senate has the power to ratify any treaty.)

- 2) Ask the participants to identify (1) what the problem is with the given scenario; and (2) what check would prevent this from happening.
- 3) Facilitate the discussion with the participants. Write down their answers on metacards.

Processing:

- N/A; See Abstraction/Input.

4. Input

- a) Connect the outputs with the earlier discussion on the important principles.
- b) Expound on the principle of checks and balances by illustrating the principle in practice and giving examples of the different checking powers of each branch of the government on the other branches, and vice-versa.

LEGISLATIVE DEPARTMENT	
Checks on the Executive Branch	Checks on the Judicial Branch
<ul style="list-style-type: none"> ● Can override presidential veto ● Confirms executive appointments ● Can impeach and remove the president ● Appropriates money ● Ratifies treaties 	<ul style="list-style-type: none"> ● Can impeach and remove justices of the Supreme Court ● Can propose amendments to overrule judicial decisions

EXECUTIVE DEPARTMENT	
Checks on the Legislative Branch	Checks on the Judicial Branch
<ul style="list-style-type: none"> ● Can disapprove/veto bills ● Can call special sessions of Congress 	<ul style="list-style-type: none"> ● Appoints judges ● Can grant pardon to offenders

JUDICIAL DEPARTMENT	
Checks on the Legislative Branch	Checks on the Executive Branch
<ul style="list-style-type: none"> ● Can declare acts of Congress unconstitutional 	<ul style="list-style-type: none"> ● Can declare executive actions unconstitutional

- c) Highlight the importance of checks and balances in a democracy.
- d) Point out that following these principles would strengthen the institutions that would provide for the needs of the people, and the mechanisms that the people can go to in case those needs are not fulfilled.
- e) The 3 branches are also called the pillars of government. Reiterate that the foundation of these pillars is the smallest local government unit - the barangay.

Suggested Materials

1. Philippine Judicial Court system flowchart
Available at: <https://cacj-ajp.org/philippines/judiciary/description-of-courts/flowchart/>

SESSION 2: JUSTICE AND HUMAN RIGHTS

While the first session focused on establishing the place of barangay in the government and the Katarungang Pambarangay as part of the system that is tasked to deliver justice, this session revolves around what the system is designed to realize — justice and human rights. It discusses basic concepts encompassed by the term ‘human rights’ and the underlying principles of equality, fairness, and justice.

Session objectives

At the end of the session, the participants should be able to:

1. Appreciate that we have different values based on what we perceive and our biases; and
2. Develop an understanding of the concept of justice and what human rights are.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour

	Group Size	Recommended Duration	Materials
1 Group Activity	5-8 participants per group	40 minutes	Metacards, markers, Manila papers, and masking tape
2 Input	All participants in plenary	20 minutes	



Key learnings

- At its core, justice is about giving everyone what they are due. It is about getting the right result in the situation, and what is ‘right’ depends on the different circumstances of the situation and on the circumstances of the parties involved. It describes an outcome that is fair. It takes into account equality and fairness both in terms of the ultimate benefit that the law provides, and also the procedure by which that law is administered.
- Human rights are the rights we have by virtue of our existence. They belong to all of us, regardless of who we are or where we live, and they cannot be taken away.

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

The activity aims to draw from the participants their concept of responsibility in relation to equality, fairness, and justice and challenge each other’s notions of responsibility in order to come up with a common output.

Activity 4: Alligator River Story

Procedures:

- 1) Give the participants 10-15 minutes to read the story and huddle with their respective groups.
- 2) Translate the story below to the local language.

The Alligator River Story¹²

“Once upon a time, there was a woman named Abigail who was in love with a man named Gregory. A river dominated by alligators separates the lovers as Gregory lived on the other side. Abigail wanted to cross the river to be with Gregory. Unfortunately, the bridge had been washed out. So she went to ask Sinbad, a riverboat captain, to take her across. He said he would be glad if she would consent to go to bed with him before crossing. She promptly refused and went to a friend named Ivan to explain her situation. Ivan did not want to be involved at all in the situation. Abigail felt her only alternative was to accept Sinbad’s terms. Sinbad fulfilled his promise to Abigail and delivered her into the arms of Gregory. When she told Gregory about Sinbad’s terms, Gregory cast her aside with disgust. Heartsick and dejected, Abigail turned to Slug with her tale of woe. Slug, feeling compassion for Abigail, sought out Gregory and beat him brutally. Abigail was overjoyed at the sight of Gregory getting his due. As the sun sets on the horizon, we hear Abigail laughing at Gregory.”

- 3) Distribute copies of the story to the participants. Give the participants 5 minutes to read the story on their own and to rank the characters from best to worst.
- 4) After 5 minutes, divide the participants into equal groups.
- 5) Ask the groups to consider the choices made by each of the five (5) characters: Abigail, Ivan, Sinbad, Slug, and Gregory.
- 6) Give the participants 10 minutes to work as a group to fill out the chart below. Ask them to rank each of the characters from *best* to *worst* based on their behavior in the situation with 1 being the worst behavior and 5 being the best behavior. In the next column, ask the participants to also rank the characters based on their responsibility in the situation with 1 being the most responsible.
- 7) Explain that their ranking on the same character will not necessarily match. For example, you might rank one character a 2 on behavior, but a 5 on responsibility. Ask the participants to justify their rankings in the *Justification* column provided after each character.

	Behavior	Responsibility	Justification
Abigail			
Ivan			
Sinbad			
Slug			
Gregory			

Processing:

- 1) Call a representative from each group. Give them a maximum of 3 minutes to share their group discussion. In case of a large volume of participants, just ask one or two (1-2) representatives from the groups to share.
- 2) Use the following guide questions:
 - a) How did you come up with this ranking?
 - b) What factors affected your group’s perception of responsibility? What did you determine to be “fair” and “just”?

12 See Oakland University’s Instructor Handbook, “The Alligator Story” (<https://www.oakland.edu/Assets/upload/docs/Instructor-Handbook/The-Alligator-River-Story.pdf>)

2. Input

- a) Clarify that the purpose of the activity is not to establish the guilt or accountability of each of the characters. Point out the different values and characteristics the participants mentioned in determining the ranking in behavior and responsibility and the different levels of importance each group assigned to a specific value or characteristic.
 - Using the difference between the answers in the groups, point out that each person has biases as a result of their own knowledge and experiences.
 - These personal biases must be set aside when performing their functions, especially in the administration of justice.
- b) What is your concept of justice? Discuss how, in its most basic sense, justice is giving everyone what they are due.
 - “[J]ustice suggests that when someone has done something wrong, or two (2) people have a dispute over something, the ‘right result’ has been achieved, and that the procedure used to get to that result was fair. It also requires that those involved in the situation have an equal opportunity to tell their side of the story. Where that procedure was not fair, justice will not have been done as the ‘right result’ will not have been achieved, or it may be uncertain whether the ‘right result’ has been achieved.”¹³
- c) What is your concept of equality, fairness, and justice? When we complain that something isn’t equal, fair, or just, what do we mean?

Equality

- “We would expect that we should be treated equally when it comes to basic rights that we are entitled to and may come across in our daily lives. This means that we should not be treated differently on the basis of different characteristics that we may have. However, there are some occasions where achieving equality means not treating people in exactly the same way. This is because we are not all exactly the same.”¹⁴

Fairness

- “The concept of fairness is inherent in the concept of equality. Fairness is the idea that people should be treated equally where it is appropriate for them to be treated equally and differently where it is appropriate for them to be treated differently. Fairness also incorporates a notion of people getting what they deserve.”¹⁵

Justice

- “The concept of justice incorporates the notions of equality, fairness, and liberty. It is about getting the right result in the situation, and what is ‘right’ depends on the different circumstances of the situation and on the circumstances of the parties involved. It describes an outcome that is fair. It takes into account equality and fairness both in terms of the ultimate benefit that the law provides, and also the procedure by which that law is administered.”
- d) Connect the discussion of the above-mentioned concepts to the activity. As *Lupon* and *barangay* officials, their functions under the Katarungang Pambarangay system expect them to administer justice at the barangay level. While they do not determine who is right or wrong and they are not bound by the strict rules of procedure like the courts of law, they are put in a situation where they are confronted with situations that ask what exactly is fair and just in that given situation and manage the conflict.
 - e) Highlight that we have different values based on what we perceive. Relate their answers from

13 See The Rule of Law for Citizenship Education: Understanding Justice (https://binghamcentre.biicl.org/documents/2106_the_rule_of_law_for_citizenship_education_understanding_justice_lesson_1_thinking_about_law_and_justice_17-40.pdf)

14 *Id.*

15 *Id.*

the processing of the activity to how we each have our own biases and that is why we need standards.

- f) Discuss that we determine “what is just” precisely through standards, and our standards for what is just or what one is due is his/her/their human rights. Explain the concept of human rights.
- Human rights are those rights that belong to every individual and person simply because s/he is a human being. They embody the basic standards without which people cannot realize their inherent human dignity.
 - Human rights are rooted in and are necessary for human dignity.
 - Human rights are universal, inherent, inalienable, indivisible, and interdependent. Yet, not all rights are realized by all people.
- g) **Other possible inputs, depending on the discussion with the participants:**
- To complement the discussion on the principles of human rights, point out that human rights are not exclusive to people who are perceived to be good by society. Using the story as context, point out that all characters in the story, regardless of the participants’ ranking of the characters, have human rights. For example, the right to due process for the Slug, in case Gregory decides to hold him accountable for beating him up.

Suggested Materials

- 1) The Story of Human Rights
Available at: https://www.youtube.com/watch?v=6XXGF_V8_7M
- 2) Ateneo Human Rights Center’s Introduction to Human Rights: What are Human Rights? (Atty. Ray Paolo Santiago)
Available at: <https://www.youtube.com/watch?v=TJXjhVXncg>
- 3) The Universal Declaration on Human Rights (UDHR)
Available at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf
- 4) Republic v. Sandiganbayan, G.R. No. 104768, July 21, 2003
Available at: https://lawphil.net/judjuris/juri2003/jul2003/gr_104768_2003.html

References

See Annex B (*Introduction to Human Rights Principles*) on page 35.

SESSION 3: ACCESS TO JUSTICE (A2J)

This session introduces the concept of Access to Justice (A2J). It draws from the participants the most common Access to Justice issues in their communities and in society. This juncture also serves as a springboard for the discussion on the Katarungang Pambarangay system as an Access to Justice mechanism.

Session objectives

At the end of the session, the participants should be able to:

1. Establish what is Access to Justice and its connection to Alternative Dispute Resolution (ADR); and
2. Illustrate common barriers to justice in their communities and in society.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour

	Group Size	Recommended Duration	Materials
1 Group Activity	5-8 participants per group	40 minutes	Metacards, markers, Manila papers, masking tape, and metacards/Manila paper with the indicators of Access to Justice
2 Input	All participants in plenary	20 minutes	



Key learnings

- The justice system is not limited to the formal justice systems, such as the courts and the police, but also traditional or customary ones, particularly the barangay justice or the Katarungang Pambarangay system and coordination mechanisms among the different components in the system.
- Access to Justice is a fundamental right as well as a key means to defend other rights. It is “much more than improving an individual’s access to courts or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.”¹⁶
- The indicators of Access to Justice are (1) Legal Protection, (2) Legal Awareness, (3) Legal aid and counsel, (4) Adjudication, and (5) Enforcement and civil society organization (CSO) oversight.

16 UNDP’s Access to Justice Practice Note (The Issue and its Dimensions), pp. 3-7 (<https://www.undp.org/publications/access-justice-practice-note>).

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

(The activity aims to draw from the participants common access to justice issues in their communities and in society and deepen their understanding of Access to Justice.)

Activity 5: Barriers to Justice

Procedures:

- 1) Divide the participants into equal groups.
- 2) Give the participants 15-20 minutes to huddle with their respective groups and answer the following questions:
 - a) Who are the people or vulnerable groups in your community do you think have a hard time availing services or approaching people who can help them with their legal problems?
 - b) What makes it hard for them? In the alternative, what challenges do they face? What are the common problems or issues usually faced by these people involved in a dispute when pursuing his/her case? You may give an example, like there are no lawyers in the community.
- 8) Ask them to place their answers on metacards and to post their metacards in one part of the room for plenary discussion after the small group huddle.
- 9) Give the participants time to observe all outputs.

Processing:

- N/A; See Abstraction/Input.

2. Input

- a) In the plenary, the facilitator should start by combining the common problems or issues identified by the participants under the right indicator of access to justice. In cases where there are no examples under a specific indicator, the facilitator should give examples.

Indicators of Access to Justice

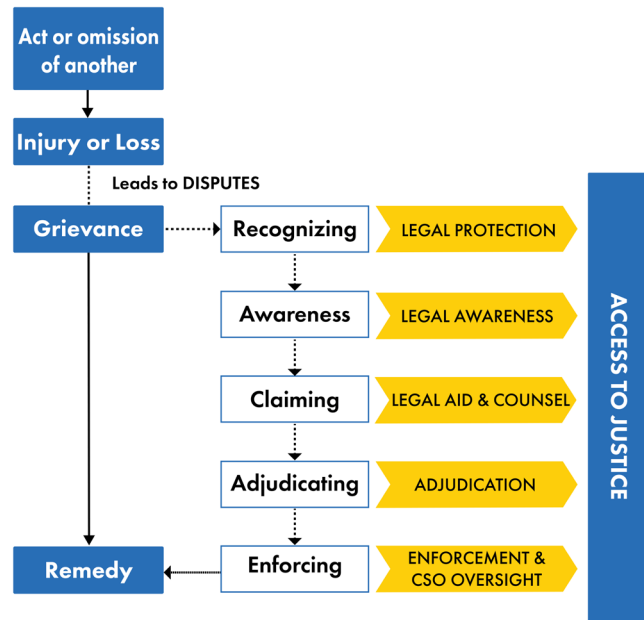


Figure 1: Indicators of Access to Justice

- b) What is your understanding of access to justice?
 c) Use the answers from the activity in expounding on the concept of access to justice. Explain the link between human rights and access to justice.

Access to Justice

- The meaning of access to justice is interpretative and contextual. “When people think of access to J=justice, they are not necessarily thinking about the justice system.”¹⁷ Access to Justice is the “ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.”¹⁸
- The justice system is not limited to the formal justice systems, such as the courts and the police, but also traditional or customary ones, particularly the barangay justice system and coordination mechanisms among the different components in the system.
- “People need remedies to protect themselves from possible harm caused by others when involved in disputes or conflicts of interests.” This is where access to justice comes in. As a process, access to justice is “particularly important in the context of power inequalities, when people’s inability to claim remedies through other means may put their well-being at risk.”¹⁹
- “Informal and traditional mechanisms of justice are often more accessible to poor and disadvantaged people and may have the potential to provide speedy, affordable, and meaningful remedies to the poor and disadvantaged.”²⁰

17 UNDP, “Programming for Justice Access to All” (<https://www.undp.org/asia-pacific/publications/programming-justice-access-all>).

18 *Id.*

19 *Id.*

20 UNDP, *supra* note 16.

- d) Connect with the first session's priming activity on why we have a government. The government is the primary duty bearer. The State has the primary responsibility to respect, protect, and promote/fulfill human rights.
- A2J is a fundamental right as well as a key means to defend other rights. It is "much more than improving an individual's access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable."²¹
- e) Clarify that although justice is commonly seen as dispensed by the judiciary, the other branches of the government and the society at large also have a stake in making justice accessible. Use this as a transition point for the next session on ADR being an Access to Justice mechanism.
- Part of the State's obligation to protect is making justice accessible to all. In case of a violation of a right, we can claim remedies through courts or out-of-court processes in traditional or ADR mechanisms.

Suggested Materials

1. UNDP's Programming for Justice Access to All, pp. 1-7
Available at: <https://www.undp.org/asia-pacific/publications/programming-justice-access-all>
2. UNDP's Access to Justice Practice Note (The Issue and its Dimensions), pp. 3-7
Available at: <https://www.undp.org/publications/access-justice-practice-note>

References

See Annex A (*Access to Justice*) on page 30. See also Annex B (*Introductions to Human Rights*) on page 35.

21 *Id.*, *supra* note 16.

SESSION 4: ALTERNATIVE DISPUTE RESOLUTION (ADR)

This session explains the concept of Alternative Dispute Resolution (ADR) and its design as a mechanism to help alleviate Access to Justice issues in resolving disputes.

Session objectives

At the end of the session, the participants should be able to:

1. Explain the concept and rationale of ADR; and
2. Illustrate why and how the Katarungang Pambarangay is a form of ADR.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour

	Group Size	Recommended Duration	Materials
1 Group Activity	2 groups	40 minutes	Laptop, multimedia projector, and speakers
2 Input	All participants in plenary	15 minutes	



Key learnings

- Dispute resolution is one of the functions of a sound political system.
- “In the Philippine context, ADR refers to the formal or informal processes for settlement of conflicts, outside of or in the periphery of institutional juridical process. It is another option to the structured adversarial approach adopted in court.”²²
- ADR is an important means to achieve speedy and impartial justice and unclog court dockets. The use of ADR is an effective tool and alternative procedure for the resolution of appropriate cases.
 - “It is less expensive, more swift and efficient, less or non-adversarial; thus, generations that can be more satisfying and enduring.”²³

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

The activity aims to present to the participants situations that require them to apply their knowledge and skills to solve real life examples of disputes in communities.

22 Domingo P. Disini, Jr., et.al, *Dispute Resolution Mechanisms in the Philippines*, IDE Asian Law Series No. 18 (May 2002).

23 *Id.*

Activity 6: Case Assessment

Procedures:

- 1) Show the participants the following clips:
 - a. Four Sisters and a Wedding: (<https://www.youtube.com/watch?v=jEMONSVbnRw>)
 - b. The Broken Marriage Vow: (<https://www.youtube.com/watch?v=p9twzxVSVgo>)
- 2) Divide the participants into two (2) equal groups.
- 3) Give the participants 10-15 minutes to huddle with their respective groups and refer to processing for questions. Ask for volunteers in each group to answer them.

Processing:

- 1) Call a representative from each group. Give them a maximum of 5 minutes to share their group discussion.
- 2) Use the following guide questions:
 - a. Should all disagreements be brought to court? Why or why not?
 - b. What may be done to settle the squabbles shown by the video?

2. Input

- a) Despite being an interpreter of statutes and a trier of issues, the judiciary is also confronted with access to justice issues like clogged dockets and lack of courts, especially in remote areas. In addition, cases also run for years and require financial resources. Explain that ADR is an effort to address access to justice issues without going through formal court procedures.
- b) What is ADR? Why is it important?

Alternative Dispute Resolution (ADR)

- The Alternative Dispute Resolution Act institutionalized the use of alternative modes of dispute resolution in the Philippines.
- ADR is meant to serve as an efficient tool and an alternative procedure for the resolution of appropriate cases.²⁴
- The ADR system refers to any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency.
- It is a system in which a neutral third-party participates to assist in the resolution of issues, which includes (a) arbitration, (b) mediation, (c) conciliation, (d) early neutral evaluation, (e) mini-trial, or (f) any combination thereof.²⁵
 - One form of ADR – informal ADR in particular – is the Katarungang Pambarangay, which acts as a complementary mechanism to the judicial system. It provides for the resolution of disputes at the barangay level in order to achieve peace and harmony within the community and to provide an accessible and effective form of justice.

24 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), § 2.

25 Alternative Dispute Resolution Act of 2004, § 3(a).

Suggested Materials

1. Republic Act (R.A.) No. 9285 (The Alternative Dispute Resolution Act) (2004)
Available at: https://lawphil.net/statutes/repacts/ra2004/ra_9285_2004.html
2. Special Rules of Court on Alternative Dispute Resolution (ADR)
Available at: https://lawphil.net/courts/supreme/am/am_07-11-08-sc_2009.html
3. Implementing Rules and Regulations of the ADR Act of 2004 (DOJ Circular No.98), 4 December 2009
Available at: <https://doj.gov.ph/files/oadr/2021/IRR%20of%20RA%209285.pdf>

ANNEX A ACCESS TO JUSTICE (A2J)

The Justice Process

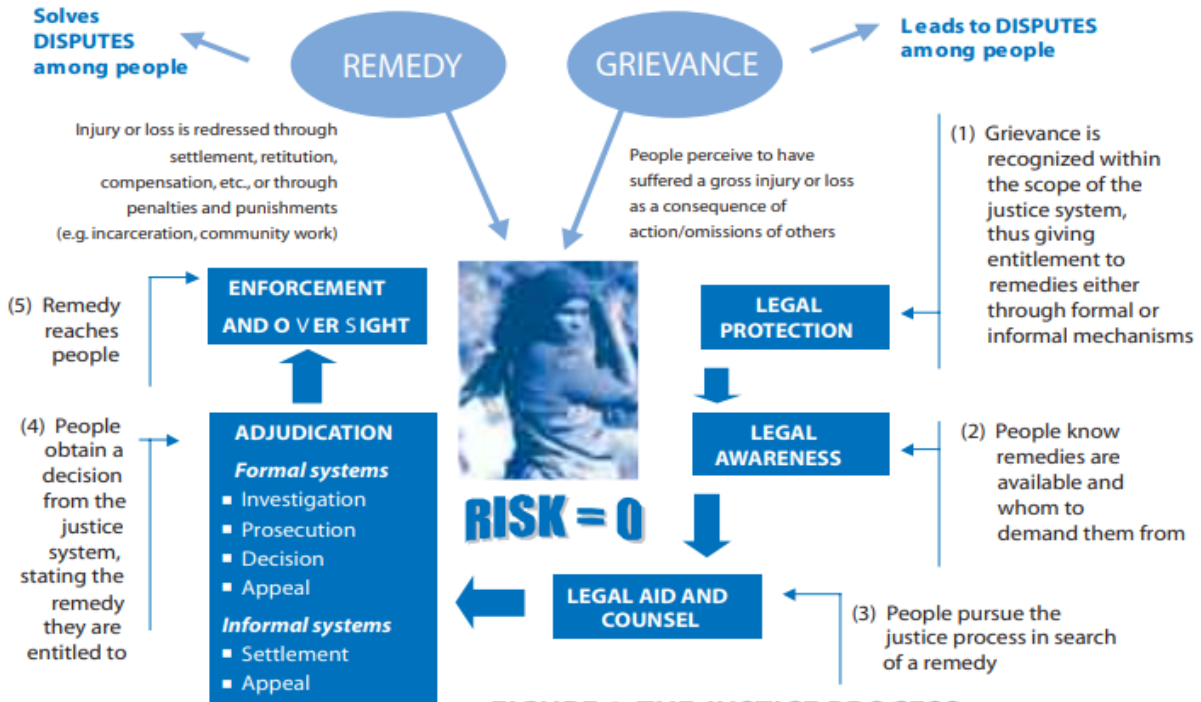


FIGURE 1: THE JUSTICE PROCESS

Figure A: The Justice Process (<https://www.undp.org/asia-pacific/publications/programming-justice-access-all>).

UNDP's Principal Areas of Support on Access to Justice and Key Actors²⁶

AREA	DESCRIPTION	KEY ACTORS
Legal Protection	<p>Provision of legal standing in formal or in traditional law, or both. It involves the development of capacities to ensure that people's rights are recognized within the scope of justice systems, thus giving <u>entitlement to remedies either through formal or traditional mechanisms.</u></p> <p>Legal protection determines the legal basis for all other stages in the access to the justice process. Legal protection can be enhanced through: (a) treaty ratification and implementation in domestic law, (b) constitutional law, (c) national legislation, (d) implementing rules, regulations, and administrative orders, and (e) traditional and customary law.</p>	<ul style="list-style-type: none"> ● Parliament ● ministries of foreign affairs ● ministries of Law and Justice ● national human rights commissions ● Law reform/legislative Commissions ● Legal drafting cells of relevant ministries ● Local officials involved in legal drafting ● Judges, particularly of courts whose decisions are binding on lower courts or, under the law, are able to influence courts in other jurisdictions ● Traditional Councils ● Community leaders (chiefs, religious leaders) ● Civil Society Organizations (CSOs)
Legal Awareness	<p><u>Degree of people's knowledge of the possibility of seeking redress through the justice system, whom to demand it from, and how to start a formal or traditional justice process.</u></p>	<ul style="list-style-type: none"> ● ministry of justice ● ministry of education ● National Human rights institutions (NHRI) ● Legal aid providers ● Quasi-judicial bodies (human rights, anti-corruption and electoral commissions) ● Local government bodies ● Non-Governmental Organizations (NGOs)
Legal Aid and Counsel	<p><u>Capacities (from technical expertise to representation) that people need to initiate and pursue justice procedures.</u></p> <p>Legal aid and counsel can involve professional lawyers (such as in the case of public defense systems and pro bono lawyering), laypersons with legal knowledge, who are often members of the community they serve (paralegals) or both.</p>	<ul style="list-style-type: none"> ● ministries of justice and state-funded legal aid programmes ● Public Attorneys ● Bar Associations ● Court system (e.g., to deal with court fees) ● Police and the prison system ● Local governments ● NGOs ● Law clinics (often linked to university faculties of law)

26 UNDP, supra note 17.

<p>Adjudication</p>	<p><u>Process of determining the most adequate type of redress or compensation.</u></p> <p>Means of adjudication can be regulated by formal law, as in the case of courts and other quasi-judicial and administrative bodies, or by traditional legal systems. The process of adjudication includes a series of stages such as (a) investigation, (b) prosecution, and (c) decision</p>	<ul style="list-style-type: none"> ● Courts ● Prosecution ● NHRIs ● Alternative Dispute Resolution (ADR) mechanisms attached to the court system or to administrative bodies ● Traditional ADR mechanisms
<p>Enforcement</p>	<p><u>Implementation of orders, decisions, and settlements emerging from formal or traditional adjudication.</u></p> <p>Enforcement systems are key to ensure accountability and minimize impunity, thus preventing further injustices.</p>	<ul style="list-style-type: none"> ● Prosecution ● Formal institutions (police and prisons) ● Administrative enforcement ● Traditional systems of enforcement
<p>Civil Society and Parliamentary Oversight</p>	<p>Includes watchdog and monitoring functions that civil society actors (or parliamentary bodies) perform with regard to the justice system. Strengthening the overall accountability within the system is critical in many cases.</p>	<ul style="list-style-type: none"> ● NGOs working on monitoring and advocacy ● Media ● Parliamentary select and permanent committees

Common barriers to access to justice²⁷

The justice system is weakened by:

- Long delays;
- Prohibitive costs of using the system;
- Lack of available and affordable legal representation (that is reliable and has integrity);
- Abuse of authority and powers (resulting in unlawful searches, seizures, detention and imprisonment);
- Weak enforcement of laws and implementation of orders and decrees;
- Severe limitations in existing remedies provided either by law or in practice;
- Failure to provide remedies that are preventive, timely, non-discriminatory, adequate, just, and deterrent;
- Gender bias and other barriers in the law and legal systems:
- Inadequacies in existing laws effectively fail to protect women, children, poor, and other disadvantaged people (including those with disabilities and low levels of literacy);
- Lack of de facto protection, especially for women, children, and men in prisons or centres of detention;
- Lack of adequate information about what is supposed to exist under the law, what prevails in practice, and limited popular knowledge of rights;
- Lack of adequate legal aid systems;
- Limited public participation in reform programmes;
- Excessive number of laws;
- Formalistic and expensive legal procedures (in criminal and civil litigation and in administrative board procedures); and
- Avoidance of the legal system due to economic reasons, fear, or a sense of futility of purpose.

²⁷ UNDP, *supra* note 16.

ANNEX B

INTRODUCTION TO HUMAN RIGHTS

What are human rights?

- Human rights are those rights that belong to every individual and person simply because s/he is a human being. They embody the basic standards without which people cannot realize their inherent human dignity.
 - Human rights are rooted in and are necessary for human dignity.
- Human rights are universal, inherent, inalienable, indivisible, and interdependent. Yet, not all rights are realized by all people.

The foundation documents of human rights law are the: (1) Universal Declaration of Human Rights (UDHR); (2) International Covenant on Civil and Political Rights (ICCPR); and (3) International Covenant on Economic, Social and Cultural Rights (ICESCR). These are known collectively as the International Bill of Human Rights. The International Bill of Human Rights was followed by more than twenty human rights conventions - treaties that become binding law in those countries that ratify them.

Five (5) Categories of Rights

- 1) Civil rights - deals with rights that belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government (or, rights appertaining to a person by virtue of his/her citizenship in a state or community);
- 2) Political rights - deals with the right to participate, directly or indirectly, in the establishment of the administration of government;
- 3) Economic rights - deals with the sphere of human beings working, producing, and servicing;
- 4) Social rights - deals with the standards of living and quality of life for all persons, including those not participating in economic activities; and
- 5) Cultural rights- deals with the cultural sphere of life, including ethnic culture, subcultures, arts, and science.

Five (5) Principles of Human Rights

PRINCIPLE	
Universality	Human rights are universal: they belong to each and everyone without qualification or discrimination, regardless of their personal characteristics, such as: (1) race, (2) color, (3) sex, (4) gender, (5) ethnic or social origin, (6) religion, (7) language, (8) nationality, (9) age, or (10) disability or other status.
Inherent	Human rights are inherent: they are the birthright of every member of the human family and no one has to earn to deserve human rights.
Inalienability	Human rights are inalienable: they can never be given or taken away; in a sense, you cannot lose these rights any more than you can cease to be a human being. Thus, while human rights can be violated, such violations do not strip the person of the right.
Indivisibility	Human rights are indivisible: each human right is equal in status and cannot be entirely separated or prioritized conceptually or practically from other human rights. You cannot be denied a right because someone decides it is "less important" or "non-essential."
Interdependent (or, Interrelated)	Human rights are interdependent/interrelated: All human rights are part of a complementary network. They do not exist or function in isolation from one another. The realization of any one human right will depend on the realization of other rights.

Right-holders and duty-bearers

RIGHT-HOLDERS	DUTY-BEARERS
<p>Those that have particular entitlements in relation to specific duty-bearers. In general terms, all human beings are right-holders.</p> <p>In particular contexts, there are often specific groups whose rights are not fully realized, respected, or protected. These groups tend to include vulnerable sectors, such as women and girls, ethnic minorities, indigenous peoples, migrants, and the youth among others.</p>	<p>Those actors who have a particular obligation or responsibility to respect, promote, and realize human rights and to abstain from human rights violations.</p> <p>The term is most commonly used to refer to State actors, but non-State actors can also be considered duty-bearers.</p>

*A **human rights-based approach** not only recognizes that the entitlements of rights-holders need to be respected, protected, and fulfilled, it also considers rights-holders as active agents in the realization of human rights and development.*

Obligation of States

- Traditionally, it is the State that has the primary duty bearer - that is, the actor who holds the responsibility to respect, protect, and fulfill human rights.
 - 1) Obligation to Respect: The State has the obligation to refrain from interfering with the enjoyment of rights.
 - 2) Obligation to Protect: The State has the obligation to prevent violations of rights by other persons or third parties.
 - 3) Obligations to Fulfill: The State has to undertake appropriate measures towards the realization of rights.
- Note that it is the violation of these obligations - to respect, protect, and fulfill - that gives rise to human rights violations.

MODULE 2: Overview of the Katarungang Pambarangay

This module aims to give the Lupon and barangay officials an overview of the Katarungang Pambarangay system. It consists of a refresher on the Revised Katarungang Pambarangay Law, its coverage and jurisdiction, and the different processes and procedures.

SESSION 1: INTRODUCING THE KATARUNGANG PAMBARANGAY

This session presents an overview of the Katarungang Pambarangay (KP) system. The session gives a primer on the Revised Katarungang Pambarangay Law and expounds on its objectives, coverage, and jurisdiction.

Session objectives

At the end of the session, the participants should be able to:

1. Explain the rationale of Katarungang Pambarangay in relation to its functions (mediation, conciliation, and arbitration);
2. Illustrate the coverage and jurisdiction of the Katarungang Pambarangay; and
3. Determine which cases fall under the jurisdiction of the Katarungang Pambarangay.

Methodologies: Group Activities and Input

Total Recommended Duration: 1 Hour

	Group Size	Recommended Duration	Materials
1 Group Activity	5-8 participants per group	10 minutes	Puzzle pieces, envelope, masking tape, red flag, white flag, and strips of paper in a fishbowl/box, laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	10 minutes	
3 Group Activity	5-10 participants	20 minutes	
4 Input	All participants in plenary	20 minutes	



Key learnings

- The Katarungang Pambarangay or Barangay Justice System is a community-based mechanism for dispute resolution that is administered by the basic political unit of the Philippines: the barangay. It covers disputes between members of the same community (generally, same city/municipality) and involves the *Punong Barangay* and other members of the communities (the *Lupong Tagapamayapa* and *Pangkat ng Tagapagkasundo*) as intermediaries (mediators, conciliators, and, sometimes, arbitrators).
- The Katarungang Pambarangay is envisioned to complement the courts in administering justice. Its essence is the amicable settlement or the peaceful and harmonious resolution of conflicts within the barangay instead of adversarial proceedings in the courts. It recognizes the traditional modes of dispute settlement at the community level, consistent with *pakikisama* (community-spirit), *utang na loob* (debt of gratitude), and kinship.²⁸
- The Katarungang Pambarangay helps reduce the number of indiscriminate filing of cases that leads to congestion of court dockets. By affording the parties the opportunity to settle their conflicts through the intervention of the barangay, the animosity generated by a protracted court litigation, which is a disruptive factor toward unity and cooperation, is avoided.

- “On the issue of access to justice, the Katarungang Pambarangay/Barangay Justice System provides an accessible mechanism for resolving the justice issues of the poor. In some areas where the courts are inaccessible, both because of location and because of the prohibitive costs of litigation, the Barangay Justice System, with all its limitations, can be the only venue that the poor can avail of for the resolution of their disputes.”²⁹

Suggested Session Outline

This session will consist of four (4) parts and will be undertaken as follows:

1. Group Activity

The activity aims to ask the participants to act out phrases related to the Katarungang Pambarangay and its rationale.

Activity 7: Ipakita mo sa akin

Procedures:

- 1) Divide the participants into equal groups.
- 2) Each group will be asked to act out the following phrases:
 - a) *Peaceful community*
 - b) *Access to justice*
 - c) *Barangay justice system*

Processing:

- 1) Call a representative from each group. Use the following guide questions:
 - a) What does the phrase mean to you?
 - b) How is it related to the Katarungang Pambarangay?

2. Input

- a) Validate the answers to the guide questions. Connect with the previous session on ADR and the rationale of the Katarungang Pambarangay.
- b) What is the Katarungang Pambarangay?

Katarungang Pambarangay

- It is an out-of-court resolution of conflicts by the community members themselves facilitated by the *Punong Barangay* (Barangay Chairperson) and the *Lupon* without intervention of legal counsels and representatives.
- c) **What is the legal basis of the Katarungang Pambarangay?**
 - The establishment and operation of the Barangay Justice System is mandated by the 1991 Local Government Code (1991 LGC). Prior to the 1991 LGC, the Barangay Justice System was covered by P.D. No. 1508 and the 1983 LGC.
 - *History of the Katarungang Pambarangay*
 - P.D. 1508 (1987) & B.P. Blg. 337 (1983) or the 1983 Local Government Code (LGC)
 1. *Established a system of amicable settlement at the barangay level*
 2. *Sought to provide a forum for disputing parties to seek a mutually agreeable settlement*

3. Aimed at achieving peace and harmony within the community
- R.A. No. 7160 or the Local Government Code of 1991
 1. Expanded the scope and power of the Katarungang Pambarangay or Barangay Justice System
 2. Designed to address inequalities in access to justice, particularly experienced by marginalized communities.
- Katarungang Pambarangay Rules (KP Rules)
 1. The Department of Justice (DOJ) promulgated the Implementing Rules and Regulations for the KP law under R.A. 7160 on 1 June 1992.
 2. The Rules govern the establishment, administration, and operation of the Lupong Tagapamayapa as well as the procedures for settling disputes among barangay members.
- Administrative Circular No. 14-93
 1. The Supreme Court issued Administrative Circular No. 14-93 on 15 July 1993.
 2. It provides guidelines for judges regarding cases brought before them coming from the barangays such as the need for prior recourse before issuing a certificate to file action.

d) What are the objectives of the Katarungang Pambarangay?

- **Objectives³⁰:**
 - To promote the speedy administration of justice;
 - To minimize the indiscriminate filing of cases in courts;
 - To minimize the congestion of court dockets and thereby enhance the quality of justice dispensed by the courts; and
 - To perpetuate and recognize the time-honored tradition of amicably settling disputes at the community level.
- In sum, the Katarungang Pambarangay/Barangay Justice System aims to facilitate the resolution of the disputes in a faster, more economical, and restorative justice system. Further, it aims to facilitate and assist the disputing parties to come to an agreement through amicable settlement or arbitration, and not to adjudicate.
- Underscore the objectives of the Revised Katarungang Pambarangay Law and the rationale of the Katarungang Pambarangay in relation to its functions of mediation, conciliation, and arbitration.

3. Group Activity

(The activity aims to test the knowledge of the participants on the coverage and jurisdiction of the Katarungang Pambarangay.)

30 Establishing A System of Amicably Settling Disputes at the Barangay Level [Presidential Decree No. 1508, as amended] (1978).

Activity 8: What makes it a Katarungang Pambarangay case? (Sa pula, sa puti!)

Procedures:

- 1) Select a group of 5-10 volunteers to join the game.
- 2) Prepare strips of paper in a fishbowl/box with the case examples:
 - a) *Sinisingil ni Aling Kika si Juana ng utang nitong P250 sa kanyang tindahan na ayaw nitong bayaran (KP);*
 - b) *Si Maria ay sinuntok ng kanyang asawa, si Juan at buong gabi itong umiyak (Hindi pasok sa KP)*
 - c) *Habang naglalakad sa kanto, sinabihan si Samantha ng mga tambay na "Miss, ang ganda mo naman!" (KP);*
 - d) *Gusto kasuhan ni Michelle ang kanyang asawang si Pedro dahil nahuli niya itong may kahalikan sa plaza (Hindi pasok sa KP);*
 - e) *Lumabag sa ordinansa si Cris na nagbabawal ng pagtatapon ng basura sa kanto (KP);*
 - f) *Hinipuan ni Jomar si Caloy habang nagbabasketball sila (Hindi pasok sa KP);*
 - g) *Si Sisa ay hindi makatulong buong gabi dahil nagkakaraoke si Dominador (KP);*
 - h) *Nahuli si Marlon na bumili ng shabu mula kay Ray (Hindi pasok sa KP);*
 - i) *Nakita ni Marites na sinipa ni Jan-jan ang alaga nitong tuta (KP);*
 - j) *Pinalo ni Gian ng sinturon sa pwet si Anton (10 taong gulang) at tuwing nalalasing ito, ay kinukulong sa kwarto matapos bugbugin (Hindi pasok sa KP);*
 - k) *Nagsumbong si Pat (Grade 2) na tinatawag siyang "pandak!" at pinagtatawanan ng kanyang kaklase at kapitbahay na si Mimi (KP);*
 - l) *Nahuli si Totoy na nangongolekta ng taya sa jueteng (Hindi pasok sa KP);*
 - m) *Tuwing umaga, tinatapanan ni Irog ng basura ang harapan ng bahay ni Kit (KP);*
 - n) *Nagpost si Danny ng "Sana mamatay ka na! Subukan mong magpakita sa akin!" sa Facebook page ng kanilang Kapitan na si Baby (Hindi pasok sa KP); and*
 - o) *Nag-away si Maria na dating girlfriend ni Juan at si Petra na siyang bagong girlfriend matapos sabihan ni Maria si Petra na "Malandi kang gaga ka!" (KP).*
- 3) Hand out the sheets of paper for Round 1. Instruct the group to line up behind the red flag for those who believe the example falls under the jurisdiction of KP and behind the white flag for those who believe it falls outside the jurisdiction of KP. Give the participants 10 seconds to decide.
- 4) Repeat for 2-3 rounds until 1 remains and the winner emerges.
- 5) Refer to processing after.

Processing:

- 1) Use the following guide questions:
 - a) What cases fall under the jurisdiction of the KP?
 - b) Should the [case example] go through mediation, conciliation, or arbitration at the barangay? Why or why not?
 - c) If a case does not fall under the jurisdiction of KP, what can the barangay do?

4. Input

- a) What is your understanding of jurisdiction? Validate the answers to the guide questions. Connect with the previous session on ADR and the rationale of the Katarungang Pambarangay.

Jurisdiction vs. Venue

JURISDICTION	VENUE
<p>The authority to hear and decide disputes; also, includes the authority to execute the decisions.</p> <p>It is conferred by law and cannot be agreed upon by the parties.</p>	<p>The place where an action must be instituted and tried, or it is the geographical location in which an action or proceeding should be brought.</p>

- b) Explain that not all cases go through the Katarungang Pambarangay system. In general, crimes whose maximum punishment exceeds one (1) year of imprisonment or a fine of Php 5,000 are not covered by the Katarungang Pambarangay. There are also other crimes and cases not covered by Katarungang Pambarangay as specifically provided for by law.
- When we speak of jurisdiction in the context of Katarungang Pambarangay, two (2) things are taken into consideration: jurisdiction over persons (or the disputing parties) and jurisdiction over subject matter.³¹

DISPUTING PARTIES ³²	SUBJECT MATTER
<ul style="list-style-type: none"> GENERAL RULE: <u>Both parties are actual residents of the same barangays in the same city/municipality</u> (NOTE: Actual Residence means having a physical presence in place and actual stay thereat, which may not necessarily be his/her legal residence or domicile provided s/he resides therein with continuity and consistency.) <i>EXCEPTION:</i> When the parties reside in adjoining barangays of different cities/municipalities agreed to submit their differences to amicable settlement by an appropriate <i>Lupon</i>. <u>Both parties are natural persons.</u>³³ 	<ul style="list-style-type: none"> All disputes, <i>except</i>³⁴: <ol style="list-style-type: none"> Where the dispute involves real properties located in different cities and municipalities, unless the parties thereto agree to submit their difference to amicable settlement by an appropriate <i>Lupon</i>; <u>Offenses for which the law prescribes a maximum penalty of imprisonment exceeding one (1) year or a fine over Php 5,000;</u> <u>Offenses where there is no private offended party;</u> Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically the following:

31 Section 408 of the 1991 LGC and Supreme Court Administrative Circular No. 14-93 defines the scope of cases covered under the KP law. Other laws also provide for exceptions and limitations to its applicability.

32 Guidelines on the Katarungang Pambarangay (KP) (Supreme Court Administrative Circular No. 14-93) (July 15, 1993). See Sections 408 & 412, 1991 Local Government Code.

33 Juridical Persons or those personalities who are created by operation of law - such as partnerships, companies, cooperatives, corporations, among others - are not natural persons.

34 *Id.*

<ul style="list-style-type: none"> ● EXCLUDED: <ol style="list-style-type: none"> 1) Where one party is the government, or any subdivision or instrumentality thereof; and 2) Where one party is a public officer or employee and the dispute relates to the performance of his/her/their official functions. 	<ol style="list-style-type: none"> a) <u>Criminal cases where accused is under police custody or detention</u> (See Sec. 412 (b)(1), Revised KP Law); b) <u>Petitions for habeas corpus by a person illegally deprived of his/her/their rightful custody over another or a person illegally deprived of his/her/their liberty or one acting in his/her/their behalf;</u> c) <u>Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the pendency of the action; and</u> d) <u>Actions which may be barred by the Statute of Limitations.</u> <ol style="list-style-type: none"> 5) <u>Any class of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;</u> 6) <u>Where the dispute arises from the Comprehensive Agrarian Reform Law (CARL) (Secs. 46 & 47, R.A. No. 6657);</u> 7) <u>Labor disputes or controversies arising from employer-employee relations</u> (Art. 226, Labor Code, as amended); and 8) <u>Actions to annul judgment upon a compromise, which may be filed directly in court.</u> <ul style="list-style-type: none"> ● Additional exemptions (Civil Code): <ol style="list-style-type: none"> 1) <u>Civil Status;</u> 2) <u>Validity of Marriage or Legal Separation;</u> 3) <u>Ground for Legal Separation;</u> 4) <u>Future Support;</u> 5) <u>Jurisdiction of Courts;</u> and 6) <u>Future Legitime.</u> ● Other exemptions: <ol style="list-style-type: none"> 1) <u>Violations under R.A. No. 9262 or the Anti-VAWC Act of 2004;</u> 2) <u>Mining Disputes;</u> 3) <u>Violations under R.A. No. 10627 or the Anti-Bullying Act of 2013;</u> 4) <u>Violations under R.A. No. 7610 or the Special Protection for Children against Abuse, Exploitation and Discrimination Act of 1992; and</u> 5) <u>Violations under R.A. No. 10175 or the Cyber Crime Prevention Act.</u>
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Note: The matter of JURISDICTION of the Revised Katarungang Pambarangay Law and of the particular *Lupon* must be taken into account first before any discussion on VENUE and Katarungang Pambarangay processes and procedures are undertaken.

- c) Highlight that the powers given to the *Lupon* and barangay officials are not absolute and one cannot go about wielding that power as he/she pleases. The jurisdiction is limited by the law.
- d) How to determine if the case/complaint falls under the scope or jurisdiction/coverage of the Katarungang Pambarangay?

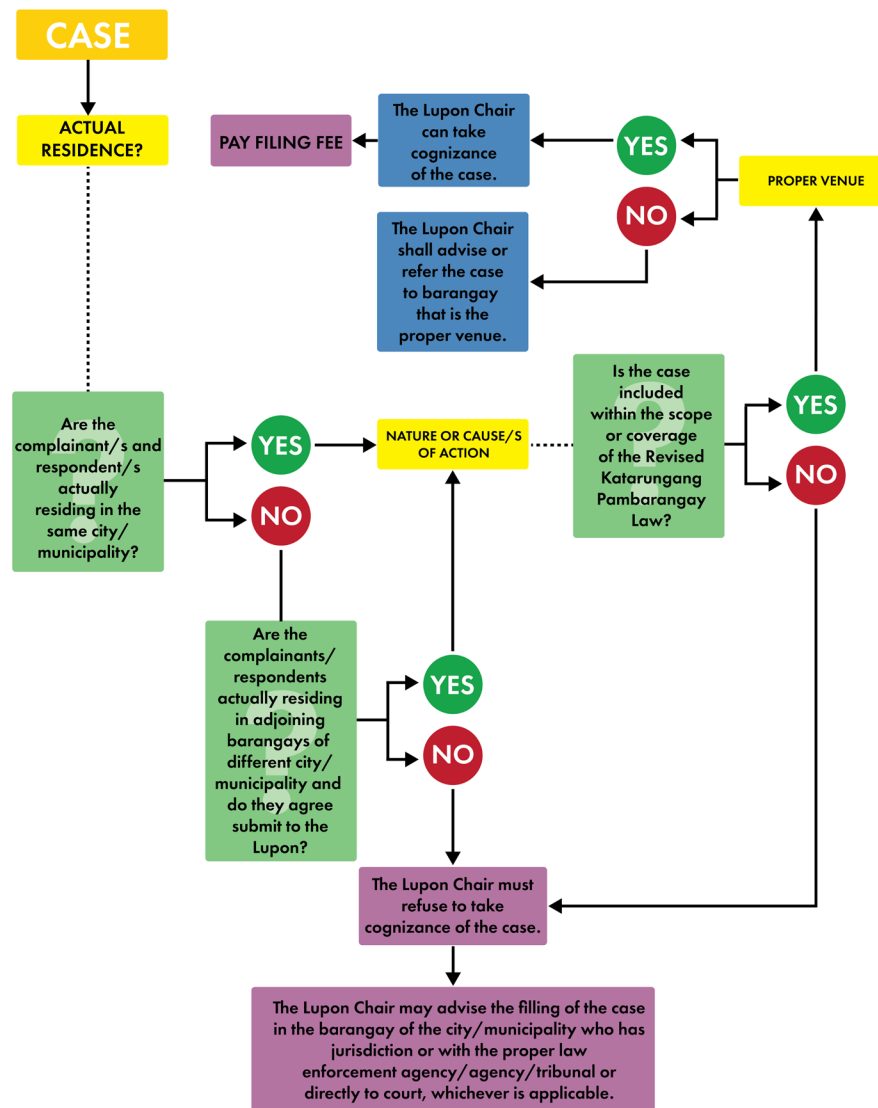


Figure 2: Determining if the case falls under the jurisdiction of the Katarungang Pambarangay

Suggested Materials

1. See Republic Act (R.A.) No. 7160 (1991 Local Government Code) in relation to Presidential Decree (P.D.) No. 1508 and the 1983 Local Government Code
Available at: https://lawphil.net/statutes/repacts/ra1991/ra_7160_1991.html
2. Guidelines on the Katarungang Pambarangay (KP) (Supreme Court Administrative Circular No. 14-93) (July 15, 1993)
Available at: https://lawphil.net/courts/supreme/ac/ac_14_1993.html
3. *Aquino v. Aure*, G.R. No. 153567, 18 February 2008
Available at: https://lawphil.net/judjuris/juri2008/feb2008/gr_153567_2008.html
4. Sentro ng Alternatibong Lingap Panligal (SALIGAN), *Katarungang Pambarangay: A Handbook* (2004)

References

See Annex C (*Primer on the Revised KP Law*) on page page 54. See also Annex D (*Table of Crimes, Penalties, and Prescriptive Periods*) on page 72.

SESSION 2: KATARUNGANG PAMBARANGAY STRUCTURE AND PROCESSES (LUPONG TAGAMAPAYAPA, PANGKAT NG TAGAPAGKASUNDO, AND MEDIATION, CONCILIATION, AND ARBITRATION)

This session provides a step-by-step guide to the Katarungang Pambarangay (KP) Structure and Processes, including the functions and roles of the Punong Barangay, Barangay Secretary, Lupon Tagamapayapa, and Pangkat ng Tagapagkasundo. It also explains the processes of mediation, conciliation, and arbitration.

Session objectives

At the end of the session, the participants should be able to:

1. Map out the different processes of the Katarungang Pambarangay;
2. Define the functions and roles of the *Lupon Tagamapayapa* and *Pangkat ng Tagapagkasundo* in settling disputes in the barangay; and
3. Differentiate and explain the processes of mediation, conciliation, and arbitration.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour

	Group Size	Recommended Duration	Materials
1 Group Activity	5-8 participants per group	30 minutes	Manila paper with the flowchart of the Katarungang Pambarangay process, markers, masking tape, laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	30 minutes	

Key learnings



- The components of Katarungang Pambarangay are: (1) *Lupon Tagamapayapa* (peace-making council); (2) *Pangkat ng Tagapagkasundo* (conciliation panel); and (3) Legal Advisers.
- The provincial, city legal officer or prosecutor or the municipal legal officer shall render legal advice on matters involving questions of law to the Punong Barangay or any Lupon or Pangkat Member whenever necessary in the exercise of his functions in the administration of the Katarungang Pambarangay.
- The *Lupon Tagamapayapa* is organized in every barangay and consists of the *Punong Barangay* as the chairperson and 10 to 20 members appointed by the *Punong Barangay*.
- The *Pangkat ng Tagapagkasundo* is a conciliation panel consisting of three (3) members chosen by the parties from the list of *Lupon* members and constituted after the *Punong Barangay* failed in his/her/their mediation efforts.
- Mediation is the process conducted by the *Punong Barangay* to assist the disputing parties to reach a settlement by consensus.
- Conciliation is the process conducted by the *Pangkat ng Tagapagkasundo* to assist the parties in isolating issues and options to reach a settlement by consensus.
- Arbitration is the process conducted by a third party who is chosen by the parties to hear and decide their dispute. The parties agree to be bound by the decision of a third party in place of a regularly organized tribunal.

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

The activity aims to test the knowledge of the participants on the structure and processes of the Katarungang Pambarangay.

Activity 9: Mapping the Katarungang Pambarangay processes

Procedures:

- 1) Divide the participants into equal groups.
- 2) Each group will be given a Manila paper. Give the participants 10-15 minutes to map and draw a flowchart of the steps of the Katarungang Pambarangay process (NOTE: For reference, the flowchart of the Katarungang Barangay process is presented in Figure 3: Overview of the process of the Katarungang Pambarangay System
- 3) Give the participants time to observe all outputs.

Processing:

- N/A; See Abstraction/Input.

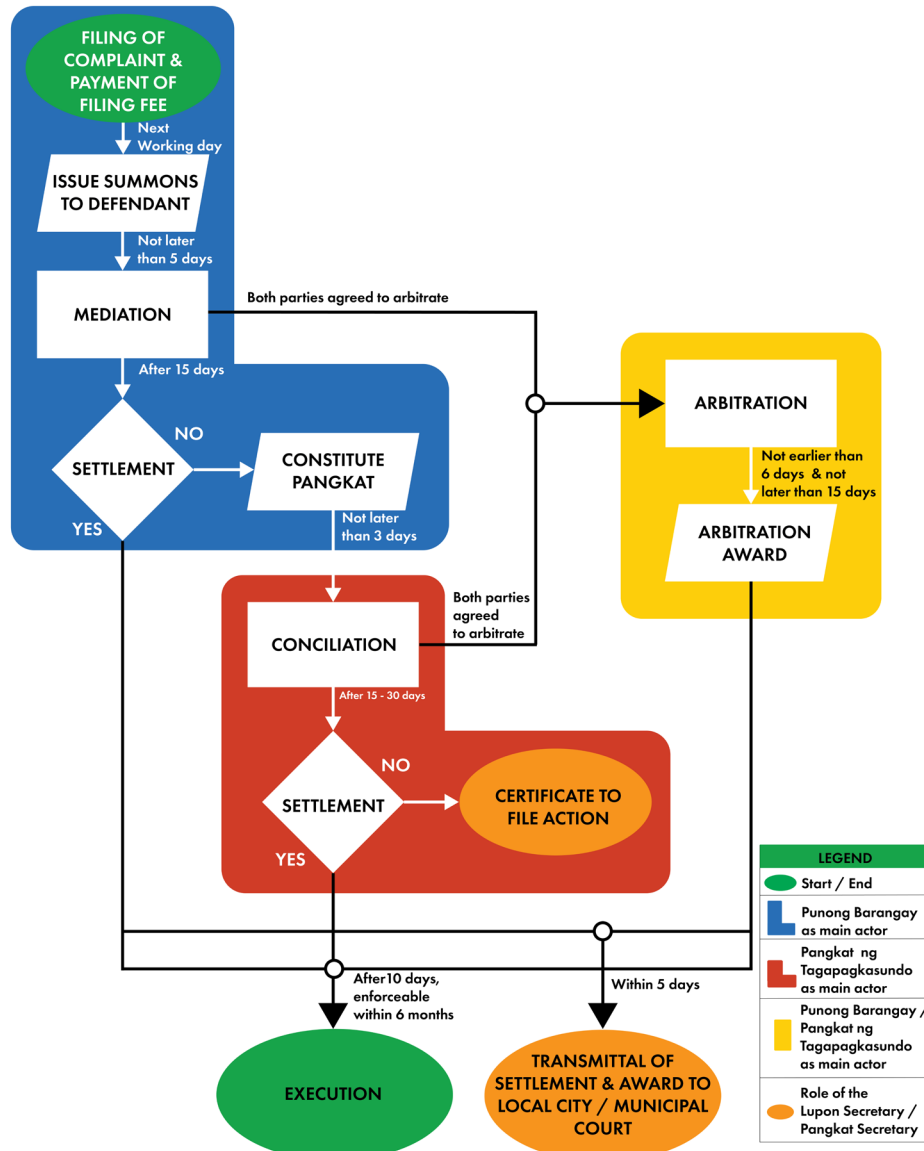


Figure 3: Overview of the process of the Katarungang Pambarangay System

2. Input

- a) Compare the outputs of the participants with the correct flowchart for the Katarungang Pambarangay. Validate the participants' correct answers in mapping out the different Katarungang Pambarangay processes.
- b) Link the outputs to the discussion of the components of the Katarungang Pambarangay, especially on the *Lupong Tagamamayapa*, *Pangkat ng Tagapagkasundo*, mediation, conciliation, and arbitration.
- c) What are the Components of the Katarungang Pambarangay?
- d) Emphasize on the role and functions of the *Lupong Tagamamayapa* and *Pangkat ng Tagapagkasundo*. Highlight that they are a vital cog in the entire Katarungang Pambarangay structure. What bodies are tasked by law to administer the Katarungang Pambarangay?

Lupong Tagamamayapa

- The *Lupon* is the peace-making council of the barangay.
 - Functions of *Lupong Tagamamayapa*³⁵:
 1. Exercise administrative supervision over the conciliation panels;
 2. Meet regularly once a month to provide a forum for the exchange of ideas among its members and the public on matters relevant to the amicable settlement of disputes; and
 3. Exercise such other powers and perform such duties and functions as may be prescribed by law or ordinance.
 - **“It is the body organized in every barangay composed of the Punong Barangay as Chairperson and not less than ten (10) nor more than twenty (20) members from which the members of every *Pangkat* shall be chosen.”**³⁶ The Barangay Secretary shall concurrently serve as the Secretary of the *Lupon*.³⁷
 - **“Although the *Lupon*, as a whole, does not facilitate mediation or conciliation proceedings, the members of the *Pangkat* which conducts mediation or conciliation sessions are chosen from the members of the *Lupon*. The *Lupon* may be assisted by the Provincial Legal Officer, City Legal Officer, Municipal Legal Officer, and/or Public Prosecutor on matters involving questions of law necessary in the administration of the Katarungang Pambarangay.”**³⁸
 - The constitution of the *Lupon* is mandatory or necessary in every barangay. The *Punong Barangay* is responsible for the fulfillment of this mandate.
 - Functions of the *Punong Barangay* as the Chairperson of the *Lupon*³⁹:
 1. Receive all the complains against other persons that are subject to amicable settlement;
 2. Administer oaths in connection with any matter relating to all proceedings in the implementation of KP;
 3. Resolve all objectives in the venue during mediation;
 4. Mediate all disputes within his/her/their jurisdiction;

35 See Section 402, 1991 Local Government Code.

36 See Section 399, 1991 Local Government Code. See also Austral, *supra* note 28.

37 The functions of the *Lupon* Secretary are: (1) keep and maintain a record book of all complaints filed before the *Punong Barangay*; (2) record the results of the mediation proceedings before the *Punong Barangay*; (3) submit a report of the mediation proceedings to the proper city/municipal courts; (4) receive and keep the records of proceedings submitted to him/her by the various conciliation panels; (5) furnish copies to parties and transmit the settlements and arbitration awards to the proper courts; (6) Issue the certification required for filing an action/proceeding in court or any government office; and (7) Issue certified true copies of any public record in custody. See also Katarungang Pambarangay Implementing Rules and Regulations (KP Rules), Rule 3, Section 2.

38 See Austral, *supra* note 28.

39 See Sections 409-413, & 420, 1991 Local Government Code. See also KP Rules, Rule 3, Section 1.

5. Arbitrate disputes upon written agreement by the parties; and
6. Enforce by execution, on behalf of the *Lupon*, the amicable settlement or arbitration award.

Pangkat ng Tagapagkasundo

- The *Pangkat* is the conciliation panel that hears each dispute brought before the *Lupon*.
 - It is composed of three (3) members who are chosen by the parties to the dispute from the list of members of the *Lupon*. The 3 shall elect among themselves a chairperson and the secretary^{40, 41}.
 - Functions of the *Pangkat* Chairperson⁴²:
 1. Preside over the hearings conducted by the *Pangkat* and administer oaths in connection with any matter relating to all Katarungang Pambarangay proceedings;
 2. Issue summons for the personal appearance of parties and witnesses before the *Pangkat*;
 3. Attest to the authenticity and due execution of the settlement reached by the parties before the *Pangkat*;
 4. Preside over the arbitration hearings the parties are in agreement to have the *Pangkat* arbitrate their dispute; and
 5. Attest the certification issued by the *Pangkat* Secretary for filing an action or proceedings in court or any government office for adjudication.
- e) What are the methods of ADR commonly used in the Katarungang Pambarangay?
- f) Expound on the Katarungang Pambarangay processes by giving a case scenario. A case is presented below that highlights the basic steps of the Katarungang Pambarangay processes.

40 The functions of the Secretary of the *Pangkat* are: (1) Issue notices of hearing before the *Pangkat* and cause them to be served upon the parties and their witnesses; (2) Keep minutes of the proceedings for conciliation and arbitration by the *Pangkat* and have them attested by the *Pangkat* Chairperson; (3) Immediately transmit to the *Lupon* Secretary all settlements agreed upon by the parties and arbitration awards rendered by the *Pangkat*; (4) Submit copies of the minutes to the *Lupon* Secretary and to the proper courts; and (5) Issue the certification required for filing an action/proceeding in court or any government office. See also Katarungang Pambarangay Implementing Rules and Regulations (KP Rules), Rule 3, Section 2.

41 See Section 404, 1991 Local Government Code.

42 See KP Rules, Rule 3, Section 3.

CASE SCENARIO: Gloria's Story

Si Gloria, isang biyuda, ay nakatira sa Brgy. 123. Tuwing madaling araw, maaga siyang nagiging kasi nagluluto siya ng mga ulam na kanyang ibinibenta sa tapat ng kanyang bahay. Isang umaga, habang nagluluto sa kusina, nakarinig siya ng gulo sa labas ng kanyang bahay. Nakita niya ang kapitbahay niyang si Neri at ang mga tropa nito na mga lasing at may hinahamon ng away. Sinubukan niyang sawayin ito pero hindi siya pinansin. Bumalik siya sa pagluluto nang biglang marinig niyang may mga bumagsak na gamit. Pag labas niya, nakita niya na nasira ang lamesa na ginagamit niya pangtinda at nahulog ang mga ulam na niluto niya habang tumatakbo palayo sila Neri at ang kanyang tropa.

Galit-galit si Gloria. Noong kinaumagahan, nagtanong si Gloria sa tanod kung ano ba magagawa niya. Sinabihan siyang pumunta sa barangay para ireklamo si Neri at ang mga tropa nito kay Kap. Gian. Noong umaga rin na iyon, pumunta si Gloria para magreklamo. **(This is the first step of the KP process: the filing of the complaint with the Punong Barangay/Lupon chairperson.)**

Sa barangay, tinanong ni Kap. Gian kung anong nangyari. Matapos makuha ang kuwento ni Gloria at itala ito, naghanda si Kap. Gian ng summon at pinatawag si Neri at ang mga tropa nito para magpaliwanag. Gulat na gulat si Neri nang pinadalhan siya ng notice sa kanyang bahay ng mga tanod. **(After receiving a complaint whether orally or in writing, the next step is for the Lupon to summon the respondent and other witnesses.)**

Noong susunod na araw, bumalik si Gloria sa barangay hall. Pagbalik niya, nandoon na nakaupo si Neri at ang mga kasama nito. Tinanong ni Kap. Gian kung totoo ba yung paratang ni Gloria na nagkagulo nga at nakasira sila ng mga paninda ni Neri. Pinakinggan ni Kap. Gian ang parehong panig. Hindi umimik si Neri. Natapos ang araw na walang napagkasunduan.

Kalat na kalat na sa Brgy. 123 ang kaguluhan. Kinabukasan, pinatawag ulit si Gloria at si Neri. Pinatawag din ni Kap. Gian ang mga kapitbahay nila na nakasaksi sa pangyayari. Habang kinukuwento ng mga kapitbahay ang narinig nila, kasama na noong nakita nilang nagsusuntukan at noong tinulak ni Neri ang kaaway ay tumalsik ito sa paninda ni Gloria. Tumayo si Neri at sinabing "MGA SINUNGALING KAYO! AKALA NIYO KUNG SINO KAYONG MGA SANTO!" Pinakalma ni Kap. Gian at ng mga Lupon si Neri. Kinalaunan, inamin na ni Neri na sangkot ito sa gulo pero nanindigan na hindi siya ang magbabayad ng lahat ng sirang gamit dahil hindi niya naman kasalanan lahat.

Matapos ang dalawang linggo, wala pa ring napagkasunduan. Dahil dito, minabuti na na ni Kap. Gian na i-endorse ang complaint ni Gloria sa Pangkat para sa conciliation. **(If mediation with the Lupon fails, the complaint will be endorsed for Conciliation Proceedings after the lapse of the 15-day mediation proceedings. While mediation is conducted by the Punong Barangay to assist the disputing parties to amicably settle, conciliation - which happens when mediation fails - is conducted by an impartial party in this case the Pangkat ng Tagapagkasundo to assist the parties in isolating issues and options to reach a settlement by consensus.)**

Muling pinatawag ni Kap. Gian si Gloria at si Neri. Sa meeting, pinapili ni Kap. Gian si Gloria at Neri kung sino ang gusto nilang Lupon na umupo sa Pangkat. Pumayag si Neri sa pag-aakalang pwede niyang piliin si Pulo na tropa niya. Pero agad na tinanggihan ito ni Gloria dahil madaya daw ito. Matapos sila makapili, nagschedule na ng susunod na hearing noong susunod na Lunes na rin na iyon. (To create the Pangkat, a meeting shall be called by the Barangay Chairperson with the disputing parties to agree on the Lupon Members who shall constitute the Pangkat. Once constituted, the Barangay Chairperson shall inform the chosen Lupon members to facilitate the amicable settlement of the complaint as Pangkat ng Tagapagkasundo.) Muling nakatanggap ng notice si Neri at ang mga tropa nito pati na rin ang mga kapitbahay nilang nakakita sa gulo. (The Pangkat shall issue summons to the respondent/s, notices of hearing to the complainant/s and subpoena to witness/es, if any.)

Nang sinimulan ni Bito, ang Pangkat Chairperson, kanyang hinimok si Neri na mas mabuti nang magkaayos sila ni Gloria, lalo na magkapitbahay sila. Sinabi rin ni Bito na pwede pangpagusapan ito bago pa lumaki ang gulo at makarating sa korte. Sinabi ni Gloria na naiintindihan niya namang walang intensyon si Neri at ang mga tropa nito na makasira, kaya sabi niya, papayag siya na kahit hulugan ang bayad. Walang imik si Neri. Nagsalita muli si Bito at tinanong kung papayag ba ang mag tropa na magbayad din dahil sila-sila naman lahat ang may kasalanan. Ayon kay Bito, maaari namang bayaran ng linggo-linggo or bawat buwan. Pumayag ang mga tropa ni Neri. Muling tinanong ni Bito kung papayag ba si Neri sa kasunduan. Matapos makapagisip-isip pumayag na rin si Neri na bayaran linggo-linggo ang mga nasira nila.

Sinulat na ni Bito ang napagkasunduan at pinapirmahan ito kay Gloria at kay Neri. Matapos pumirma ang parehong panig, pumirma rin si Bito at binigyan ng kopya ng amicable settlement si Gloria, Neri, at ang tropa ni Neri. (If the disputing parties come to an agreement, an amicable settlement shall be prepared containing the terms of agreement of both parties signed by both complainant and respondent and attested by the Pangkat Chairperson. The amicable settlement shall have the force and effect of a final judgment of a court upon the expiration of the repudiation period.)

Matapos ang tatlong buwan, nakakapagbayad si Neri at ang mga tropa nito. Pumupunta sila sa barangay tuwing Lunes para ibigay ang bayad kay Gloria. Bawat linggo, inuupdate ni Kap. Gian ang report. (If within the period of six (6) months, both parties comply on the agreements laid down in the amicable settlement, the Lupon, through the Barangay Secretary, shall secure a proof of compliance authenticated by both parties and prepare a report of compliance.) Dahil naging matagumpay ang conciliation, nakabili na si Gloria ng bagong lamesa at nagsimula na ulit magtinda.

a) Discuss the consequences of the failure to appear of the complainant and the respondent.

Personal appearance

- Parties must appear in person without the assistance of counsel or representative except for minors and incompetents who may be assisted by the next-of-kin who are not lawyers in all Katarungang Pambarangay proceedings.

Consequences of Failure to Appear (Complainant)

1. Notice of Hearing
2. Dismissal of the Complaint
3. Certificate to Bar Action
4. Indirect Contempt

Dismissal of Complaint – No Constitution of Pangkat

Consequences of Failure to Appear (Respondent)

1. Notice of Hearing
2. Dismissal of Counterclaim
3. Certificate to Bar Action Counterclaim
4. Indirect Contempt
5. Constitution of Pangkat

Suggested Materials

1. See Republic Act (R.A.) No. 7160 (1991 Local Government Code) in relation to Presidential Decree (P.D.) No. 1508 and the 1983 Local Government Code
Available at: https://lawphil.net/statutes/repacts/ra1991/ra_7160_1991.html
2. Guidelines on the Katarungang Pambarangay (KP) (Supreme Court Administrative Circular No. 14-93) (July 15, 1993)
Available at: https://lawphil.net/courts/supreme/ac/ac_14_1993.html
3. Sentro ng Alternatibong Lingap Panligal (SALIGAN), Katarungang Pambarangay: A Handbook (2004)

References

Annex C (Primer on the Revised KP Law) on page page 54.

ANNEX C

PRIMER ON THE REVISED KATARUNGANG PAMBARANGAY LAW

What is the Katarungang Pambarangay (KP)?

- The Katarungang Pambarangay or Barangay Justice System is a community-based mechanism for dispute resolution that is administered by the basic political unit of the Philippines: the barangay. It covers disputes between members of the same community (generally, same city/municipality) and involves the *Punong Barangay* and other members of the communities (the *Lupon Tagapamayapa* and *Pangkat ng Tagapagkasundo*) as intermediaries (mediators, conciliators, and, sometimes, arbitrators).
 - It is an out-of-court resolution of conflicts by the community members themselves facilitated by the *Punong Barangay* (Barangay Chairperson) and the *Lupon* without intervention of legal counsels and representatives.

What is the rationale of Katarungang Pambarangay?

- The Katarungang Pambarangay is envisioned to complement the courts in administering justice. Its essence is the amicable settlement or the peaceful and harmonious resolution of conflicts within the barangay instead of adversarial proceedings in the courts. It recognizes the traditional modes of dispute settlement at the community level, consistent with *pakikisama* (community-spirit), *utang na loob* (debt of gratitude), and kinship.⁴³
- The Katarungang Pambarangay helps reduce the number of indiscriminate filing of cases that leads to congestion of court dockets. By compelling the parties to settle their conflicts through the intervention of the barangay, the animosity generated by a protracted court litigation, which is a disruptive factor toward unity and cooperation, is avoided.
- “On the issue of access to justice, the Katarungang Pambarangay/Barangay Justice System provides an accessible mechanism for resolving the justice issues of the poor. In some areas where the courts are inaccessible, both because of location and because of the prohibitive costs of litigation, the Barangay Justice System, with all its limitations, can be the only venue that the poor can avail of for the resolution of their disputes.”⁴⁴

The establishment and operation of the Barangay Justice System is mandated by the 1991 Local Government Code (1991 LGC). Prior to the 1991 LGC, the Barangay Justice System had its roots in the Presidential Decree (P.D.) No. 1508 and the 1983 LGC. P.D. No. 1508 was promulgated to institutionalize a formal system of resolving disputes at the barangay level. While the 1991 LGC repealed P.D. No. 1508, it did not do away with the Katarungang Pambarangay because R.A. No. 7160 provided for the same system originally established. By virtue of Section 421 of the 1991 LGC, the Secretary of Justice was empowered to promulgate the rules and regulations implementing the provisions of the LGC on the Katarungang Pambarangay. Thus, on June 1, 1991, the KP Implementing Rules and Regulations was promulgated.

History of the Katarungang Pambarangay

1. P.D. 1508 (1987) & B.P. Blg. 337 (1983) or the 1983 Local Government Code (LGC)
 - Established a system of amicable settlement at the barangay level
 - Sought to provide a forum for disputing parties to seek a mutually agreeable settlement
 - Aimed at achieving peace and harmony within the community
2. R.A. No. 7160 or the Local Government Code of 1991
 - Expanded the scope and power of the Katarungang Pambarangay or Barangay Justice

⁴³ Austral, *supra* note 28.

⁴⁴ Sentro ng Alternatibong Lingap Panligal (SALIGAN), *Katarungang Pambarangay: A Handbook* (2004).

System

- Designed to address inequalities in access to justice, particularly experienced by marginalized communities.

3. Katarungang Pambarangay Rules (KP Rules)

- The Department of Justice (DOJ) promulgated the Implementing Rules and Regulations for the KP law under R.A. 7160 on 1 June 1992.
- The Rules govern the establishment, administration, and operation of the *Lupong Tagapamayapa* as well as the procedures for settling disputes among barangay members.

4. Administrative Circular No. 14-93

- The Supreme Court issued Administrative Circular No. 14-93 on 15 July 1993.
- It provides guidelines for judges regarding cases brought before them coming from the barangays such as the need for prior recourse before issuing a certificate to file action.

What are the objectives of KP?⁴⁵

- The objectives of KP are:
 - (1) To promote the speedy administration of justice;
 - (2) To minimize the indiscriminate filing of cases in courts;
 - (3) To minimize the congestion of court dockets and thereby enhance the quality of justice dispensed by the courts; and
 - (4) To perpetuate and recognize the time-honored tradition of amicably settling disputes at the community level.
- In sum, the Katarungang Pambarangay/Barangay Justice System aims to facilitate the resolution of the disputes in a faster, more economical, and restorative justice system. Further, it aims to facilitate and assist the disputing parties to come to an agreement through amicable settlement or arbitration, and not to adjudicate.

Jurisdiction vs. Venue

JURISDICTION	VENUE
The authority to hear and decide disputes; also, includes the authority to execute the decisions. It is conferred by law and cannot be agreed upon by the parties.	The place where an action must be instituted and tried, or it is the geographical location in which an action or proceeding should be brought.

- When we speak of jurisdiction in the context of the Katarungang Pambarangay, two (2) things are taken into consideration: jurisdiction over persons (or the disputing parties) and jurisdiction over subject matter.⁴⁶

⁴⁵ Presidential Decree No. 1508, as amended.

⁴⁶ Section 408 of the 1991 LGC and Supreme Court Administrative Circular No. 14-93 defines the scope of cases covered under the KP law. Other laws also provide for exceptions and limitations to its applicability.

DISPUTING PARTIES ⁴⁷	SUBJECT MATTER
<ul style="list-style-type: none"> ● <u>GENERAL RULE: Both parties are actual residents of the same barangays in the same city/municipality</u> (NOTE: Actual Residence means having a physical presence in place and actual stay thereat, which may not necessarily be his/her legal residence or domicile provided s/he resides therein with continuity and consistency.) <u>EXCEPTION: When the parties reside in adjoining barangays of different cities/municipalities agreed to submit their differences to amicable settlement by an appropriate Lupon.</u> ● <u>Both parties are natural persons.</u>⁴⁸ 	<ul style="list-style-type: none"> ● All disputes, <i>except</i>⁴⁹: <ol style="list-style-type: none"> 1) <u>Where the dispute involves real properties located in different cities and municipalities, unless the parties thereto agree to submit their difference to amicable settlement by an appropriate Lupon;</u> 2) <u>Offenses for which the law prescribes a maximum penalty of imprisonment exceeding one (1) year or a fine over Php 5,000;</u> 3) <u>Offenses where there is no private offended party;</u> 4) <u>Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically the following:</u> <ol style="list-style-type: none"> a) <u>Criminal cases where accused is under police custody or detention</u> (See Sec. 412 (b)(1), Revised Katarungang Pambarangay Law); b) <u>Petitions for habeas corpus by a person illegally deprived of his/her/their rightful custody over another or a person illegally deprived of his/her/their liberty or one acting in his/her/their behalf;</u> c) <u>Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the pendency of the action; and</u> d) <u>Actions which may be barred by the Statute of Limitations.</u> 5) <u>Any class of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;</u> 6) <u>Where the dispute arises from the Comprehensive Agrarian Reform Law (CARL) (Secs. 46 & 47, R.A. 6657);</u> 7) <u>Labor disputes or controversies arising from employer-employee relations</u> (Art. 226, Labor Code, as amended); and 8) <u>Actions to annul judgment upon a compromise, which may be filed directly in court.</u> ● Additional exemptions (Civil Code): <ol style="list-style-type: none"> 1) <u>Civil Status;</u> 2) <u>Validity of Marriage or Legal Separation</u> 3) <u>Ground for Legal Separation;</u> 4) <u>Future Support;</u>

47 Guidelines on the Katarungang Pambarangay (KP) (Supreme Court Administrative Circular No. 14-93) (July 15, 1993). See Sections 408 & 412, 1991 Local Government Code.

48 Juridical Persons or those personalities who are created by operation of law - such as partnerships, companies, cooperatives, corporations, among others - are not natural persons.

49 *Id.*

<ul style="list-style-type: none"> ● EXCLUDED: <ol style="list-style-type: none"> 1) Where one party is the government, or any subdivision or instrumentality thereof; and 2) Where one party is a public officer or employee and the dispute relates to the performance of his/her/their official functions. 	<ol style="list-style-type: none"> 5) <u>Jurisdiction of Courts</u>; and 6) <u>Future Legitime.</u> <ul style="list-style-type: none"> ● Other exemptions: <ol style="list-style-type: none"> 1) <u>Violations under R.A. No. 9262 or the Anti-VAWC Act of 2004;</u> 2) <u>Mining Disputes;</u> 3) <u>Violations under R.A. No. 10627 or the Anti-Bullying Act of 2013;</u> 4) <u>Violations under R.A. No. 7610 or the Special Protection for Children against Abuse, Exploitation and Discrimination Act of 1992;</u> and 5) <u>Violations under R.A. No. 10175 or the Cyber Crime Prevention Act.</u>
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Exceptions for KP

Exception Under Sec. 408 of R.A. No. 7160

- Where one party is the government, or any subdivisions or instrumentality thereof;
- Where one party is a public officer or employee, and the dispute relates to the performance of his/her official function;
- Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Php 5000;
- Offenses where there is no private offended party;
- Where the disputes 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;
- 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; and
- Such other classes of disputes which the President may determine in the Interest of Justice or upon the recommendation of the Secretary of Justice.

Additional Exemptions Under Sec. 412 (B) of R.A. No. 7160

- The parties may go directly to court in the following instances:
 - Where the accused is under detention;
 - Where a person has otherwise been deprived of personal liberty calling of habeas corpus proceedings;
 - Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendente lite; and
 - Where the action may otherwise be barred by the statute of limitations.

Exceptions Under Supreme Court A.M 14-93

- Where one party is the government or any subdivision or instrumentality thereof;
- Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- Where the dispute involves real properties located in different cities and municipalities, unless the parties thereto agree to submit their difference to amicable settlement by an appropriate Lupon;
- Any complaint by or against corporations, partnerships, or judicial entities, since only individuals shall be parties to Barangay conciliation proceedings either as complainant or respondent;
- Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay unit adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate Lupon;
- Offenses for which the law prescribes a maximum penalty of imprisonment exceeding one (1) year

- or a fine over Php 5000;
- Offenses where there is no private offended party;
 - Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically the following:
 - Criminal cases where accused is under police custody or detention;
 - Petitions for habeas corpus by a person legally deprived of his rightful custody over another or a person illegally deprived or on acting on his behalf;
 - Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the pendency of the action; and
 - Action which may be barred by the Statute of Limitations
 - Any class of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;
 - Where the dispute arises from the Comprehensive Agrarian Reform Law;
 - Labor disputes or controversies arising from employer-employee relations; and
 - Actions to annul judgment upon a compromise which may be filed directly in court.

Jurisprudence

1. *SANCHEZ v. TUPAS* (G.R. No. 76690, 29 February 1988)
 - An action for annulment of a compromise judgment which is immediately executory is beyond the authority of the *Lupon* to change or modify.
2. *MONTOYA v. ESCAYO* (G.R. No. 8211-12, 12 March 1989)
 - It is the DOLE and its divisions, and not the barangay or *Lupong Tagapamayapa*, which are vested by law with original and exclusive authority to conduct conciliation and mediation proceedings on labor controversies before endorsement to the appropriate Labor Arbiter for adjudication.
3. *TRIBIANA v. TRIBIANA* (G.R. No. 137359, 13 September 2004)
 - The Supreme Court ruled that the barangay conciliation requirement in Section 412 of the LGC does not apply to habeas corpus proceedings where a person is deprived of personal liberty. "In such a case, Section 412 expressly authorizes the parties "to go directly to court without need of any conciliation proceeding. There is a deprivation of personal liberty warranting a petition for habeas corpus where the "rightful custody of any person is withheld from the person entitled thereto."
4. *HEIRS OF FERNANDO VINZONS v. COURT OF APPEALS* (G.R. No. 111915, 30 September 1999)
 - Referral to the *Lupon Chairman* or the *Pangkat* should be made before the filing of the ejectment case. Legal action for ejectment is barred when there is non-recourse to the barangay court. The complaint for unlawful detainer should have been coursed first to the barangay court.
5. *DOJ OPINION No. 2, s. 1982*
 - The *Lupon* cannot settle cases involving traffic violations. This is beyond the scope of authority of the *Lupon* because there is no private individual violated. What is violated is the interest of the general public, there is no one who can properly represent the public interest in the amicable settlement.

When Parties may Directly File the Case/Complaint in Court

(NOTE: These cases are disputes where urgent legal action is necessary to prevent injustice from being committed if further continued; thus, they are excluded from going through the Katarungang Pambarangay procedures/processes.)

- 1) Criminal cases where the accused is under police custody or detention;
 - Take note of Article 125 of the Revised Penal Code, which penalizes a public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of:
 - a) 12 hours, for crimes or offenses punishable by light penalties,
 - b) 18 hours, for crimes or offenses punishable by correctional penalties, and
 - c) 36 hours, for crimes or offenses punishable by afflictive or capital penalties.
- 2) Petitions for habeas corpus by a person illegally deprived of his/her rightful custody over another or a person illegally deprived of his/her/their liberty or one acting in his/her/their behalf;
- 3) Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the pendency of the action; and
- 4) Actions which may be barred by the Statute of Limitations.

Note: The matter of JURISDICTION of the Revised Katarungang Pambarangay Law and of the particular *Lupon* must be taken into account first before any discussion on VENUE and Katarungang Pambarangay processes and procedures are undertaken.

IMPORTANT!

For purposes of Katarungang Pambarangay, RESIDENCE is the personal, actual, or physical habitation or his/her/their actual residence or place of abode, which may not necessarily be his/her/their legal residence or domicile provided he/she/they resides therein with continuity and consistency.

How to determine if the case/complaint falls under the scope or jurisdiction/coverage of the Katarungang Pambarangay?

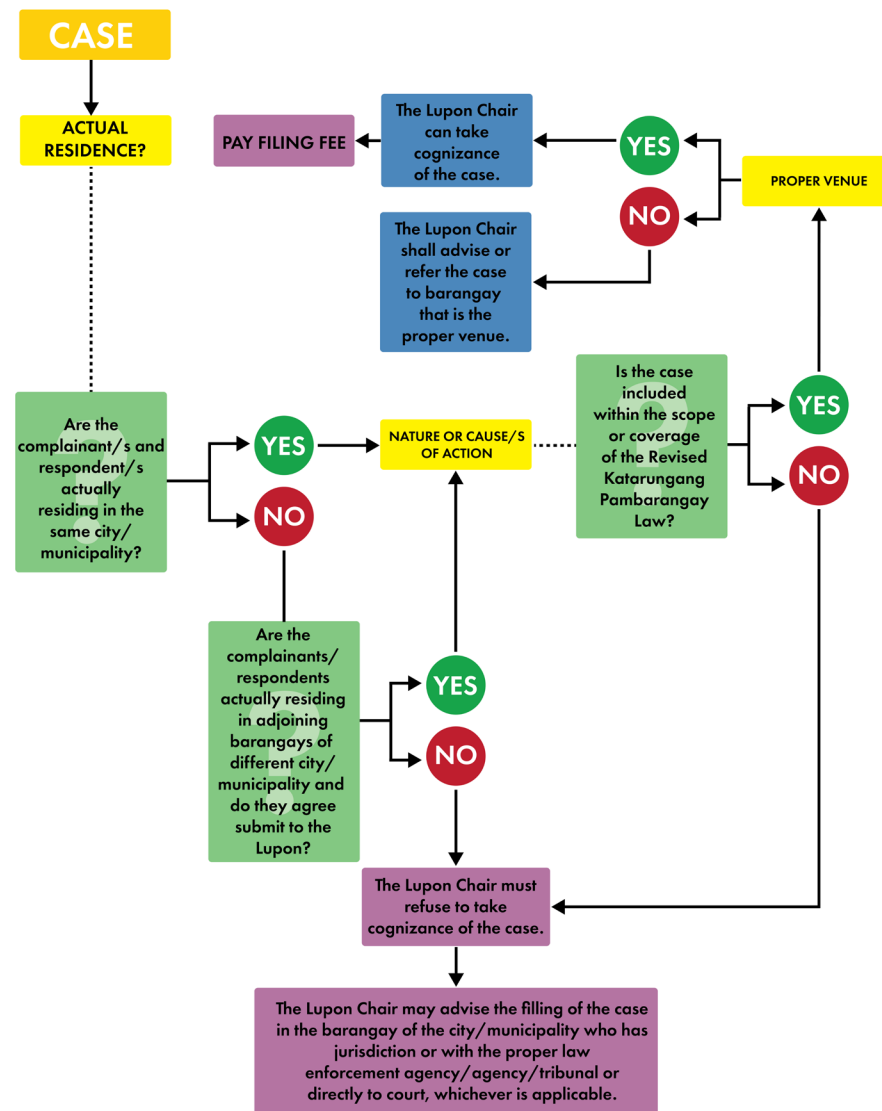


Figure B: Determining if the case falls under the jurisdiction of the Katarungang Pambarangay

1. Determine and ascertain the ACTUAL RESIDENCE of the complainant/s and respondent/s. This is the very basic criterion in determining whether the Revised Katarungang Pambarangay Law is applicable and if the Lupon can acquire jurisdiction over the case/complaint.
 - Ask: Are the complainants/respondents actually residing in the same barangay in the city/municipality?
 - IF YES: Move on to the 2nd criterion (See Step 2).
 - IF NO: Determine if they are actually residing in adjoining barangays and agree to submit to the Lupon.
 - If YES: Move on to the 2nd criterion (See Step 2).
 - If NO: The case does not satisfy the first criterion; thus, the Lupon must refuse to take cognizance of the case.

The Lupon Chair may advise the filing of the case in the barangay of the city/municipality who has jurisdiction or with the proper law enforcement agency/agency/tribunal or directly to court, whichever is applicable.

IMPORTANT!

The *Lupon* has no authority to settle the dispute when one of the parties is a resident of another city or municipality.

IMPORTANT!

If the case is not covered or is not under the jurisdiction of the Revised Katarungang Pambarangay Law, the *Lupon* should not issue any certification to file action.

Remember that the certification to file action contains an assertion that “there has been a personal confrontation between the parties before the *Punong Barangay*.” Hence, the *Lupon* (*Punong Barangay* and *Barangay Secretary*) may be held liable for the falsification of public documents and be subjected to other criminal, civil, and administrative liabilities.

2. Determine and ascertain the NATURE OF THE CASE/COMPLAINT or CAUSE/S OF ACTION.

- Ask: Is the case included within the scope or coverage of the Revised Katarungang Pambarangay Law?
 - If YES: Move on to determining the proper venue (See Step 3).
 - If NO: The case does not satisfy the second criterion; thus, the *Lupon* must refuse to take cognizance of the case.

The *Lupon* Chair may again advise the filing of the case in the barangay of the city/municipality who has jurisdiction or with the proper law enforcement agency/agency/tribunal or directly to court, whichever is applicable.

3. When the case/complaint satisfies or passes the first two (2) criterion, the Katarungang Pambarangay is deemed to be applicable over the case/complaint, and therefore, the *Lupon* may take jurisdiction over the case/complaint. The next step is to determine the PROPER VENUE for the filing of the complaint.

- Remember: Venue refers to the place where an action must be instituted and tried.
 - If YES: The *Lupon* Chair may take cognizance of the case/complaint. The filing fee must be paid.
 - If NO: The *Lupon* Chair shall advise or refer the case to the proper barangay that is the proper venue.

IMPORTANT!

If a case covered by the Revised Katarungang Pambarangay Law is brought directly to court, the same will be dismissed.

However, if the case is accepted by the court and the respondent failed to invoke the premature filing, such a failure would constitute a waiver.⁵⁰

50 See *Fernandez v. Militante*, G.R. No. L-59801, May 31, 1988. See also *Banares v. Balising*, G.R. No. 132624, March 13, 2000.

What are the Legal Effects of Settling Cases Not Covered by KP Law?

1. Prosecution and penalties are not waived by the state for criminal cases.
2. Agreement cannot be enforced through execution by *Lupon*.
3. No force and effect of a final judgment of the court even after 10 days from signing.
4. The running of the prescriptive period for the institution of an action against another shall not be suspended. In other words, the prescribed period may lapse to the prejudice of the concerned party/ies.

Rules on Venue⁵¹

DISPUTE	VENUE
Persons ACTUALLY RESIDING in the SAME BARANGAY	Brought before the <i>Lupon</i> of the SAID BARANGAY
ACTUALLY RESIDENTS of DIFFERENT BARANGAYS (where the barangays are adjoining and they agree to submit to the <i>Lupon</i>)	Brought before the <i>Lupon</i> of the barangay WHERE THE RESPONDENT ACTUALLY RESIDES
REAL PROPERTY or any interest therein	Brought before the <i>Lupon</i> of the barangay WHERE THE REAL PROPERTY OR THE LARGER PORTION IS SITUATED
Those arising at the WORKPLACE where the contending parties are empowered or the INSTITUTION where the parties are enrolled	Brought before the <i>Lupon</i> of the Barangay where such workplace or institution is located

Lupong Tagapamayapa

- The *Lupon* is the peace-making council of the barangay,
 - Functions of Lupong Tagapamayapa⁵²:
 - (1) Exercise administrative supervision over the conciliation panels;
 - (2) Meet regularly once a month to provide a forum for the exchange of ideas among its members and the public on matters relevant to the amicable settlement of disputes; and
 - (3) Exercise such other powers and perform such duties and functions as may be prescribed by law or ordinance.
- “It is the body organized in every barangay composed of the Punong Barangay as Chairperson and not less than ten (10) nor more than twenty (20) members from which the members of every *Pangkat* shall be chosen.”⁵³ The Barangay Secretary shall concurrently serve as the Secretary of the *Lupon*.⁵⁴
- “Although the *Lupon*, as a whole, does not facilitate mediation or conciliation proceedings, the members of the *Pangkat* which conducts mediation or conciliation sessions are chosen from the

51 See Section 409, 1991 Local Government Code. See also Rule 6, Sec. 3, KP Rules.

52 See Section 402, 1991 Local Government Code.

53 See Section 399, 1991 Local Government Code. See also Austral, supra note 28.

54 The functions of the *Lupon* Secretary are: (1) keep and maintain a record book of all complaints filed before the *Punong Barangay*; (2) record the results of the mediation proceedings before the *Punong Barangay*; (3) submit a report of the mediation proceedings to the proper city/municipal courts; (3) receive and keep the records of proceedings submitted to him/her by the various conciliation panels; (4) furnish copies to parties and transmit the settlements and arbitration awards to the proper courts; (5) Issue certification required for filing an action/proceeding in court or any government office; and (6) Issue certified true copies of any public record in custody. See also Katarungang Pambarangay Implementing Rules and Regulations (KP Rules), Rule 3, Section 2.

members of the *Lupon*. The *Lupon* may be assisted by the Provincial Legal Officer, City Legal Officer, Municipal Legal Officer, and/or Public Prosecutor on matters involving questions of law necessary in the administration of the [KP].⁵⁵

- The constitution of the *Lupon* is mandatory or necessary in every barangay. The *Punong Barangay* is responsible for the fulfillment of this mandate.
 - Functions of the *Punong Barangay* as the Chairperson of the *Lupon*⁵⁶:
 - (1) Receive all the complains against other persons that are subject to amicable settlement;
 - (2) Administer oaths in connection with any matter relating to all proceedings in the implementation of KP;
 - (3) Resolve all objectives in the venue during mediation;
 - (4) Mediate all disputes within his/her/their jurisdiction;
 - (5) Arbitrate disputes upon written agreement by the parties; and
 - (6) Enforce by execution, on behalf of the *Lupon*, the amicable settlement or arbitration award.

Pangkat ng Tagapagkasundo

- The *Pangkat* is the conciliation panel that hears each dispute brought before the *Lupon*.
- It is composed of three (3) members who are chosen by the parties to the dispute from the list of members of the *Lupon*. The 3 shall elect among themselves a chairperson and the secretary.^{57, 58}
- Functions of the *Pangkat* Chairperson⁵⁹:
 - (1) Preside over the hearings conducted by the *Pangkat* and administer oaths in connection with any matter relating to all KP proceedings;
 - (2) Issue summons for the personal appearance of parties and witnesses before the *Pangkat*;
 - (3) Attest to the authenticity and due execution of the settlement reached by the parties before the *Pangkat*;
 - (4) Preside over the arbitration hearings when the parties are in agreement to have the *Pangkat* arbitrate their dispute; and
 - (5) Attest the certification issued by the *Pangkat* Secretary for filing an action or proceedings in court or any government office for adjudication.
- All disputes not successfully settled by the *Punong Barangay* shall as far as possible be settled by the *Pangkat* through conciliation or arbitration.⁶⁰

55 See also Austral, supra note 28.

56 See Sections 409-413, & 420, 1991 Local Government Code. See also KP Rules, Rule 3, Section 1.

57 The functions of the Secretary of the *Pangkat* are: (1) Issue notices of hearing before the *Pangkat* and cause them to be served upon the parties and their witnesses; (2) Keep minutes of the proceedings for conciliation and arbitration by the *Pangkat* and have them attested by the *Pangkat* Chairperson; (3) Immediately transmit to the *Lupon* Secretary all settlements agreed upon by the parties and arbitration awards rendered by the *Pangkat*; (4) Submit copies of the minutes to the *Lupon* Secretary and to the proper courts; and (5) Issue the certification required for filing an action/proceeding in court or any government office. See also Katarungang Pambarangay Implementing Rules and Regulations (KP Rules), Rule 3, Section 2.

58 See Section 404, 1991 Local Government Code.

59 See KP Rules, Rule 3, Section 3.

60 See KP Rules, Rule 5, Section 3.

IMPORTANT!

The *Lupon* members, while in the performance of their official duties or on the occasion thereof, shall be deemed persons-in-authority, as defined in the Revised Penal Code.

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.

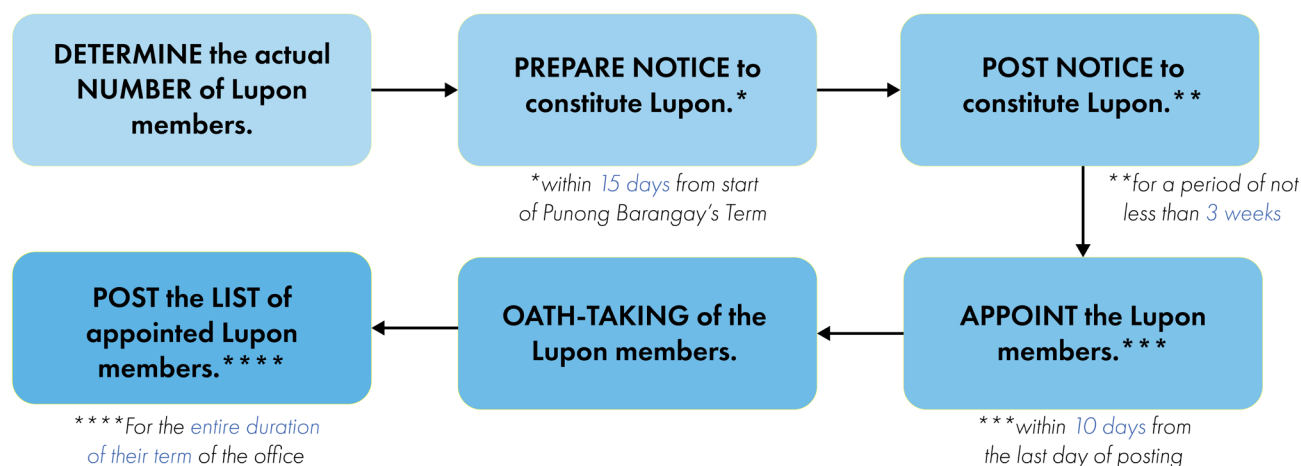
Constitution of the Lupon⁶¹

Figure D: Process of the Constitution of the Lupon

1. DETERMINE the actual NUMBER of *Lupon* members that will constitute the *Lupon*. The *Punong Barangay* shall take into consideration: (a) the barangay population; and (b) the volume of disputes previously brought for conciliation in his/her/their barangay.
2. PREPARE NOTICE to constitute the *Lupon*. The notice shall contain an invitation to the barangay to endorse or oppose the proposed appointment of any person included in the list or to recommend other persons.
3. POST NOTICE to constitute the *Lupon* immediately upon completion in three (3) conspicuous places within the barangay for a period of not less than 3 weeks.
4. APPOINT the *Lupon* members from the list of names contained in the notice within ten (10) days from the last day of posting.
5. Swear the appointees into office, sign their appointment papers, and have them attested by the Barangay Secretary.
6. POST the LIST of appointed *Lupon* members in three (3) conspicuous places in the barangay for the entire duration of the term of office.

61 See Section 399, 1991 Local Government Code.

IMPORTANT!

Appointment of the *Lupon* is the sole prerogative of the *Punong Barangay*; it does not require the approval or confirmation of the Sangguniang Barangay.

Should the *Punong Barangay* fail to constitute the *Lupon*, he/she/they can be charged with neglect of duty and be administratively liable.

Constitution of the Pangkat⁶²

1. For each dispute brought before the *Lupon*, the parties shall choose three (3) members thereof who shall constitute the *Pangkat*.
2. Should the parties fail to agree on the *Pangkat* membership, the same shall be determined by lots drawn by the *Lupon* chairperson.
3. The 3 members constituting the *Pangkat* shall elect from among themselves the chairperson and the secretary. The secretary shall prepare the minutes of the *Pangkat* proceedings and submit a copy duly attested to by the chairperson to the *Lupon* secretary and to the proper city or municipal court.

Qualifications and Disqualifications of Lupon Members

- For a person to become a *Lupon* member, he/she/they shall possess all of the following qualifications and none of the disqualifications.⁶³

QUALIFICATIONS	DISQUALIFICATIONS
Any person who is: <ol style="list-style-type: none"> (1) Actually residing or working in the barangay; (2) Not otherwise expressly disqualified by law; and (3) Possessing integrity, impartiality, independence of mind, sense of fairness, and reputation for probity as well as other relevant considerations like tact, patience, resourcefulness, flexibility, and open mindedness. 	Any person who is: <ol style="list-style-type: none"> (1) Convicted of crime with an accessory penalties of perpetual or temporary disqualification from holding public office; (2) A minor (below 18-years-old); (3) An incompetent; (4) A member of the armed forces who is still in active services; and (5) An elective government official, except otherwise allowed by law or the primary function of his/her/their position.

Terms of Office for Lupon Members

- Each *Lupon* member shall hold office until a new *Lupon* is constituted on the third year following his/her/their appointment, unless sooner terminated by the *Punong Barangay* with the concurrence of the majority of all the members of the *Lupon*.⁶⁴

Rules on Vacancies in the Lupon

- The *Punong Barangay* shall appoint a suitable replacement who shall serve the unexpired portion

62 See Section 404, 1991 Local Government Code.

63 See Section 399, 1991 Local Government Code. See also KP Rules, Rule 4, Section 1.

64 See Section 400, 1991 Local Government Code. See also KP Rules, Rule 4, Section 4.

of the term of office of the replaced member immediately upon learning of the *Lupon* members⁶⁵:

- (1) Death;
- (2) Transfer of residence;
- (3) Transfer of place of work;
- (4) Acceptance of resignation; or
- (5) Withdrawal of his/her/their appointment.

Can a Lupon member's appointment be withdrawn?

- YES. A *Lupon* member's appointment can be withdrawn by the *Punong Barangay* after due hearing and with the concurrence of a majority of all the *Lupong Tagapamayapa* members, a *Lupon* member's appointment may be withdrawn on the grounds of incapacity to discharge the duties of his/her/their office or unsuitability.⁶⁶

Disqualification of Members of the Pangkat

- A party may move to disqualify any member of the *Pangkat* by reason of relationship, bias interest, or other similar grounds discovered after the constitution of the *Pangkat*. The *Pangkat* shall resolve the matter by majority vote. Its decision on this matter shall be final.⁶⁷

Rules on Vacancies in the Pangkat

- Any vacancy in the *Pangkat* shall be chosen by the parties to the dispute from among the other *Lupon* members. Should the parties fail to agree on a common cause, the vacancy shall be filled by lot to be drawn by the *Lupon* chairperson.⁶⁸

65 See Sections 400 & 401, 1991 Local Government Code. See also KP Rules, Rule 4, Section 5.

66 See KP Rules, Rule 4, Section 7.

67 See KP Rules, Rule 5, Section 4.

68 See Section 405, 1991 Local Government Code.

Katarungang Pambarangay Procedures⁶⁹

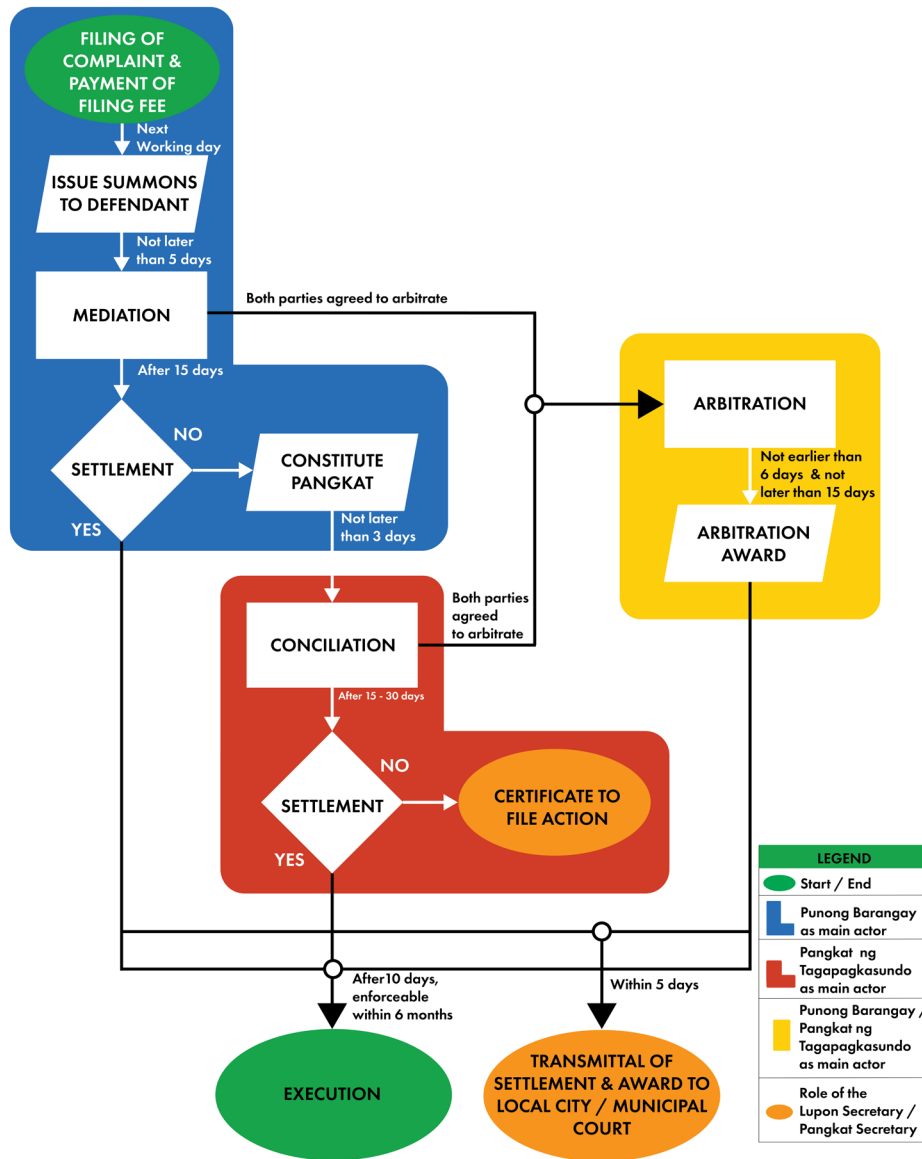


Figure E: Overview of the process of the Katarungang Pambarangay System

69 See Section 399, 1991 Local Government Code.

Forms of Dispute Resolution

Mediation vs. Conciliation vs. Arbitration

MEDIATION	CONCILIATION	ARBITRATION
<p>The process conducted by the <i>Punong Barangay</i> to assist the disputing parties to reach a settlement by consensus.</p> <p>This means a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute.⁷⁰</p>	<p>The process conducted by the <i>Pangkat ng Tagapagkasundo</i> to assist the parties in isolating issues and options to reach a settlement by consensus.</p> <p>This involves an impartial person acts an intermediary to open communication between parties to resolve their dispute.</p>	<p>The process conducted by a third party who is chosen by the parties to hear and decide their dispute. The parties agree to be bound by the decision of a third party in place of a regularly organized tribunal.</p> <p>One where one or more arbitrators, appointed in accordance with the agreement of the parties or rules pursuant to law, resolve a dispute by rendering an award.⁷¹</p>

IMPORTANT!

The *Lupon* chairperson or the *Pangkat* will not decide the dispute brought to them or render an award thereon. They are vested only with conciliation functions. They can only encourage the parties to voluntarily arrive at an amicable settlement.

IMPORTANT!

At any stage of the proceedings, the parties may agree to undergo arbitration by the *Lupon* chairperson or the *Pangkat* provided that the parties agree in writing that they shall abide by the award thereon. While the *Lupon* chairperson acting as a sole arbitrator or the *Pangkat* acting as a panel of arbitrators can conduct arbitration, arbitration is not commonly undertaken because of a lack of awareness of the intricacies of the arbitral procedure and the apprehension of rendering an award that cannot withstand legal challenge.

Commencement of Katarungang Pambarangay Proceedings

1. Any person who has a cause of action against another involving any matter within the authority of the *Lupon* may COMMENCE Katarungang Pambarangay proceedings by filing a COMPLAINT, orally or in writing, to the *Lupon* chairperson upon payment of the appropriate FILING FEE.
2. Upon receipt of the complaint, the *Lupon* chairperson shall SUMMON the respondent, with notice to the complainant for them and their witnesses to appear before him/her/them for a MEDIATION of their conflicting interests within the next working day.
 - a. The respondent may submit his/her/their answer and he/she/they may interpose his/her/their counterclaim.
 - b. Hearing is done informally. Technical rules of evidence are not resorted.
 - c. Settlement must be reduced into writing signed by the complainant and respondent and attested by the *Punong Barangay*.
3. The Mediation Proceedings shall have a duration of 15 days from the date of the first meeting. The Mediation Proceedings shall not be limited to three (3) hearings/meetings only. The *Lupon*

⁷⁰ Alternative Dispute Resolution Act of 2004, § 3(q).

⁷¹ Alternative Dispute Resolution Act of 2004, § 3(d).

Chairperson may call for a daily hearing/meeting to ensure an amicable settlement of the disputing parties.

4. The following are the possible results of the Mediation Proceedings:
 - a. If the disputing parties come to an agreement, an amicable settlement shall be prepared containing the terms of agreement of both parties signed by both complainant and respondent and attested by the Punong Barangay.
 - i. Any party to the dispute may, within 10 days from the date of the settlement, repudiate the same by filing with the *Lupon* chairperson a statement to that effect sworn to before him/her/them, where the consent is vitiated by fraud, violence, or intimidation.
 - b. If, before the lapse of the 15-day mediation proceedings, the disputing parties do not come to an agreement but agree in writing to arbitrate, the arbitration award shall be made and awarded by the Punong Barangay within 10 days after the lapse of the five (5) day repudiation period. Otherwise, the complaint will be endorsed for Conciliation Proceedings after the lapse of the 15-day mediation proceedings.
5. After the complaint is endorsed by the Punong Barangay for conciliation proceedings, a *Pangkat ng Tagapagkasundo* consisting of three (3) members chosen from the list of *Lupon* Members shall be created to facilitate the CONCILIATION Proceedings.
 - a. To create the *Pangkat*, a meeting shall be called by the Punong Barangay with the disputing parties to agree on the *Lupon* Members who shall constitute the *Pangkat*.
6. Once constituted, the Punong Barangay shall inform the chosen *Lupon* members to facilitate the amicable settlement of the complaint as *Pangkat ng Tagapagkasundo*.
7. The Conciliation Proceedings shall likewise have a duration of 15 days extendible for another 15 days at the discretion of the *Pangkat* for meritorious cases.
8. The *Pangkat* shall issue summons to the respondent/s, notices of hearing to the complainant/s and subpoena to witness/es, if any.
9. The following are the possible results of the Conciliation Proceedings:
 - a. If the disputing parties come to an agreement, an amicable settlement shall be prepared containing the terms of agreement of both parties signed by both complainant and respondent and attested by the *Pangkat* Chairperson.
 - b. Any party to the dispute may, within 10 days from the date of the settlement, repudiate the same by filing with the *Lupon* chairperson a statement to that effect sworn to before him/her/them, where the consent is vitiated by fraud, violence, or intimidation.
 - c. If, before the lapse of the 15-day conciliation proceedings, the disputing parties do not come to an agreement but agree in writing to arbitrate, the arbitration award shall be made and awarded by the *Pangkat* Chairperson within 10 days after the lapse of the five (5) day repudiation period.
 - d. Otherwise, a Certification to File Action shall be issued to the Complainant/s as a precondition to filing of complaint in court.
10. The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of the repudiation period 10 days if amicably settled (or 5 days if agreement to arbitrate) from the date thereof, unless repudiation of the settlement has been made or a petition to nullify the award has been filed before the proper city or municipal court.
 - a. It transcends being a mere contract binding only upon the parties thereto, and is akin to a judgment that is subject to execution in accordance with the Rules.
11. 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.
12. If within the period of six (6) months, both parties comply with the agreements laid down in the amicable settlement or arbitration award, the *Lupon*, through the Barangay Secretary, shall secure a proof of compliance authenticated by both parties and prepare a report of compliance.

13. In case of non-compliance by any of the parties, the unsatisfied party may file a motion of execution before the *Lupon Tagapamayapa*. The *Punong Barangay* shall call for a meeting to hear the cause/s of non-compliance and issue a notice of execution to any or both of the parties.
 - a. During the hearing, the *Punong Barangay* shall ascertain the facts for non-compliance of settlement and strongly encourage the party obliged to comply with the settlement.
14. After the lapse of five (5) days with no voluntary compliance, the *Punong Barangay* shall issue a notice of execution.
15. The following are the different rules on execution:
 - a. In case of collection of sum of money, the *Lupon* may cause the seizure of personal property/ies of the non-complying party which will be subjected to public auction, proceeds of which shall be used as payment for the owed sum of money. In case of non-delivery of personal property/ies by the concerned party, the *Lupon* shall apply for indirect contempt of court and file enforcement by action in the appropriate city or municipal court.
 - b. In case of performance of certain action/s, the *Punong Barangay* shall direct the *Barangay Secretary* to perform the action/s in lieu of the non-complying party.
 - c. In case of delivery of commodity/ies or production of certain document/s, the *Lupon* shall direct the concerned party to cause the delivery of such commodity/ies or produce the needed documents. In case of non-compliance by the concerned party, the *Lupon* shall apply for indirect contempt of court and file enforcement by action in the appropriate city or municipal court.

DO'S AND DON'TS!

- Proceedings shall be informal but orderly but without regard to technical rules of evidence.
- Proceedings shall be open to the general public except upon request of a party, the *Punong Barangay* or *Pangkat ng Tagapagkasundo* shall exclude the public for the interest of privacy, decency, and public morals.
- Parties should appear in person, without the assistance of counsel or a lawyer or the intervention of anyone.
- Minor and incompetents may be assisted by their next of kin who is NOT a lawyer.
- Representative or Attorney-in-fact (even armed with a special power of attorney) shall not be allowed during Mediation or Conciliation Proceedings. Appearance through a representative is tantamount to the non-appearance of a party.
- The proceedings shall be recorded by the *Lupon/Pangkat Secretary* as the case may be.
- The *Punong Barangay* or *Pangkat Chairperson* administers oaths in connection with any matter relating to all KP proceedings.
- The amicable settlement:
 - Should be in writing;
 - In a language or dialect known to both parties;
 - Not to be drafted by a lawyer;
 - Not to be brought home by the parties for their signatures;
 - Not have it notarized by a notary public/lawyer; and
 - Should be drafted at the barangay hall and nowhere else.

Can all personal properties be subjected to execution?

- Not all of the personal properties of the respondent are subject to confiscation/attachment/levy for purposes of executing the settlement agreed upon by the parties or that of the arbitration award.

Properties Exempted from Execution

1. Debtor's family home;
2. Tools and implements necessary used in trade or employment;

3. Two (2) horses, cows, or carabaos or other beasts of burden such as the debtor may select and are necessary used in ordinary occupation;
4. Necessary clothing for the debtor and his/her/their family;
5. Household furniture and utensils necessary for housekeeping;
6. Provisions for individual or family use sufficient for four (4) months;
7. Professional libraries of attorneys, judges, physicians, pharmacists, dentists, engineers, surveyors, clergy, teachers, and other professionals;
8. One fishing boat, net, and other fishing paraphernalia of the party who is a fisherfolk by lawful use of which he/she/they earns a livelihood;
9. Earnings for personal services within the month preceding the levy as necessary for his/her/their family's support;
10. All money, benefits, privileges, or annuities accruing in any manner or growing out of any life insurance not to exceed Php 100,000;
11. Right to receive legal support or money or property obtained as such support or any pension or gratuity from the government; and
12. Copyrights and other properties especially exempted by law.

Effect of Non-Appearence

- In case a party fails to appear, the *Lupon* Chairperson shall set a date for the absent party to appear before him/her/them and explain the reason for his/her/their absence.
 - If the failure to appear by the complainant is unjustifiable, the *Lupon* Chairperson shall:
 - 1) Dismiss the complaint;
 - 2) Direct the issuance of and attest to the issuance of a certification to bar action; and
 - 3) Apply for indirect contempt before the proper court.
 - If the failure to appear by the respondent is unjustifiable, the *Lupon* Chairperson shall:
 - 1) Dismiss the respondent's counterclaim.
 - 2) Direct the issuance of and attest to the issuance of a certification to bar the filing of respondent's counterclaim; and
 - 3) Apply for indirect contempt before the proper court.

When to Issue Certification to File Action?

1. When there is an amicable settlement reached between and among the parties, but one of the parties has repudiated the amicable settlement during the 10-day period to repudiate;
2. When the current whereabouts of the respondent are unknown and despite all efforts exerted by the *Lupon* chairperson, there is no possibility that the summons can be effectively served to the respondent;
3. When a party, more particularly the respondent, fails to appear for unjustified reasons and the circumstances clearly indicate that there is no possibility that the said party is willing to appear before the *Lupon*, even if the *Pangkat* is constituted for conciliation of the parties;
4. When the parties came to an agreement to arbitrate but during the 5-day period to repudiate, one of the parties repudiates the said agreement; and
5. When the parties fail to come to an amicable settlement despite mediation and conciliation efforts.

ANNEX D

TABLES OF PENALTIES, PRESCRIPTIVE PERIODS, AND CRIMES

Classification of Penalties

There are three (3) classifications of penalties that may be imposed:

1. Afflictive penalties;
2. Correctional penalties; and
3. Accessory penalties.

Summary of Penalties and their Duration (according to the Revised Penal Code)

Penalty	Duration	Effect	Accessories
AFFLICTIVE PENALTIES			
Death (NOTE: Not in effect)	Indivisible		(1) PAD; and (2) Civil interdiction 30 years from sentence (*Except when expressly remitted)
Reclusion Perpetua	Indivisible; <u>20 years and 1 day to 40 years</u>		(1) PAD; and (2) Civil interdiction 30 years from sentence
Perpetual Absolute Disqualification (PAD)	Indivisible; for life	(1) Deprivation of public office, even if by election; (2) Deprivation of right to vote & be voted for; (3) Disqualification from public office held; and (4) Loss of retirement rights	
Perpetual Special Disqualification	Indivisible; for life	(1) Deprivation of office, employment, profession, or calling affected; and (2) Disqualification from similar offices or employment	
Reclusion Temporal	Divisible; <u>12 years and 1 day to 20 years</u>		(1) PAD; and (2) Civil interdiction during the term of the sentence
Prision Mayor	Divisible; <u>6 years and 1 day to 12 years</u>		(1) TAD during the term of the sentence; and (2) PSD of suffrage
Temporary Absolute Disqualification (TAD)	Divisible; 6 years and 1 day to 12 years	(1) Deprivation of public office, even if by election; (2) Deprivation of right to vote & be voted for; (3) Disqualification from public office held; and (4) Loss of retirement rights	

<i>Temporary Disqualification (TSD)</i>	<i>Special</i>	Divisible; 6 years and 1 day to 12 year	(1) Deprivation of office, employment, profession, or calling affected; and (2) Disqualification from similar offices or employment	
CORRECTIONAL PENALTIES				
Prision Correccional		Divisible; <u>6 months 1 day to 6 years</u>		(1) Suspension from public office; (2) Suspension from profession or calling; and (3) PSD of suffrage, if the duration of imprisonment exceeds 18 months
<i>Suspension</i>		Divisible; 6 months 1 day to 6 years	(1) Public office; (2) Profession or calling; and (3) Suffrage	
<i>Destierro</i>		Divisible; 6 months 1 day to 6 years	Prohibition to enter within 25-250 km radius from the designated place	
Arresto Mayor		Divisible; <u>1 month and 1 day to 6 months</u>		(1) Suspension of right to hold office; and (2) Suspension of the right to suffrage
LIGHT PENALTIES				
Arresto menor		Divisible; <u>Divisible; 1 day to 30 days</u>		
<i>Fine</i>				
<i>Bond To Keep The Peace</i>		Period during which the bond shall be effective is discretionary with the Court		
<i>Public censure</i>				

The penalties may also be classified according to gravity (NOTE: The gravity of the felonies is determined by the penalties attached to them by law):

	Art. 9, RPC as amended	Art. 26, RPC as amended
Grave felonies	Those which the law attaches afflictive penalties.	If it exceeds Php 1,200,000.
Less grave felonies	Those which the law punishes with penalties which in their maximum period are correctional.	If it does not exceed Php 1,200,000 but is not less than Php 40,000
Light felonies	Those infractions of law or the commission of which the penalty of <i>arresto menor</i> or a fine not exceeding Php 40,000 or both is provided.	If it is less than Php 40,000.

Summary of Prescriptive Periods of Crimes and Penalties

	Prescription of Crime (The loss or forfeiture of the right of the State to prosecute the offender after the lapse of a certain time)	Prescription of Penalties (The loss or forfeiture of the right of the Government to execute the final sentence after the lapse of a certain time)
Death	20 years	20 years
Reclusion Perpetua	20 years	20 years
Reclusion Temporal	20 years	15 years
Prision Mayor	15 years	15 years
Prision Correccional	10 years	10 years
Arresto Mayor	5 years	5 years
Arresto Menor	2 months* (light offenses)	1 year
*Libel or other similar offenses	1 year	1 year
**Oral Defamation and Slander by Deed	6 months	1 year
***Light Offenses	2 months	1 year

Specific Cases under the Revised Penal Code (as amended by R.A. No. 10951) Covered by KP Law

	Crime	How Committed	Penalty
Crimes Against Public Interest			
1	<u>Alarm and scandals</u> (Art. 155, RPC)	Committed in any of the following instances: (1) Discharging any firearm, rocket, firecracker, or other explosive within any town or public place, "calculated to cause" (which produces) alarm or danger; (2) Instigating or taking active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility; (3) Disturbing the public peace while wandering about at night or while engaged in any other nocturnal amusement; and (4) Causing any disturbance or scandal in public places while intoxicated or otherwise, provided the act is not covered by Art. 153 (tumults and other disturbances of public order).	<i>Arresto menor</i> or a fine not exceeding Php 40,000
3	<u>Using false certificates</u> (Art. 175, RPC)	Elements: (1) A physician or surgeon had issued a false medical certificate, or a public officer had issued a false certificate of merit or service, good conduct, or similar circumstances, or a private person had falsified any of said certificates; (2) The offender knew that the certificate was false; and (3) He/she used the same despite such knowledge.	<i>Arresto menor</i>
4	<u>Concealing true names</u> (Art. 178, RPC)	Elements: (1) The offender conceals (a) his/her true name and (b) all other personal circumstances; and (2) The purpose is only to conceal his/her identity.	<i>Arresto menor</i> or a fine not to exceed Php 200

5	<p><u>Illegal use of uniforms and insignias</u> (Art. 179, RPC)</p>	<p>Elements:</p> <ul style="list-style-type: none"> (1) The offender makes use of insignia, uniform or dress; (2) The insignia, uniform or dress pertains to an office not held by the offender or to a class of persons of which he/she is not a member; and (3) The said insignia, uniform or dress is used publicly and improperly. 	<p><i>Arresto mayor</i></p>
Crimes Against Persons			
6	<p><u>Physical injuries inflicted in a tumultuous affray, if the physical injuries are of a less serious nature and the person responsible cannot be identified</u> (Art. 252, RPC)</p>	<p>Elements:</p> <ul style="list-style-type: none"> (1) There is a tumultuous affray; (2) A participant or some participants thereof suffer physical injuries of a less serious nature only; (3) The person responsible thereof cannot be identified; and (4) All those who appear to have used violence upon the person of the offended party are known. 	<p><i>Arresto mayor</i> from five (5) to 15 days.</p>
7	<p><u>Giving assistance to suicide, if suicide is not consummated</u> (Art. 253, RPC)</p>	<p>Committed in any of the following instances of giving means (such as arms, poison,s or other weapons or articles that may be used by the person to commit suicide):</p> <ul style="list-style-type: none"> (1) By assisting another to commit suicide; and (2) By lending his/her assistance to another to commit suicide to the extent of doing the killing himself/herself. 	<p><i>Arresto mayor</i> in its medium and maximum periods</p>
8	<p><u>Responsibility of participants in a duel, if no physical injuries have been inflicted</u> (Art. 260, RPC)</p>		<p><i>Arresto mayor</i></p>
9	<p><u>Less serious physical injuries</u> (Art. 265, RPC);</p>	<p>Elements:</p> <ul style="list-style-type: none"> (1) The offended party is incapacitated: <ul style="list-style-type: none"> (a) For labor for 10 days or more but not more than 30 days (inability for work); or (b) Such that he/she needs medical attendance for the same period (necessity for medical attendance); and (2) The physical injuries must not be those described in the preceding articles. 	<p><i>Arresto mayor</i></p>
10	<p><u>Slight physical injuries and maltreatment</u> (Art. 266)</p>	<p>Committed in the following instances:</p> <ul style="list-style-type: none"> (1) Physical injuries which incapacitated the offended party for labor from one (1) to nine (9) days or required medical attendance during the same period; (2) Physical injuries which did not prevent the offended party from engaging in his/her habitual work or which did not require medical attendance; and (3) Ill-treatment of another by deed without causing any injury. 	<p><i>Arresto menor</i></p> <p><i>Arresto menor</i> or a fine not exceeding Php 40,000 and censure</p> <p><i>Arresto menor</i> in its minimum period or a fine not exceeding Php 5,000</p>

11	<u>Inducing a minor to abandon his/her home, if the person committing the act is the father/mother of the minor</u> (Art. 271, RPC)	Elements: <ol style="list-style-type: none"> (1) A minor (less than 18 years old) is living in the home of his/her parents or guardian or the person entrusted with his/her custody; and (2) The offender induces said minor to abandon such home. 	Arresto menor or a fine not exceeding Php 40,000 or both
Crimes Against Personal Liberty & Security			
12	<u>Abandonment of a person in danger and abandonment of one's own victim</u> (Art. 275, RPC)	Committed in the following instances: <ol style="list-style-type: none"> (1) By failing to render assistance to any person whom the offender finds in an uninhabited place wounded or in danger of dying when he/she can render such assistance without detriment to himself/herself, unless such omission shall constitute a more serious offense; (2) By failing to help or render assistance to another whom the offender has accidentally wounded or injured; and (3) By failing to deliver a child under seven (7) years of age whom the offender has found abandoned, to the authorities or to his/her family or by failing to take him/her to a safe place. 	Arresto mayor
13	<u>Abandoning a minor</u> (Art. 276, RPC)	Elements: <ol style="list-style-type: none"> (1) The offender has the custody of a child; (2) The child is under seven (7) years of age; (3) S/he abandons such child; and (4) S/he has no intent to kill the child when the latter is abandoned. 	Arresto mayor and a fine not exceeding Php 100,000 Prision correccional in its medium and medium periods - if the minor shall have been in danger
14	<u>Other forms of trespass</u> (Art. 281, RPC)	Elements: <ol style="list-style-type: none"> (1) The offender enters the closed premises or the fenced estate of another; (2) The entrance is made while either of them is uninhabited. (3) The prohibition to enter should be manifest; and (4) The trespasser has not secured the permission of the owner or the caretaker thereof. 	Arresto menor or a fine not exceeding Php 40,000 or both
15	<u>Light threats</u> (Art. 283, RPC)	Elements: <ol style="list-style-type: none"> (1) The offender makes a threat to commit a wrong; (2) The wrong does not constitute a crime; (3) There is a demand for money or that other condition is imposed, even though not unlawful; and (4) That the offender has attained his/her purpose or that he/she has not attained his/her purpose. 	Arresto mayor
16	<u>Other light threats</u> (Art. 285, RPC)	Committed in the following instances: <ol style="list-style-type: none"> (1) By threatening another with a weapon, or by drawing such weapon in a quarrel, unless it be in lawful self-defense; (2) By orally threatening another, in the heat of anger, with some harm (not) constituting a crime, without persisting in the idea involved in his/her threat; and (3) By orally threatening to do another any harm not constituting a felony. 	Arresto menor in its minimum period or a fine not exceeding Php 40,000

17	Light coercions (other coercions or unjust vexations) (Art. 287, RPC)		<i>Arresto menor</i> or a fine ranging from Php 1,000 to Php 40,000
18	Other similar coercions (compulsory purchase of merchandise and payment of wages by means of tokens) (Art. 288, RPC)	Committed in the following instances: (1) By forcing or compelling, directly or indirectly, or knowingly permitting the forcing or compelling of the laborer or employee of the offender to purchase merchandise or commodities of any kind from him/her; and (2) By paying the wages due his/her laborer or employee by means of tokens or objects other than the legal tender currency of the Philippines, unless expressly requested by such laborer or employee.	<i>Arresto mayor</i> or a fine ranging from Php 40,000 to Php 100,000 or both

Crimes Against Property

19	Theft, if the amount does not exceed Php 500 (Art. 309, RPC)	<p>Elements (1st Kind):</p> <ul style="list-style-type: none"> (1) There be taking of personal property; (2) The said property belongs to another; (3) The taking be done with intent to gain; (4) The taking be done without the consent of the owner; and (5) The taking be accomplished without the use of violence against or intimidation of persons or force upon things. <p>Elements (2nd Kind):</p> <ul style="list-style-type: none"> (1) The accused found lost property belonging to another; and (2) The accused having had the opportunity to return or deliver the property to its owner or to the local authorities, refrained from doing so. <p>Elements (3rd Kind):</p> <ul style="list-style-type: none"> (1) The offender maliciously damaged the property of another; and (2) The offender removed or made use of the fruits of object of the damage caused. <p>Elements (4th Kind):</p> <ul style="list-style-type: none"> (1) There is an enclosed estate or a field where trespass is forbidden, or which belongs to another; (2) The offender enters the same; (3) The offender hunts or fishes upon the same or gathers fruits, cereals, or other forest or farm products in the estate or field; and (4) The hunting or fishing or gathering of products is without the consent of the owner. 	<p><i>If the value of the property stolen does not exceed Php 500 but does not exceed Php 5,000, arresto mayor to its full extent</i></p> <p><i>If the value of the property stolen does not exceed Php 500, arresto mayor in its minimum and medium periods</i></p> <p><i>If Art. 308, par. 3 applies and the value of the thing stolen does not exceed Php 500, arresto menor or a fine not exceeding Php 20,000</i></p> <p><i>If the value of the thing stolen is not over Php 500 and the offender acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood, arresto menor in its minimum or a fine not exceeding Php 5,000</i></p>
20	Qualified theft, if the amount does not exceed Php 500 (Art. 310, RPC);	When theft is qualified: (1) If the theft is committed by a domestic servant who was given trust and confidence by the employer; (2) If the theft is committed with a grave abuse of confidence; (3) If the property stolen is a (a) motor vehicle, (b) mail matter, or (c) large cattle; (4) If the property stolen consist of coconuts taken from the premises of a plantation; (5) If the property stolen is fish taken from a fishpond or fishery; and (6) If the property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident, or civil disturbance.	

21	<u>Altering boundaries or landmarks</u> (Art. 313, RPC)	Elements: <ol style="list-style-type: none"> (1) There be boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same.; and (2) The offender alters said boundary marks. 	Arresto menor or a fine not exceeding Php 20,000 or both
22	<u>Swindling or estafa, if the amount does not exceed Php 40,000</u> (Art. 315, RPC)	<p>Committed in the following instances:</p> <ol style="list-style-type: none"> (1) With unfaithfulness or abuse of confidence; (2) By means of false pretenses or fraudulent acts; or (3) Through fraudulent means. <p>Elements:</p> <ol style="list-style-type: none"> (1) Accused defrauded another; (2) Damage or prejudice capable of pecuniary estimation is caused to the offended party or third person; and (3) The element of damage or prejudice may consist in: <ol style="list-style-type: none"> (a) The offended party being deprived of his money or property, as a result of the defraudation; (b) Disturbance in property rights; or (c) Temporary prejudice. 	Arresto mayor in its medium and maximum periods
23	<u>Other forms of swindling</u> (Art. 316, RPC)	<p>Committed in the following instances:</p> <ol style="list-style-type: none"> (1) By any person who, pretending to be owner of any real property, shall convey, sell, encumber, or mortgage the same; (2) By any person, who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded; (3) By the owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person; (4) By any person who, to the prejudice of another, shall execute any fictitious contract; (5) By any person who shall accept any compensation given him/her under the belief that it was in payment of services rendered or labor performed by him/her, when in fact he/she did not actually perform such services or labor; and (6) Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his/her bond or before being relieved from the obligation contracted by him/her, shall sell, mortgage, or, in any other manner, encumber the real property or properties with which he/she guaranteed the fulfillment of such obligation. 	Arresto mayor in its minimum and medium periods and a fine not less than the value of the damage caused and not more than three (3) times the value
24	<u>Swindling a minor</u> (Art. 317, RPC)	Elements: <ol style="list-style-type: none"> (1) The offender takes advantage of the inexperience or emotions or feelings of a minor; (2) He/she induces such minor (a) to assume an obligation, or (b) to give release, or (c) to execute a transfer of any property right; (3) The consideration is some loan of money, credit, or other personal property; and (4) The transaction is to the detriment of such minor. 	Arresto mayor and a fine of a sum ranging from 10 to 50% of the value of the obligation contracted by the minor

25	<u>Other deceits</u> (Art. 318, RPC)	Committed in the following instances: <ol style="list-style-type: none"> (1) By defrauding or damaging another by any other deceit not mentioned in preceding articles; and (2) By interpreting dreams, making forecasts, fortune-telling, or by taking advantage of the credulity of the public in any other similar manner, for profit or gain. 	<i>Arresto mayor</i> and a fine of not less than the amount of the damage caused and not more than twice such amount <i>Arresto mayor</i> or a fine not exceeding Php 40,000
26	<u>Removal, sale, or pledge of mortgaged property</u> (Art. 319, RPC)	Elements of Art. 319 (a): <ol style="list-style-type: none"> (1) The personal property is mortgaged under the Chattel Mortgage Law; (2) The offender knows that such property is so mortgaged; (3) He/she removes such mortgaged personal property to any province or city other than the one in which it was located at the time of the execution of the mortgage; (4) The removal is permanent; and (5) There is no written consent of the mortgagee or his/her executors, administrator, or assignees to such removal. Elements of Art. 319 (b): <ol style="list-style-type: none"> (1) The personal property is already pledged under the terms of the Chattel Mortgage Law; (2) The offender, who is the mortgagor of such property, sells or pledges the same or any part thereof; and (3) There is no consent of the mortgagee written on the back of the mortgage and notes on the record thereof in the office of the register of deeds. 	<i>Arresto mayor</i> or a fine amounting to twice the value of the property
27	<u>Malicious mischief, if the value of the damaged property does not exceed Php 40,000</u> (Art. 328, RPC)	Elements: <ol style="list-style-type: none"> (1) The offender deliberately/wilfully caused damage to the property of another; (2) Such act does not constitute arson or other crimes involving destruction; and (3) The act of damaging another's property be committed merely for the sake of damaging it. 	<i>If the value of the thing damaged does not exceed Php 200,000 but is over Php 40,000, arresto mayor</i> <i>If the value of the thing damaged does not exceed Php 40,000, arresto menor</i>

28	<u>Other mischiefs, if the value of the damaged property does not exceed Php 40,000 (Art. 329, RPC)</u>		<p><i>If the value of the thing damaged exceeds Php 200,000, arresto mayor in its medium and maximum periods</i></p> <p><i>If the value of the thing damaged is over Php 40,000 but does not exceed Php 200,000, arresto mayor in its minimum and medium periods</i></p> <p><i>If the value of the thing damaged does not exceed Php 40,000 or cannot be estimated, arresto menor or a fine of not less than the value of the damage caused and not less than Php 40,000</i></p>
Crimes Against Chastity			
29	<u>Simple seduction (Art. 338, RPC)</u>	<p>Elements:</p> <ol style="list-style-type: none"> 1. The offended party is over 12 and under 18 years of age; 2. She must be of good reputation, single, or a widow; 3. The offender has sexual intercourse with her; and 4. It is committed by means of deceit. 	Arresto mayor
30	<u>Acts of lasciviousness with the consent of the offended party (Art. 339, RPC)</u>	<p>Elements:</p> <ol style="list-style-type: none"> (1) The offender commits acts of lasciviousness or lewdness; (2) The acts are committed upon a woman who is virgin or single or widow of good reputation, 12-18 years of age, or a sister of descendant regardless of her reputation or age; and (3) The offender accomplishes the acts by abuse of authority, confidence, relationship, or deceit. 	Arresto mayor
Crimes Against Honor			
31	<u>Threatening to publish and offer to prevent such publication for compensation (Art. 356, RPC)</u>	<p>Committed in the following instances:</p> <ol style="list-style-type: none"> (1) By threatening another to publish a libel concerning him/her, or his/her parents, spouse, child, or other members of his/her family; or (2) By offering to prevent the publication of such libel for compensation, or money consideration. 	Arresto mayor or a fine from Php 40,000 to Php 400,000 or both
32	<u>Prohibiting publication of acts referred to in the course of official proceedings (Art. 357, RPC)</u>	<p>Elements:</p> <ol style="list-style-type: none"> (1) The offender is a reporter, editor, or manager of a newspaper, daily, or magazine; (2) The offender publishes facts connected with the private life of another; and (3) Such facts are offensive to the honor, virtue, and reputation of said person. 	Arresto mayor or a fine from Php 40,000 to Php 200,000 or both

33	<u>Slander (oral defamation)</u> (Art. 358, RPC)	<p>Elements:</p> <ol style="list-style-type: none"> (1) There must be an imputation of a crime or of a vice or defect, real or imaginary, or any act, omission, status or circumstances; (2) The defamatory remark is made orally; (3) The remark is made publicly; (4) The remark is made maliciously; (5) The remark is directed to a natural or juridical person or one who is dead; and (6) The remark tends to cause dishonor, discredit, or contempt of the person defamed. 	<p><i>Arresto mayor</i> in its maximum period to <i>prision correccional</i> in its minimum period - if it is of a serious and insulting nature</p> <p><i>Arresto menor</i> or a fine not exceeding Php 20,000</p>
34	<u>Slander by deed</u> (Art. 359, RPC)	<p>Elements:</p> <ol style="list-style-type: none"> (1) The offender performs any act not included in any other crime against honor; (2) Such act is performed in the presence of other person/s; and (3) Such act casts dishonor, discredit, or contempt upon the offended party. 	<p><i>Arresto mayor</i> in its maximum period to <i>prision correccional</i> in its minimum period or a fine ranging from Php 20,000 to Php 100,000 - any person who shall perform any act not included and punished in this title which shall cast, dishonor, discredit or contempt upon another person</p> <p><i>Arresto menor</i> or a fine not exceeding Php 20,000 - if the act is not serious in nature</p>
35	<u>Incriminating innocent persons</u> (Art. 363, RPC)	<p>Elements:</p> <ol style="list-style-type: none"> (1) The offender performs an act; (2) By such act he/she directly incriminates or imputes to an innocent person the commission of the crime; and (3) Such act does not constitute perjury. 	<i>Arresto mayor</i>
36	<u>Intriguing against honor</u> (Art. 364, RPC)		<i>Arresto menor</i> or a fine not exceeding Php 20,000

37	<p><u>Imprudence and negligence</u> (Art. 365, RPC)</p>	<p>Elements of Reckless Imprudence:</p> <ol style="list-style-type: none"> (1) The offender does or fails to do an act; (2) The doing of or failure to do that act is voluntary; (3) It be without malice; (4) Material damage results; and (5) There is inexcusable lack of precaution on the part of the offender, taking into consideration his/her employment or occupation, degree of intelligence, physical conditions, and other circumstances regarding persons, time and place. <p>Elements of Simple Imprudence:</p> <ol style="list-style-type: none"> (1) There is a lack of precaution on the part of the offender; and (2) The damage impending to be caused is not immediate or the danger is not clearly manifest. 	<p><i>By reckless imprudence, if it would have constituted a less grave felony, arresto mayor in its minimum and medium periods</i></p> <p><i>By reckless imprudence, if it would have constituted a light felony, arresto menor in its maximum period</i></p> <p><i>By simple imprudence or negligence, if it would have otherwise been a grave felony, arresto mayor in its medium and maximum periods</i></p> <p><i>By simple imprudence or negligence, if it would have constituted a less serious felony, arresto mayor in its minimum period</i></p>
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**PART II:
REALIZING HUMAN
RIGHTS AND ACCESS
TO JUSTICE THROUGH
THE KATARUNGANG
PAMBARANGAY**

MODULE 3: What is a Gender-Responsive Katarungang Pambarangay?

This module aims to demonstrate what makes a gender-responsive Katarungang Pambarangay by increasing the gender awareness and sensitivity of the Lupon and barangay officials and deepening their understanding of the foundational principles on gender as well as the salient laws on gender. The module also explores the areas in which Lupon and barangay officials can be gender-responsive and how they can advocate gender-responsiveness in all levels of participation, decision-making, and implementation in the barangay in order to address the needs and concerns of women and the people of diverse Sexual Orientation, Gender Identity, Gender Expression, and Sexual Characteristics (SOGIESC).

PRELIMINARY SESSION

Session Objectives

At the end of the session, the participants should be able to:

1. Develop an increased gender awareness or sensitivity on the situation of women and people of diverse SOGIESC and the need to respect, protect, and fulfill their rights; and
2. Understand the importance of having a gender perspective and of integrating gender-responsiveness in performing their functions as *Lupon* and barangay officials in resolving conflicts at the barangay level.

Methodologies: Case Study and Input

Total Recommended Duration: 30 minutes

	Group Size	Recommended Duration	Materials
1 Group Activity	All participants in plenary	20 minutes	Laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	10 minutes	



Key learnings

- Making gender an integral dimension in the conduct of the Katarungang Pambarangay is vital in forwarding the rights of women and people of diverse SOGIESC. This means recognizing the differences in experiences between men and women with a view of addressing or at the very least reducing the disadvantages and discrimination of women and LGBTQIA+ individuals on the basis of their sex and their SOGIESC.
- The *Lupon* or barangay officials are frontliners; they are usually the first to approach or be approached by victims/survivors. For this reason, they are in a position to help the victims/survivors cope with the immediate trauma and access justice. Thus, *Lupon* and barangay officials should be aware of the importance of gender-sensitive and victim-centered approaches.

Suggested Session Outline

1. **Case study**
 - a) Ask the participants to read and reflect on the case study.

CASE STUDY: Clara's Story

Clara and Simon were high school sweethearts. When Clara turned 19, she found out she was pregnant. Feeling like she was an embarrassment to her family, she eloped with Simon. Simon promised that he would take care of her and their baby. Clara and Simon lived together in a small rental unit in Brgy. Malinis. At first, everything was smooth sailing. But after Clara had her baby, a beautiful girl that they named Maria, everything changed.

During one of their first weeks as parents, Clara spent all day taking care of their baby. She lost track of time and was unable to prepare dinner for Simon. Before she could explain what happened, he started yelling, "What have you been doing?!" He grabbed her by the hair and slapped her face. She tried to get away, but he punched her and knocked her to the ground. Clara blacked out for a minute or two, and when she came to Simon was sitting on the ground crying and saying, "I'm sorry, I'm so sorry." She cleaned herself up and put makeup where the bruises would show. She came back outside, and Simon acted like nothing had happened.

Since then, Simon would come home drunk and hit her. She was often pulled by her hair and oftentimes, he would not stop hitting or kicking her. Even as Maria was already walking and a toddler, Simon would hit Clara in front of her. Clara would take the beating afraid that Simon would hurt their daughter. She was so afraid that he would hurt her badly, but at the end of the day, she cared about him. And deep down, she thought that he might come after her if she tried to break up with him.

One day, after having way too many beers, Simon dragged Clara into the kitchen. He threw her into the wall and hit her. He started yelling about how Clara was a failure of a wife and mother. He was so angry he started to choke her. He only stopped for enough time to get another beer from the sari-sari store. Hearing the commotion, Cecille, their neighbor, told the barangay about the domestic dispute. Coming back with a beer, Simon was greeted by the *tanods*. He insisted that Cecille was being a *marites* and that he and Clara were just talking. The *tanods* asked if they could talk to Clara and check if everything was alright. When they opened the door to their unit, the room was in disarray and Clara was on the floor, bruised and beaten and crying while holding Maria.

You are the barangay captain of Brgy. Malinis. Clara and Maria are brought to the barangay. Clara is still visibly shaken up and crying. What do you do?

b) Debrief this activity using the following questions:

1. What kinds of abusive behavior were demonstrated in the scenario?
2. How do you feel? What if the roles were reversed?
3. Are there any differences between the types of abuse and violence women and men are victims of? How about LGBTQIA+ individuals?
4. Why is it that instances of abuse and violence are not always reported?

2. Input

- c) Encourage participants to share their experiences with dealing with gender based-abuse and violence. Explain that the way people cope as survivors of harassment, abuse, or violence depends on their experience.
- Abuse and violence can be difficult to talk about or address because it is often hidden, or it is accepted that men have power over women, even if they sometimes abuse that power.

- d) Discuss how abuse and violence may happen to anyone, but women and girls are at greater risk of abuse. This is rooted in historical injustice or the longstanding gender inequality - that is, the differences in experiences between men and women which result in disadvantages and discrimination of women and LGBTQIA+ individuals on the basis of their sex and their SOGIESC.
- e) Highlight the importance of having a gender lens.
 - Making gender an integral dimension in the conduct of the Katarungang Pambarangay is vital in forwarding the rights of women and people of diverse SOGIESC.
 - As *Lupons* or barangay officials, they are also frontliners - they are usually the first to approach or be approached by victims/survivors. For this reason, they are in a position to help the victims/survivors cope with the immediate trauma and access justice. Thus, *Lupon* and barangay officials should be aware of the importance of gender-sensitive and victim-centered approaches.
 - People often feel helpless, vulnerable, and frightened by the trauma of their victimization. As the first responders, they can respond to victims/survivors' need to feel safe, express their emotions, and to know what comes after their victimization. They should be aware and respectful of the rights and the special concerns and needs of women, girls, and people of diverse SOGIESC, in order to provide proper services to them.
 - In the Philippines, some realities that contribute to the vulnerability of Filipino women to abuse and violence are being accused as “naggers” or neglectful of their duties as a wife that is why they are being beaten by their spouses or being raped due to her “flirtatious” ways; many cases often go unreported due to the victims’ “culture of silence.” Many of the victims are ashamed to relate their experiences while others tend to dismiss their ordeal as a result of their lack of faith in the justice system caused by frustrations over the lack of results in filing complaints.
- f) Emphasize that having a gender perspective and understanding the unequal power relations between men and women in all spheres of life is vital in being able to conduct Katarungang Pambarangay in a gender-sensitive manner.

References

See Annex E (What Makes a Gender-Responsive Katarungang Pambarangay?) at page 108.

SESSION 1: FOUNDATIONAL PRINCIPLES ON GENDER

This session discusses the basic concepts and foundational principles on gender to enable the participants to reflect on their understanding of sex and gender, gender roles, gender bias, and discrimination, among others. The session helps further explain why understanding the difference between sex and gender is critical in delivering services through the Katarungang Pambarangay system and the administration of justice, specifically that the cause of the inequity is not due to biological characteristics, but socially constructed attributes of men and women and the unequal power relations between men and women. The session also tackles the basic steps in addressing women's issues in the Katarungang Pambarangay.

Session objectives

At the end of the session, the participants should be able to:

1. Differentiate sex and gender;
2. Explain the manifestation of gender bias and discrimination; and
3. Identify areas in the Katarungang Pambarangay system that the *Lupon* and the barangay officials can practice to be gender-responsive.

Methodologies: Group Activities and Input

Total Recommended Duration: 1 Hour and 30 minutes

	Group Size	Recommended Duration	Materials
1 Group Activity	All participants in plenary	20 minutes	Metacards, markers, masking tape, Laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	30 minutes	
3 Group Activity	All participants in plenary	20 minutes	
4 Input	All participants in plenary	20 minutes	



Key learnings

- “[A]s a society that grew up with the myth of *Malakas and Maganda*, we only identify two (2) sexes: *lalaki at babae*, man or woman, male or female. But as our understanding of human sexuality continues to evolve, we realize that we’re not just limited to this binary—the concept has always been there, we just didn’t have names for them, until today.”⁷²
- Sex and gender are not the same. Sex identifies the biological difference between men and women, while gender identifies the social relations between men and women or the acquired identity.
- Gender is a social construct. They are learned but internalizing culturally approved ways of thinking, feeling, and behaving. Gender characteristics and relations are perpetuated by values, institutions, and practices. As such, they can be influenced and changed.
- Society prescribes specific roles for girls and boys/women and men but values them differently. This comes as a source of discrimination and inferior status of women and people of diverse SOGIESC in the society. Substantive equality recognizes the difference - that is, the unequal power relations - and affirms the equality between men and women.

72 Christa I. Dela Cruz, All You Need to Know About SOGIE, Explained, Spot PH, 28 June 2021, available at <https://www.spot.ph/newsfeatures/the-latest-news-features/86615/sogie-explainer-philippines-a833-20210628-lfrm2> (last accessed 1 June 2023).

- Being gender-responsive in performing work and in everyday life enables men and women to respect, protect, and fulfill their human rights. In practicing gender-responsiveness, a person must take into consideration the principle of respect for men and women's rights, empathy, equality of men and women, and acceptance.

Suggested Session Outline

This session will consist of four (4) parts and will be undertaken as follows:

1. Group Activities

The activities aim to challenge the gender biases of the participants in relation to the gender stereotypes and deepen their understanding of the foundational principles on gender.

Activity 10: Kababae at kalalaki mong tao!

Procedures:

- 1) Put a sign "men" and "women" in the middle of the board.
- 2) Draw out a list of roles and activities.
- 3) Call out the name of each role or activity and ask the participants to take their position whether it belongs to a man or a woman.
- 4) Some of these roles or activities could be:

ROLES	ACTIVITIES
Chef	Sewing
Tailor	Cooking
Farmer	Washing Clothes
Housewife	Reading newspaper
Breadwinner	Breast-feeding babies
Nurse	Bathing children
Mother	Fixing the electric bulb
Barber	Knitting sweaters
Politician	Driving
Head of the family	Sweeping

ROLES

- 5) Discuss the responses of the participants.

Processing:

- 1) Use the following guide questions:
 - a) Why do we associate certain roles or activities with women, and some with men?
 - b) Which of the activities above has any biological basis? Which does not have a biological basis?
 - c) What responses in the men's roles, characteristics, and objects are exclusive for men only or women only?
 - d) What is the importance of knowing the differences between men and women, masculinity, and femininity?

Activity 11: Mythbusters

Procedures:

- 1) Ask the participants to evaluate a series of statements that start from relatively simple to more controversial statements that relate to gender issues and some myths about sex and gender.
- 2) Ask the participants to read each statement and determine whether they believe it to be true or false.
- 3) Statements:
 - (1) *Empowered na lahat ng mga kababaihan sa Pilipinas. Wala nang gender inequality, lalaki na ang mga naaapi ngayon.* (False)
 - (2) *Natural na obligasyon ng kababaihan ang pag-aalaga ng mga bata at pag aasikaso sa bahay.* (False)
 - (3) *Tanging mga kababaihan lamang ang nanganganak kaya't kailangan nila ang suporta ng gobyerno ukol dito.* (False)
 - (4) *Likas na magaling ang mga kalalakhian mamuno kung kaya't mas marami ang mga lider at opisyales na lalaki.* (False)
 - (5) *Ang babaeng nagkakagusto sa kapwa babae ay gusto maging lalaki; ang lalaki na nagkakagusto sa kapwa lalaki ay gusto maging babae.* (False)
 - (6) *Para maiwasan ang pangungutya at pambabastos, maigi na ang mga LGBTQ ay iwasan na ang public display of affection.* (False)
 - (7) *Nakakaakit ang mga seksi o revealing na damit sa mga kalalakhian kaya huwag kang magsuot nito kung ayaw mo na mabastos o marape.* (False)
 - (8) *Kung talagang biktima ka ng karahasan, dapat magsumbong agad sa autoridad. Kasalanan na yan ng babae kung pinila niya manahimik.* (False)
 - (9) *Marami na ang mga batas para sa mga kababaihan. Madali na para sa mga babae ang pagsampa ng kaso.* (False)
 - (10) *Ang kasong VAWC ay 'di na dapat inaayos o dinadaan sa KP.* (True)
 - (11) *Para kay kap, makasalanan ang mga LGBTQIA+. Tama lamang na tinanggihan nya ang mga grupo ng mga baklang nagrereklamo sa pambabastos ng mga tambay. Pwede naman na sila dumiresto sa mga kapulisan.* (False)
 - (12) *Ang paninitsit sa kanto ay biro lamang at 'di dapat seryosohin. Walang korte ang tatanggap ng reklamo ukol dito.* (False)
 - (13) *Minsan ang mga bastos na biro ay talagang biro lamang, paglabag lamang ito ng batas kung may malisya ang gumawa nito.* (False)
 - (14) *Lahat ng pananakit sa kababaihan ay maaaring makapagsampa ng kaso sa ilalim ng VAWC or R.A. No. 9262.* (False)
 - (15) *May panlilinlang ang pakikipagtalik ng isang 20 year old na binatilyo sa isang 15 year old na batang babae. Simple seduction ito at maari idaan sa KP.* (False)
- 4) The statements may be shown by slides or posting print-outs on the wall.
- 5) Validate and process the answers by the participants.

Processing:

- N/A; See abstraction/input.

2. Input

- a) Link the outputs and the discussions to the input on the difference between sex and gender, gender roles, SOGIESC, non-discrimination, and gender equality.
- b) What is the difference between sex and gender?

SEX	GENDER
<p>Refers to the biological characteristics that define men and women</p> <p>Biologically determined</p> <p>Universal for all human beings</p>	<p>Refers to the traits, norms, stereotypes, and roles of men and women</p> <p>Differentiation between masculinity and femininity</p> <p>Constructed and reproduced through socialization in various societal institutions</p> <p>Differs within and between cultures</p> <p>Dynamic, fluid (gender not as a spectrum but <i>wheel</i>)</p>

c) What is gender?

Gender

- Gender refers to the “socially constructed characteristics of women and men - such as norms, roles, and relationships of and between groups of men and women.”⁷³
- It varies from society to society and can be changed. While most people are born either male or female, they are taught appropriate norms and behaviors - including how they should interact with others of the same or opposite sex within households, communities, and workplaces.
- “When individuals or groups do not “fit” established gender norms they often face stigma, discriminatory practices, or social exclusion – all of which adversely affect health. It is important to be sensitive to different identities that do not necessarily fit into binary male or female sex categories.”⁷⁴

d) What are gender roles?

Gender roles

- Gender roles refer to learned behaviors in a society, community, or other special group or that condition in which activities, tasks, and responsibilities are perceived as male and female.
- It is the social role or behavior learned by individuals as appropriate to their gender.
 - Female gender roles are associated with femininity and traits such as being submissive, modes, and nurturing while male gender roles are associated with the concept of masculinity and traits such as being assertive, dominant, and strong.
- *Examples:* boys should have strong legs; women should have smooth legs; as they grow up, boys help in cars/mechanical work, while girls are expected to help in the house.

73 World Health Organization, Gender mainstreaming for health managers: a practical approach, available at <https://www.who.int/publications/i/item/9789241501057> (last accessed 10 September 2023).

74 *Id.*

GENDER DIVISION OF LABOR	
PRODUCTIVE ROLE	REPRODUCTIVE ROLE
<ul style="list-style-type: none"> ● Work that is undertaken in exchange for money or goods. ● Includes both market production with an exchange-value, and subsistence/home production with actual use-value, and also potential exchange-value. 	<ul style="list-style-type: none"> ● Roles required to guarantee the maintenance and reproduction of the labor force. <ul style="list-style-type: none"> ○ Childcare/child-rearing chores ○ Home management ○ Family health care (e.g., sick, elderly, PWD, etc.)
COMMUNITY ROLE	
<ul style="list-style-type: none"> ● Activities undertaken primarily by women at the community level as an extension of their reproductive role to ensure the provision and maintenance of scarce resources of collective consumption, such as water, health, and education. ● This is voluntary unpaid work, undertaken in 'free' time 	

e) What is gender stereotyping?

Gender stereotyping

- A gender stereotype is a generalized view or preconceived notion about attributes or characteristics, or the roles that are or ought to be possessed by or performed by men and women.
- A gender stereotype is harmful when it limits a person's capacity to develop their personal abilities, pursue their professional careers, and/or make choices about their lives.

f) What is gender socialization?

Gender socialization

- Gender socialization is the process by which individuals learn how to socially behave based on gender.
- It begins at birth, intensifies during adolescence, and sometimes goes all the way up to old age.
 - Sex- and gender-linked notions of how a man or woman should act are created, produced, reproduced, and maintained by social institutions.
 - Through the constant socialization of these gender roles, discrimination is made acceptable and often unquestionable.

g) What is SOGIESC (Sexual Orientation, Gender Identity, Gender Expression, and Sexual Characteristics)?

SEXUAL ORIENTATION	<p>Associated with whom a person is attracted to (<u>Who am I attracted to?</u>).</p> <ul style="list-style-type: none"> ● Heterosexual: Attracted to the opposite sex; ● Homosexual: Attracted to the same sex (i.e., gay and lesbian); ● Bisexual: Attracted to either of the two (2) sexes but not at the same time; ● Pansexual: Attracted to people regardless of gender; or ● Asexual: Not sexually attracted to anyone, but they may or may not be romantically attracted to someone.
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GENDER IDENTITY	<p>Refers to the personal and psychological concept of self or how an individual identifies as a man, a woman, or neither/either (How one sees oneself?).</p> <ul style="list-style-type: none"> ● Cisgender: When someone's gender identity aligns with the sex assigned at birth; ● Transgender: When someone's gender identity does not align with the sex assigned at birth; or ● Queer: When an individual identifies as neither man nor woman or does not fit the binary notions of being a man or woman.
GENDER EXPRESSION	<p>Refers to the external manifestation of one's gender identity or relates to a person's behavior, mannerisms, interests, and appearances associated with how a society sees categories of femininity or masculinity.</p> <ul style="list-style-type: none"> ● Masculine; ● Feminine; or ● Androgynous.
SEXUAL CHARACTERISTICS	<p>Relates to a person's biological traits or the sex assigned at birth.</p> <ul style="list-style-type: none"> ● Assigned Sex at Birth (You are not born as but assigned sex at birth.): <ol style="list-style-type: none"> (1) Male; (2) Female; or (3) Other/Intersex.

Genderbread person

Suggested Material:

1. See Genderbread person infographic, available at www.genderbread.org.

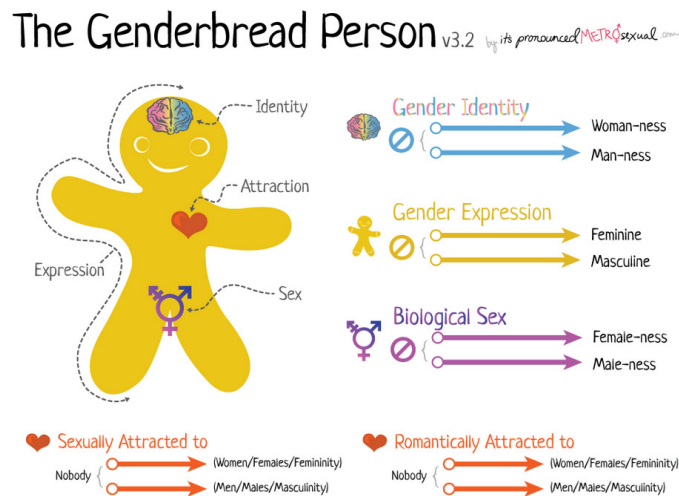


Figure 5: Genderbread person

SOGIESC

- Everyone has SOGIESC. All deserve equal dignity and rights.
- No one should be discriminated against on the basis of SOGIESC.
- We should be aware of how some individuals are discriminated against or excluded from the exercise of rights on the basis of SOGIESC.
- We should be aware of how SOGIESC interacts with other identities.

3. Group Activity

(The activity aims to introduce the concept of discrimination and help the participants understand that while everyone has rights, some groups of people can be treated unfairly because of certain characteristics.)

Activity 12: Discrimination

Procedures:

- 1) Select a group of 5-6 volunteers to join the game.
- 2) Prepare strips of paper with the roles for each volunteer/participant:
 - a) A 7-year-old boy
 - b) An Aeta mother
 - c) A construction worker
 - d) A college student
 - e) A farmer from Sumalo, Bataan
 - f) A person deprived of liberty (PDL)
- 3) Assign each role to every volunteer/participant.
- 4) All volunteers/participants stand at the starting line. Every time they believe a statement is true for their role, they take a step forward.
 - a) *May karapatan ako.*
 - b) *Nakakakain ako nang tatlong (3) beses sa isang araw.*
 - c) *Nakapagtapos/makakapagtapos ako ng pag-aaral.*
 - d) *May malapit na barangay hall sa akin.*
 - e) *May kilala akong abogado.*
 - f) *Kaya kong kumuha ng abogado para tumulong sa akin.*

Processing:

- N/A; See abstraction/input.

4. Input

- a) Emphasize that discrimination means, at a basic level, the act of separating out singular things or groups of things. Highlight that discrimination can sometimes result from treating people the same and that occasionally we are required to treat people differently to achieve equal results.

Discrimination

- Discrimination refers to unequal treatment based on a personal characteristic.
 - Where stereotypes generalize based on beliefs, discrimination is that which prevents one from accessing rights.
- b) Discuss the principles of non-discrimination and gender equality. Underscore that every person is entitled to his or her human rights, regardless of color, race, sex, sexuality, religion, nationality, or any other status without discrimination. This recognition is necessary and fundamental for each person to live in freedom and dignity, affirming the inherent and universal character of human rights, and is ultimately in the pursuit of equal treatment and equality.

Non-discrimination and gender equality

- As applied in the context of gender, the principle of equality and non-discrimination guarantees that those in equal circumstances are dealt with equally in law and practice. This means that individuals or groups of individuals which are in comparable situations should not be treated less favorably simply because of a particular characteristic such as

- their SOGIESC.
 - Substantive equality recognizes the difference - that is, the unequal power relations - and affirms the equality between men and women.
 - Working towards gender equality ensures that the rights of *all* genders and regardless of gender, responsibilities, and opportunities are considered and valued in resolving conflicts referred to the Katarungang Pambarangay.
- c) Use the discussion on principles of non-discrimination and gender-equality as a starting point to expound on the effects of “assigning” roles, behaviors, attitudes, and values to individuals. Illustrate how stereotypes, gender bias, and all forms of discrimination, including gender-based violence, are barriers to gender equality.

Gender bias and discrimination

- Society prescribes specific roles for girls and boys/women and men but values them differently. This comes as a source of discrimination and inferior status of women and people of diverse SOGIESC in the society.
- Gender bias is manifested in economic marginalization, political subordination, multiple burdens, gender stereotyping, and violence against women/gender-based violence.
- It is important to be gender-sensitive and take into consideration the intersecting factors underlying discrimination based on the manifestation of gender bias.

Patriarchy

- Patriarchy refers to the system of male dominance and female subordination.
- It is marked by discrimination, exploitation, marginalization, oppression, and subordination (DEMOS).

Gender-based violence (GBV)

- Gender-based violence is any act of violence directed against another person because of their gender.
- Gender-based violence is the most severe form of gender discrimination. It is directly linked to patriarchy. It is about ‘power relations’ and has deep cultural and historical roots.
- The subordinate position of women becomes the basis of all sorts of discrimination against them. They are considered to be ‘inferior’ to men, who then ensure that women remain confined to their traditional roles and positions.
- Gender-based violence is any act that results in physical, sexual, or psychological harm or suffering to women, men, and children. While women, men, and boys can be victims, women and girls are the main victims of GBV. It takes place in the home, community, place of employment, or broader society and is perpetrated by loved ones, acquaintances, or strangers.
- Gender-based violence has many forms: those which result in physical and sexual abuse, and those which are relatively ‘hidden’ but have a damaging effect on the levels of self-esteem and dignity of persons.

- d) Connect the earlier discussions on the foundational principles of gender with the concepts of gender sensitivity and gender responsiveness. Explain what gender sensitivity and gender responsiveness are.

What is gender sensitivity?

- Gender sensitivity refers to the ability and willingness to perceive the existing gender issues, gaps, and inequalities.
- It means to be sensitive to the different situations and needs of persons to be able to accommodate aspects of relations in their social and cultural contexts in order to promote gender equality and eliminate gender discrimination.

What is gender-responsiveness?

- Gender-responsiveness means addressing the different situations, roles, needs, and interests of women, men, girls, and boys in the design and implementation of activities, policies, and programs.
- A program, policy, or activity that is gender-responsive addresses gender-based barriers, respects gender differences, enables structures, systems, and methodologies to be sensitive to gender, ensures gender parity is a wider strategy to advance gender equality, and evolves to close gaps and eradicate gender-based discrimination.

- e) Ask the participants: As frontliners, how can *Lupon* and barangay officials be gender-responsive in performing their functions?

What can the *Lupon* and barangay officials do to be gender-responsive in performing their functions?

- Understand the unequal power relations between men and women and promote the equality of women and men.
- Respect the inherent worth, dignity, and rights of women.
- Be aware of underlying social intricacies or behaviors.
- Come from a place of empathy. The survivor is a person with strengths and frailties. Respect and understand the survivor's feelings, his/her psycho-social state, and his/her response to the situation. He/she should not be scolded or blamed for what happened.

Suggested Materials

1. Discrimination Law by Sandra Fredman (Chapter 1 on Equality: Concepts and Controversies & Chapter 4 on Legal Concepts: Direct, Indirect Discrimination, and Beyond)
2. Universal Declaration on Human Rights, Articles 1, 2, 4, & 7
Available at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf
3. International Covenant on Civil and Political Rights, Articles 2 & 26
Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
4. International Covenant on Economic, Social, and Cultural Rights, Article 2(3) & 3
Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
5. Convention on the Elimination of All Forms of Discrimination Against Women
Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>
6. CEDAW General Recommendation No. 19 on Violence Against Women
Available at: <https://www.un.org/womenwatch/daw/cedaw/recommendations/>

- [recomm.htm#recom19](#)
7. CEDAW General Recommendation No. 35 on Gender-based Violence Against Women (Updating GR No. 19)
Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based>
 8. *Garcia v. Drilon*, G.R. No. 179267, June 25, 2013
Available at: https://lawphil.net/judjuris/juri2013/jun2013/gr_179267_2013.html

References

See Annex E (What Makes a Gender-Responsive Katarungang Pambarangay?) at page page 108.

SESSION 2: SALIENT LAWS ON GENDER

The 1987 Philippine Constitution protects the human rights of all Filipinos. Article II, Section 14 of the 1987 Constitution provides that the State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men. This session discusses the gender legal and policy framework in support of women's rights as well as the salient laws on gender.

Session objectives

At the end of the session, the participants should be able to:

1. Identify and explain the fundamental rights of women and the responsibilities of the state to promote, protect, and respect these rights; and
2. Discuss the salient features of R.A. No. 7877 (Anti-Sexual Harassment), R.A. No. 9262 (Anti-Violence Against Women and their Children), R.A. No. 9710 (Magna Carta for Women), and R.A. No. 11313 (Safe Spaces).

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour and 30 minutes

	Group Size	Recommended Duration	Materials
1 Group Activity	All participants in plenary	20 minutes	Metacards, Manila paper, markers,
2 Input	All participants in plenary	40 minutes	masking tape,
3 Simulation	All participants in plenary	30 minutes	Laptop, Powerpoint presentation, and multimedia projector



Key learnings

- The Philippines has comprehensive laws that promote and protect women's rights and forward gender equality (i.e., the equality of men and women and their right to enjoy equal conditions realizing their full human potential to contribute to and benefit from the results of development).
- R.A. No. 7877 or the Anti-Sexual Harassment Act was the first criminal statute enacted in the Philippines to penalize sexual harassment. The concept of sexual harassment began in the context of unwanted sexual relations imposed by superiors on subordinates in the workplace and in education or training.
- R.A. No. 9262 or the Anti-Violence against Women and Children (VAWC) Act aims to address the discrimination brought about by biases and prejudices and violence committed against women and children as they are usually the victims due to unequal power relations between men and women.
- R.A. No. 9710 or the Magna Carta of Woman is the primary law on women's rights, seeking to eliminate discrimination against women and forward the rights of women.
- R.A. No. 11313 or the Safe Spaces Act provides protective measures and prescribes penalties to stop gender-based sexual harassment (GBSH). The Safe Spaces Act aims to achieve equality, security, and safety not only in private but also on the streets, in public spaces, online, workplaces, and in educational and training institutions.

- All forms of amicable settlement under the Katarungang Pambarangay such as mediation, conciliation, and arbitration shall not apply to cases of Workplace and Education or Training-Related Sexual Harassment and VAWC.

Suggested Session Outline

This session will consist of three (3) parts and will be undertaken as follows:

1. Group Activity

(The activity aims to identify the many forms of gender-based violence, including its causes and consequences, and recognize that gender inequality is the root cause of gender-based violence.)

Activity 13: Gender-Based Violence Tree

Procedures:

- 1) Ask participants what they think of when they hear the term, “Gender-Based Violence”? Explain that gender-based violence is physical, mental, or social abuse that is directed against a person on the basis of gender.
- 2) Ask participants to identify some forms of gender-based violence. Draw a simple tree on the Manila paper. Use only the top 2/3 of the page and leave the bottom 1/3 for contributing factors/causes which will be filled in later.
- 3) As participants identify different forms of gender-based violence, list each example at the trunk of the tree. Encourage all ideas and examples.
 - Some forms of gender-based violence that should be identified: Sexual assault, rape, attempted rape, trafficking, prostitution, sexual harassment, manipulation within the home, the workplace, or schools, domestic violence, emotional abuse, pornography, harmful traditional practices, and early/forced marriage, among others.

Processing:

- 1) Use of the following guide questions:
 - a) How do you find the activity?
 - b) As a *Lupon* or barangay official, why do we need to know when the rights of women and people of diverse SOGIESC are violated?

2. Input

- a) Summarize the outputs and link to the inputs from the previous session.
- b) Make sure that all forms of gender-based violence are covered. Connect with the preliminary session. It is also important to explain that men and boys can also be the target of abuse and violence, but that women and girls are affected disproportionately. It is therefore important to integrate a gender perspective into efforts to effectively prevent and respond to discrimination, abuse, and violence.
 - This means looking at what causes gender-based violence and analyzing what happens to women and girls because of gender discrimination. It is important to stress that discrimination and abuse is one form of gender-based violence.
 - GBV affects the entire community, including families and the communities, workplaces, schools, and broader society.
- c) What are salient laws on gender or relating to women and people of diverse SOGIE?

R.A. No. 7877 (Anti-Sexual Harassment)	
Year enacted	1995
Policy	The State shall: <ol style="list-style-type: none"> 1. value the dignity of every individual; 2. enhance the development of its human resources; 3. guarantee full respect for human rights; and 4. uphold the dignity of workers, employees, applicants for employment, students, or those undergoing training, instruction, or education.⁷⁵
Coverage	Limited to sexual harassment in the context of a work, education, and training-related environment. ⁷⁶
Punishable Acts or Crimes	Sexual harassment may either be: (1) work-related sexual harassment ⁷⁷ ; or (2) education or training-related sexual harassment ⁷⁸ . <i>The law also punishes (1) any person who directs or induces another to commit any act of sexual harassment; or (2) any person who cooperates in the commission thereof by another without which it would not have been committed.</i> ⁷⁹
Penalties	Imprisonment of not less than one (1) month nor more than six (6) months or a fine of not less than Php 10,000 nor more than Php 20,000, or both such fine and imprisonment at the discretion of the court. ⁸⁰
Prescriptive period	3 years. ⁸¹
Subject to KP?	No.

75 An Act to Declaring Sexual Harassment Unlawful in the Employment, Education, or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995), § 2.

76 Sexual harassment requires three (3) elements for an accused to be convicted:

- (1) that the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person has authority, influence, or moral-ascendancy over another;
- (2) the authority, influence, or moral ascendancy exists in a work-related, training-related, or education-related environment; and
- (3) the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who has authority, influence, or moral-ascendancy over another makes a demand, request, or requirement of a sexual favor.

77 Anti-Sexual Harassment Act of 1995, § 3. Work-related sexual harassment is committed when:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive, or diminish employment opportunities or otherwise adversely affect said employee;
- (2) The above acts would impair the employee's rights or privileges under existing labor laws; or
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

78 Anti-Sexual Harassment Act of 1995, § 3. Education or training-related sexual harassment is committed against: (1) one who is under the care, custody or supervision of the offender; or (2) one whose whose education, training, apprenticeship or tutorship is entrusted to the offender. It occurs when:

- (1) when the sexual favor is made a condition to giving a passing grade, or granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
- (2) when the sexual advances result in an intimidating, hostile, or offensive environment for the student, trainee, or apprentice.

79 Anti-Sexual Harassment Act of 1995, § 3.

80 Anti-Sexual Harassment Act of 1995, § 7.

81 Anti-Sexual Harassment Act of 1995, § 7.

R.A. No. 9262 (Anti-Violence Against Women and their Children)	
Year enacted	2004
Policy	The State shall: <ol style="list-style-type: none"> 1. value the dignity of women and children; 2. guarantee full respect for human rights; and 3. recognize the need to protect the family and its members, particularly women and children, from violence and threats to their personal safety and security; and 4. exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and other international human rights instruments of which the Philippines is a party.⁸²
Coverage	Limited to acts or series of acts in the context of a sexual or dating relationship. VAWC includes: (1) physical violence ⁸³ ; (2) sexual violence ⁸⁴ ; (3) psychological violence ⁸⁵ ; and (4) economic abuse. ⁸⁶

82 An Act to Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262 (2004), § 2.

83 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (A). Section 3 (a) (A) states that:

SECTION. 3. Definition of Terms.- As used in this Act: X X X A. "Physical Violence" refers to acts that include bodily or physical harm;

84 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (B) (a) to (c). Section 3 (a) (B) (a) to (c) states that:

SECTION. 3. Definition of Terms.- As used in this Act: X X X B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

- a) Rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
- b) Acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
- c) Prostituting the woman or child.

85 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (C). Section 3 (a) (C) states that:

SECTION. 3. Definition of Terms.- As used in this Act: X X X C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children;

86 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (D) (1) to (4). Section 3 (a) (D) (1) to (4) states that:

SECTION. 3. Definition of Terms.- As used in this Act: X X X D. "Economic abuse" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. Withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
2. Deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. Destroying household property;
4. Controlling the victims' own money or properties or solely controlling the conjugal money or properties

Punishable Acts or Crimes	Violence against Women and their Children (VAWC) refers to “any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse.” ⁸⁷
Penalties	<p>1. Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.</p> <p>If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prison mayor; those constituting less serious physical injuries shall be punished by prison correccional; and those constituting slight physical injuries shall be punished by arresto mayor.</p> <p>Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.</p> <p>2. Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor; 3. Acts falling under Section 5(e) shall be punished by prison correccional; 4. Acts falling under Section 5(f) shall be punished by arresto mayor; 5. Acts falling under Section 5(g) shall be punished by prison mayor; and 6. Acts falling under Section 5(h) and Section 5(i) shall be punished by prison mayor.</p> <p>If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed.</p> <p>In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than Php 100,000 but not more than Php 300,000; as well as (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.</p>
Prescriptive period	<p>Acts falling under Sections 5(a) to 5(f) shall prescribe in 20 years.</p> <p>Acts falling under Sections 5(g) to 5(l) shall prescribe in 10 years.⁸⁸</p>
Subject to KP?	No.

87 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a).

88 Anti-Violence Against Women and Their Children Act of 2004, § 24.

R.A. No. 9710 (Magna Carta for Women)	
Year enacted	2009
Policy	The State shall: <ol style="list-style-type: none"> 1. recognize the economic, political, and sociocultural realities affect women's current condition; 2. affirms the role of women in nation building; 3. ensures the substantive equality of women and men; 4. promote empowerment of women and pursue equal opportunities for women and men; 5. ensure equal access to resources and to development results and outcome; and 6. realize that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality.⁸⁹
Coverage	Covers the State, private sector, society in general and all individuals who are enjoined to contribute to the recognition, respect, and promotion of the rights of women. ⁹⁰
Punishable Acts or Crimes	Public and private entities and individuals found to have committed discrimination against women shall be subject to the sanctions. ⁹¹ <p>Discrimination Against Women refers to "any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.</p> <p>It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges."⁹²</p>
Penalties	Upon finding of the CHR that a department, agency, or instrumentality of government, government-owned and-controlled corporation, or local government unit has violated any provision of the Act and its implementing rules and regulations, the sanctions under administrative law, civil service, or other appropriate laws shall be recommended to the Civil Service Commission and/or the DILG. <p>If the violation is committed by a private entity or individual, the person directly responsible for the violation shall be liable to pay damages.⁹³</p>
Subject to KP?	No.

89 An Act to Providing for a Magna Carta for Women [The Magna Carta of Women], Republic Act No. 9710 (2009), § 2.

90 The Magna Carta of Women, § 5.

91 The Magna Carta of Women, § 35.

92 The Magna Carta of Women, § 4(c). Section 4(c) states that:

XXX A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices.

Provided, finally, that discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under the Act.

93 The Magna Carta of Women, § 41.

R.A. No. 11313 (Safe Spaces)	
Year enacted	2018
Policy	The State shall: <ol style="list-style-type: none"> 1. value the dignity of every human person; 2. guarantee full respect for human rights; 3. recognize the role of women in nation-building; 4. ensure the fundamental equality before the law of women and men 5. recognize that both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions.⁹⁴
Coverage	Covers gender-based sexual harassment (GBSH) not only in private but also on the streets, in public spaces, online, workplaces, and educational and training institutions. ⁹⁵
Punishable Acts or Crimes	<p>Gender-Based Sexual Harassment (GBSH) constitutes any acts that are committed through any unwarranted, unwanted, and uninvited sexual actions or remarks against any person, of any gender identity, regardless of the motive for committing such action or remarks.</p> <p>GBSH may be committed on/in:</p> <ol style="list-style-type: none"> 1. [the] Streets and Public Spaces⁹⁶; 2. Online⁹⁷; 3. [the] Workplace⁹⁸; and 4. Educational and Training Institutions.⁹⁹ <p><i>The law also punishes (1) non-implementation of employers' or school heads' duties; or (2) the failure to act on reported acts of GBSH committed in the workplace or educational institution.</i></p>
Penalties	<ol style="list-style-type: none"> 1. For acts such as cursing, wolf-whistling, catcalling, leering and intrusive gazing, taunting, pursing, unwanted invitations, misogynistic, transphobic, homophobic, and sexist slurs, persistent unwanted comments on one's appearance, relentless requests for one's personal details such as name, contact and social media details or destination, the use of words, gestures or actions that ridicule on the basis of sex, gender or sexual orientation, identity and/or expression including sexist, homophobic, and transphobic statements and slurs, the persistent telling of sexual jokes, use of sexual names, comments and demands, and any statement that has made an invasion on a person's personal space or threatens the person's sense of personal safety – <ol style="list-style-type: none"> (1) The first offense shall be punished by a fine of Php 1,000 and community service of 12 hours inclusive of attendance to a Gender Sensitivity Seminar to be conducted by the PNP in coordination with the LGU and the Philippine Commission of Women (PCW);

94 An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor [Safe Spaces Act], Republic Act No. 11313 (2018), § 2.

95 Safe Spaces Act, § 2.

96 Safe Spaces Act, § 4-6.

97 Safe Spaces Act, § 12.

98 Safe Spaces Act, § 16.

99 Safe Spaces Act, § 21.

	<p>(2) The second offense shall be punished by <i>arresto menor</i> or a fine of Php 3,000;</p> <p>(3) The third offense shall be punished by <i>arresto menor</i> and a fine of Php 10,000.</p> <p>2. For acts such as making offensive body gestures at someone, and exposing private parts for the sexual gratification of the perpetrator with the effect of demeaning, harassing, threatening or intimidating the offended party including flashing of private parts, public masturbation, groping, and similar lewd sexual actions –</p> <p>(1) The first offense shall be punished by a fine of Php 10,000 and community service of 12 hours inclusive of attendance to a Gender Sensitivity Seminar, to be conducted by the PNP in coordination with the LGU and the PCW;</p> <p>(2) The second offense shall be punished by <i>arresto menor</i> or a fine of Php 15,000;</p> <p>(3) The third offense shall be punished by <i>arresto mayor</i> and a fine of Php 20,000.</p> <p>3. For acts such as stalking, and any of the acts mentioned in Section 11 paragraphs (a) and (b), when accompanied by touching, pinching or brushing against the body of the offended person; or any touching, pinching, or brushing against the genitalia, face, arms, anus, groin, breasts, inner thighs, face, buttocks or any part of the victim's body even when not accompanied by acts mentioned in Section 11 paragraphs (a) and (b) –</p> <p>(1) The first offense shall be punished by <i>arresto menor</i> or a fine of Php 30,000, provided that it includes attendance in a Gender Sensitivity Seminar, to be conducted by the PNP in coordination with the LGU and the PCW;</p> <p>(2) The second offense shall be punished by <i>arresto mayor</i> or a fine of Php 50,000;</p> <p>(3) The third offense shall be punished by <i>arresto mayor</i> in its maximum period or a fine of Php 100,000.</p>
Prescriptive period	<ol style="list-style-type: none"> 1. Offenses committed under Section 11(a) shall prescribe in one (1) year; 2. Offenses committed under Section 11(b) shall prescribe in three (3) years; 3. Offenses committed under Section 11(c) shall prescribe in ten (10) years; 4. Offenses committed under Section 12 shall be imprescriptible; and 5. Offenses committed under Sections 16 and 21 shall prescribe in five (5) years.
Subject to KP?	Yes, limited to the first and second offenses of GBSH in streets and public spaces in the first degree of the Safe Spaces Act.

Suggested Materials

1. Ateneo Human Rights Center's Convention on the Elimination of All Forms of Discrimination Against Women & Women's Rights (Atty. Amparita Sta. Maria)
Available at: <https://www.youtube.com/watch?v=x469JUznsaU>
2. Convention on the Elimination of All Forms of Discrimination Against Women
Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>
3. Republic Act (R.A.) No. 7877 (Anti-Sexual Harassment Act)
Available at: https://lawphil.net/statutes/repacts/ra1995/ra_7877_1995.html
4. Republic Act (R.A.) No. 9262 (Anti-Violence Against Women and their Children)
Available at: https://lawphil.net/statutes/repacts/ra1995/ra_7877_1995.html
5. Republic Act (R.A.) No. 9710 (Magna Carta for Women)
Available at: https://lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html
6. Republic Act (R.A.) No. 11313 (Safe Spaces Act)
Available at: https://lawphil.net/statutes/repacts/ra2019/ra_11313_2019.html

References

See Annex F (Salient Laws on Gender) on page page 119. See also Annex G (Primer on Safe Spaces Act) on page page 129.

ANNEX E

WHAT MAKES A GENDER-RESPONSIVE KĀTARUNGANG PAMBARANGAY?

Difference between sex and gender

SEX	GENDER
Refers to the biological characteristics that define men and women	Refers to the traits, norms, stereotypes, and roles of men and women
Biologically determined	Differentiation between masculinity and femininity
Universal for all human beings	Constructed and reproduced through socialization in various societal institutions
	Differs within and between cultures
	Dynamic, fluid (gender not as a spectrum but <i>wheel</i>)

- **Sex** refers to the biological difference between males and females. The differences are fixed at birth. The sex differences in humans relate to menstruation, pregnancy and breastfeeding in females, and production of sperm in males, among others. It is inborn, biological, natural, and universal.
 - Attributes of sex are maleness and femaleness.
- **Gender** refers to the differentiated social roles, behavior, capacities, and emotional and social characteristics attributed to given culture to women and men.
 - Characteristics attributed to females are labeled as feminine and those attributed to males are labeled as masculine. Attributes of gender are masculinity and femininity.
 - It varies from society to society and can be changed. While most people are born either male or female, they are taught appropriate norms and behaviors - including how they should interact with others of the same or opposite sex within households, communities, and workplaces.
 - “When individuals or groups do not “fit” established gender norms they often face stigma, discriminatory practices, or social exclusion – all of which adversely affect health. It is important to be sensitive to different identities that do not necessarily fit into binary male or female sex categories.”¹⁰⁰
 - Gender is a social construct. They are learned but internalizing culturally approved ways of thinking, feeling, and behaving. Gender characteristics and relations are perpetuated by values, institutions, and practices. As such, they can be influenced and changed.

Gender roles

- Gender roles refer to learned behaviors in a society, community, or other special group or that condition in which activities, tasks, and responsibilities are perceived as male and female.
- It is the social role or behavior learned by individuals as appropriate to their gender.
 - Female gender roles are associated with femininity and traits such as being submissive, modesty, and nurturance while male gender roles are associated with the concept of

¹⁰⁰ “World Health Organization, *supra* note 74

masculinity and traits such as being assertive, dominant, and strong.

- Gender roles are affected by age, class, race, ethnicity, religion or other ideologies, economic, political, and environment. Gender roles of men and women differ among societies and can change in response to economic and social change.
- *Examples:* boys should have strong legs; women should have smooth legs; as they grow up, boys help in cars/mechanical work, while girls are expected to help in the house.

GENDER DIVISION OF LABOR	
PRODUCTIVE ROLE	REPRODUCTIVE ROLE
<ul style="list-style-type: none"> ● Work that is undertaken in exchange for money or goods. ● Includes both market production with an exchange-value, and subsistence/home production with actual use-value, and also potential exchange-value. 	<ul style="list-style-type: none"> ● Roles required to guarantee the maintenance and reproduction of the labor force. <ul style="list-style-type: none"> ○ Childcare/child-rearing chores ○ Home management ○ Family health care (e.g., sick, elderly, PWD, etc.)
COMMUNITY ROLE	
<ul style="list-style-type: none"> ● Activities undertaken primarily by women at the community level as an extension of their reproductive role to ensure the provision and maintenance of scarce resources of collective consumption, such as water, health, and education. ● This is voluntary unpaid work, undertaken in 'free' time 	

Gender stereotyping

- A gender stereotype is a generalized view or preconceived notion about attributes or characteristics, or the roles that are or ought to be possessed by or performed by men and women.
- A gender stereotype is harmful when it limits a person’s capacity to develop their personal abilities, pursue their professional careers, and/or make choices about their lives.

Gender Socialization

- Gender socialization is the process by which individuals learn how to socially behave based on gender.
- It begins at birth, intensifies during adolescence, and sometimes goes all the way up to old age.
- Sex- and gender-linked notions of how a man or woman should act is created, produced, reproduced, and maintained by social institutions.
- Through the constant socialization of these gender roles, discrimination is made acceptable and often unquestionable.

SOGIESC (Sexual Orientation, Gender Identity, Gender Expression, and Sexual Characteristics)

SEXUAL ORIENTATION	<p>Associated with whom a person is attracted to (Who am I attracted to?).</p> <ul style="list-style-type: none"> ● Heterosexual: Attracted to the opposite sex; ● Homosexual: Attracted to the same sex (i.e., gay and lesbian); ● Bisexual: Attracted to either of the two (2) sexes but not at the same time; ● Pansexual: Attracted to people regardless of gender; or ● Asexual: Not sexually attracted to anyone, but they may or may not be romantically attracted to someone.
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GENDER IDENTITY	<p>Refers to the personal and psychological concept of self or how an individual identifies as a man, a woman, or neither/either (How one sees oneself?).</p> <ul style="list-style-type: none"> ● Cisgender: When someone's gender identity aligns with sex assigned at birth; ● Transgender: When someone's gender identity does not align with the sex assigned at birth; or ● Queer: When an individual identifies as neither man nor woman or does not fit the binary notions of being a man or woman.
GENDER EXPRESSION	<p>Refers to the external manifestation of one's gender identity or relates to a person's behavior, mannerisms, interests, and appearances associated with how a society sees categories of femininity or masculinity.</p> <ul style="list-style-type: none"> ● Masculine; ● Feminine; or ● Androgynous.
SEXUAL CHARACTERISTICS	<p>Relates to a person's biological traits or the sex assigned at birth.</p> <ul style="list-style-type: none"> ● Assigned Sex at Birth (You are not born as, but assigned sex at birth.): <ol style="list-style-type: none"> (1) Male; (2) Female; or (3) Other/Intersex.

Genderbread person

The Genderbread Person v3.2 by its pronounced METROsexual.com

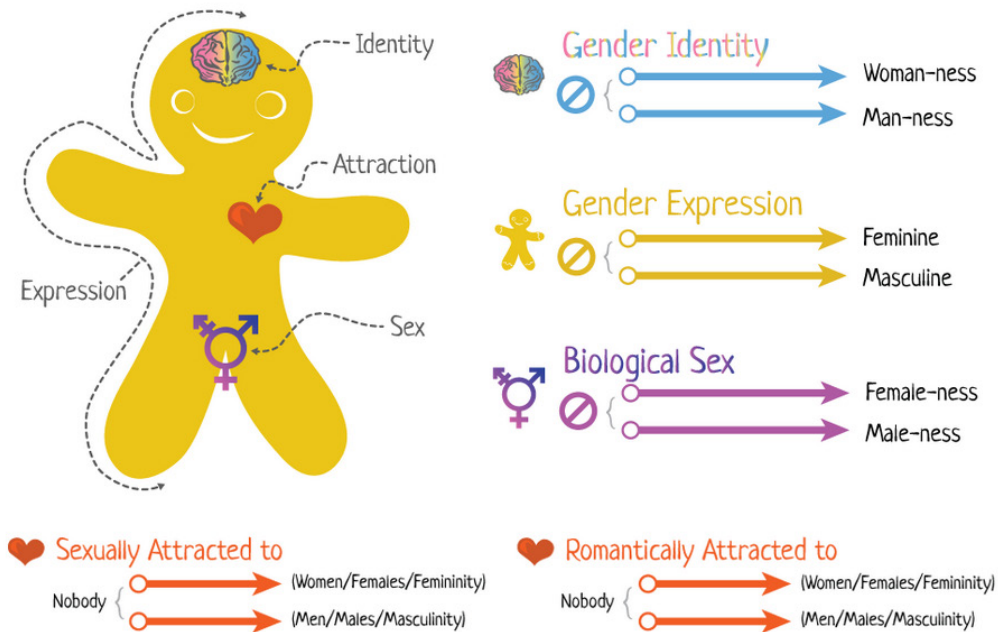


Figure F: Genderbread person (www.genderbread.org)

- Everyone has SOGIESC. All deserve equal dignity and rights.
- No one should be discriminated against on the basis of SOGIESC.
- We should be aware of how some individuals are discriminated against or excluded from the exercise of rights on the basis of SOGIESC.
- We should be aware of how SOGIESC interacts with other identities.

Gender bias

- Society prescribes specific roles for girls and boys/women and men but values them differently. This comes as a source of discrimination and inferior status of women (and people of diverse SOGIESC) in the society.
- Gender bias is manifested in economic marginalization, political subordination, multiple burdens, gender stereotyping, and violence against women/gender-based violence.

Manifestations of Gender Bias

1. *Economic Marginalization*

- Work in society is divided into reproductive and productive spheres.
- Reproductive work is considered to be women's domain and work performed is unpaid, rendered invisible, not valued, and considered secondary.
 - The tasks are related to housework, child-rearing, and family care that when carried to the economic domain manifest that women are the last to be hired and the first to be fired.
- Productive work is considered to be the domain of the man. It is paid and considered primary.

2. *Political Subordination*

- Political subordination refers to power relations where women are expected to take secondary or insignificant position, status, and decision-making roles in the family, community, and organization.
 - At home, the authority structure is generally male domain that is commonly described as "*haligi ng tahanan*." In the community leadership in the organization are commonly in the hand of man.

3. *Multiple Burdens*

- Women find themselves involved in the three (3) spheres of work: (1) reproductive; (2) productive; and (3) community work, such as parenting, housework, community work, and work in the public sphere or informal sector.
 - Women work in agriculture, fisheries, manufacturing, and various professions with the same working hours of men, but their primary concern is child care and housework. Women perform heavy workload and overlapping tasks involved, which if computed in terms of hours would total to more than 24 hours.

4. *Gender Stereotyping*

- Gender socialization is shaped by family, media, church, school, and state. Social institutions promote gender stereotyping.
- Gender stereotyping refers to the tendency or attitudes to ascribe particular traits, characteristics, and roles distinctly to men and women.

- Confusion between sex and gender gives rise to such stereotypes as:

MEN	WOMEN
Men are physically stronger; thus, they are better engineers, architects, welders, or carpenters. They are the protectors of women. They are more fit to be heads, leaders of families, business enterprises, organizations, armies, and communities.	Women are physically weak; thus, they are better sewers. They need protection from men. They are more fit to take secondary roles.

Discrimination

- Discrimination means, at a basic level, the act of separating out singular things or groups of things. It refers to unequal treatment based on a personal characteristic.
 - Where stereotypes generalize based on beliefs, discrimination is that which prevents one from accessing rights.
- **Principle of Non-discrimination and Equality**
 - Every person is entitled to his or her human rights, regardless of color, race, sex, sexuality, religion, nationality, or any other status without discrimination. This recognition is necessary and fundamental for each person to live in freedom and dignity, affirming the inherent and universal character of human rights, and is ultimately in the pursuit of equal treatment and equality.
 - As applied in the context of gender, the principle of equality and non-discrimination guarantees that those in equal circumstances are dealt with equally in law and practice. This means that individuals or groups of individuals which are in comparable situations should not be treated less favorably simply because of a particular characteristic such as their SOGIESC.
 - Substantive equality recognizes the difference - that is, the unequal power relations - and affirms the equality between men and women. This equality means equality in opportunity, in access, and in results. For equality of results to occur, women and men may need to be treated differently.

FORMAL DISCRIMINATION	SUBSTANTIVE DISCRIMINATION
Eliminating formal discrimination requires ensuring that a State's constitution, laws, and policy documents do not discriminate on prohibited grounds. e.g., laws should not deny equal social security benefits to women on the basis of their marital status	Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. e.g., ensuring that all individuals have equal access to adequate housing, water, and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.

DIRECT DISCRIMINATION	INDIRECT DISCRIMINATION
<p>Occurs when an individual is treated less favorably than another person in a similar situation for a reason related to a prohibited ground.</p> <p>e.g., where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees.</p>	<p>Refers to laws, policies, or practices which appear neutral at face value, but have a disproportionate impact on the exercise of rights as distinguished by prohibited grounds of discrimination.</p> <p>e.g., requiring a birth registration certificate for school enrollment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.</p>

Patriarchy

- Patriarchy refers to the system of male dominance and female subordination.
- It is marked by discrimination, exploitation, marginalization, oppression, and subordination (DEMOS).

Gender-based Discrimination

DIRECT	INDIRECT
<p>Discrimination, exploitation, marginalization, oppression, stigma, and subordination (DEMOS)</p> <p>Different manifestations: economic, political, sexual, etc.</p>	<p>Microaggressions - subtle, often unintentional verbal or nonverbal actions, behavior, or comments that convey negative stereotypes, prejudice, or discrimination towards a person or a group based on their race, ethnicity, gender, sexual orientation, religion, or other social identity.</p>

MICRO ASSAULTS	MICRO INSULTS	MICRO INVALIDATIONS
<p>These are conscious and intentional actions or expressions that convey discrimination, bias, or derogatory beliefs about a group. They may be subtle and indirect, but they are still hostile in nature.</p> <p>e.g., purposefully using the wrong pronouns/calling someone sweetie/honey in a professional setting</p>	<p>Subtle, often unintentional comments or behaviors that convey insensitivity, rudeness, or demean a person's social identity. They may appear to be compliments or neutral statements, but they contain hidden negative messages or stereotypes.</p> <p>e.g., "You're beautiful, you don't look like a transgender"</p>	<p>These are comments or actions that negate, dismiss, or undermine a person's experiences, feelings, or perspectives related to the social identity. They can make the person feel invisible, unimportant, or misunderstood.</p> <p>e.g., "It's because of what you're wearing" or "You're being too sensitive"</p>

- These are referred to as "micro", because they are seemingly small or insignificant, but they can accumulate and have significant negative impacts on the target individuals or groups.

Gender-based violence (GBV)

- Gender-based violence is any act of violence directed against another person because of their gender.
- Gender-based violence is the most severe form of gender discrimination. It is directly linked to patriarchy. It is about 'power relations' and has deep cultural and historical roots.

- The subordinate position of women becomes the basis of all sorts of discrimination against them. They are considered to be 'inferior' to men, who then ensure that women remain confined to their traditional roles and position.
- Gender-based violence is any act which results in physical, sexual, or psychological harm or suffering to women, men, and children. While women, men, and boys can be victims, women and girls are the main victims of GBV. It takes place in the home, community, place of employment, or broader society and is perpetrated by loved ones, acquaintances, or strangers.
- Gender-based violence has many forms: those which result in physical and sexual abuse, and those which are relatively 'hidden' but have a damaging effect on the levels of self-esteem and dignity of persons.

Forms of Gender-Based Violence

1. **Physical:** Hitting, slapping, punching, kicking, scratching, choking, pulling hair, biting, stabbing, or hitting with a weapon, cutting, burning, throwing objects, throwing gasoline or acid into the face, forcing wife to abort a child, or dowry killings.
2. **Emotional:** Insulting, belittling, scolding, jealousy or suspicion, threatening, shaming, and blaming the wife for having no children, having a girl, not raising children properly, etc., or threatening the wife for questioning the husband's extra-marital affairs.
3. **Economic:** Controlling all household spending, withholding necessary household money, wasting family money (e.g., drinking, playing cards), preventing wife from earning money, forcing wife to do work against her will, grabbing the money she has earned, forcing a wife/daughter to do excessive work, or dowry harassment, leaving a husband because he is not in gainful employment.
4. **Sexual:** Forcing a woman to have sex against her will (marital rape), forcing a partner to practice oral/anal sex, inflicting pain during sex, preventing the wife from using birth control, refusing to use a condom when a partner has concerns about sexually transmitted infections (STIs), including HIV. Sexual violence also includes rape, sexual teasing, coercion at workplaces or schools, and incest.

What is gender sensitivity?

- Gender sensitivity refers to the ability and willingness to perceive the existing gender issues, gaps, and inequalities.
- It means to be sensitive to the different situations and needs of persons to be able to accommodate aspects of relations in their social and cultural contexts in order to promote gender equality and eliminate gender discrimination.

What is gender-responsiveness?

- Gender-responsiveness means addressing the different situations, roles, needs, and interests of women, men, girls, and boys in the design and implementation of activities, policies, and programs.
- A program, policy, or activity that is gender-responsive addresses gender-based barriers, respects gender differences, enables structures, systems, and methodologies to be sensitive to gender, ensures gender parity is a wider strategy to advance gender equality, and evolves to close gaps and eradicate gender-based discrimination.

As frontliners, how can *Lupon* and barangay officials be gender-responsive in performing their functions?

- Understand the unequal power relations between men and women and promote the equality of women and men.
- Respect the inherent worth, dignity, and rights of women.
- Be aware of underlying social intricacies or behaviors.
- Come from a place of empathy. The survivor is a person with strengths and frailties. Respect and understand the survivor's feelings, his/her psycho-social state, and his/her response to the situation. He/she should not be scolded or blamed for what happened.

Pointers on the Use of Gender-Fair Language

- Language and the words we use are very powerful. They convey ideas, images, and a picture of how we see things. They can make or unmake, give life or cause death, and make others invisible in our life processes.
- Sexist language “devalues members of one sex, almost invariably women”, perpetuating stereotype notions about women and men and fosters gender inequality.
 - Example: When we say “chairman”, it doesn't bother us even if the person concerned is a woman. We accept this as normal because we believe in the generic character of the word “man.”

Guidelines on the Use of Gender-Fair Language¹⁰¹

1. ELIMINATE language that excludes or renders invisible persons of another gender and/or of diverse SOGIESC
 - (1) The use of generic masculine
 - **STOP:** Using the generic term “man” and similar terms to subsume all of humanity.
 - **START:** Using gender-neutral mass nouns, e.g., people, persons, humans, human beings, and humankind; and including women in a general statement about the human condition.
 - (2) The unwarranted use of masculine pronouns
 - **STOP:** Using singular masculine pronouns unless the subject is unequivocally male.
 - **START:** Using plural nouns to avoid using third person singular pronouns or using articles (a, an, the instead of his) as substitute for pronouns.
 - (3) The use of masculine terms for professions, occupations, and roles
 - **STOP:** Using terms ending in “-man” to refer to functions that may be performed by individuals of either sex.
 - **START:** Using widely used gender-neutral forms of professions, occupations, and roles, e.g., changing “chairman” to “chairperson.”
 - (4) The use of sex-appropriated terms
 - **STOP:** Using terms as though they apply to adult males only, or are appropriate to a particular sex.
 - **START:** Using “spouses” for “wives”, “family” for “wife and child”, and similar terms.
2. ELIMINATE language that trivializes or diminishes the stature of persons of another gender and/or people with diverse SOGIESC
 - (1) The use of diminutive feminine suffixes

101 See A.M. No. 21-11-25-SC-1, February 15, 2022.

- **STOP:** Using feminine suffixes such as -ess, -ette, -trix, or -enne, which make unnecessary references to the person's sex and suggest triviality, unimportance, or inferiority of women occupying a position.
 - **START:** Using gender-neutral terms, e.g., changing "starlet" to "actor."
- (2) The use of sex-linked modifiers
- **STOP:** Using gratuitous and patronizing sex-linked adjectives and modifiers.
 - **START:** Using gender-neutral forms of occupations and/or common nouns, e.g., changing "lady doctor" and "physician."
- (3) The use of gender-linked modifiers
- **STOP:** Using gender-linked adjectives and modifiers that carry disrespectful, if not pejorative, connotations.
 - **START:** Removing references to gender identity and/or expression when irrelevant, e.g., changing "gay entertainer" to "entertainer."
3. ELIMINATE language which disparages and marginalizes persons of another gender and/or persons of diverse SOGIESC
- (1) The use of disparaging language
- **STOP:** Using antiquated terms.
 - **START:** Using non-oppressive, modern terms.
- (2) Gender stereotypes
- **STOP:** Using terms with sexist assumptions that the occupant has a particular sex or is demonstrable only by a certain sex; or using imprecise terms to identify non-binary SOGIESC.
 - **START:** Using gender-fair terms, e.g., changing "sportsmanship" to "fair play"; or conscientiously using language and terms commonly used to describe specific SOGIESC, e.g., changing "gay" to "homosexual."
4. ELIMINATE language that fosters unequal gender relations
- (1) Calling attention to a person's sex
- **STOP:** Using terms that call attention to a person's sex when not relevant for communication.
 - **START:** Using gender-neutral terms, e.g., changing "delivery boy" to "deliverer."

PRACTICAL TIPS!

- Ask how they want to be addressed and their pronouns or just refer to them by name.
- When addressing minors, refrain from using words like "little boy", "little girl", "hijo/iho", "hija/iha." Instead, use their first names or nicknames, if known, to put them at ease and to avoid diminutive references.
- Refrain from any act or proceeding that will demean, embarrass, humiliate, or degrade any party by reason of gender.
- Refrain from perpetuating gender stereotypes.
- Avoid comments on or insinuations related to physical appearance that may draw unwanted attention to one's gender.
- Gender insensitive acts or omissions committed in one's presence should be courteously but discreetly corrected in the most respectful manner.

Ensuring Prompt, Effective, and Survivor-Centered Response to Gender-Based Violence¹⁰²

- At the outset, all of the *Lupon* and barangay officials' responses should include as a key component ensuring effective, prompt, survivor-centered response and interventions to cases of GBV.
 - Barangays should adopt a strategy in providing necessary support and temporary shelter for women and girls or persons of diverse SOGIESC who are at risk of violence or are already victims of violence.
 - This includes providing transportation and legal assistance in case of reporting, assistance in securing medico-legal certificates, and designating temporary shelters in the Barangay or in the City or Municipality for GBV survivors and their children. Referral to psychological support through an updated referral mechanism should remain available.
- LGUs and PNP should consider adopting strategies in monitoring households with previously reported GBV cases.
- LGUs and PNP should widely disseminate updated referral pathways and hotline numbers.
- Explore the possibility of maximizing the use of television and radio networks, print, and social media channels, and other online mechanisms to augment GBV referral, reporting, and information dissemination.
- To ensure compliance with previous directives and advisories and of domestic laws mandating specific action on the part of the Barangay and other GBV frontliners that LGUs should establish clear complaints mechanisms in case of inaction or refusal to process reports on GBV.

TRAUMA INFORMED CARE

- What happened to this person?
- Beware of possible triggers.
- Be conscious of the phrasing of questions.
- Select a supportive tone.
- Use open-ended questions.

IMPORTANT!

Some women, due to their specific needs and context, face multiple and intersecting vulnerabilities. According protection to women does not mean providing uniform intervention for all women. It requires paying attention and addressing specific vulnerabilities to ensure protection and full enjoyment of rights.

Pointers in Working with Survivors

Steps to be taken during the intake interview:

1. **Identify the state of mind of the survivor.**

- The girl/woman survivor most often is in a state of crisis as manifested by:
 - (1) Temporary loss of self-control, state of shock, hysteria;
 - (2) Fear of her own safety and safety of her children and/or family members;
 - (3) Anxiety, worry, and fear that the male perpetrator would find out she sought help; and
 - (4) Defensive, insecurity, and distrust.

¹⁰² See Joint Memorandum Circular 2020-01, July 15, 2020.

2. **Create a safe environment and stabilize the survivor.**

- Provide a room/place with privacy.
- Offer water, food, and first aid (if needed).
- Ensure that the perpetrator is not present or is at safe distance from the place of the interview.
- Let the survivor decide whether to be interviewed alone or in the presence of a relative or friend.
- Show sincere concern and compassion for her. Do not blame her or add to her feelings of inadequacy, guilt, failure, incompetence, and other negative emotions.
- Assure her of the confidentiality of information.
- Allow and respect her own pace of disclosure.

3. **Conduct a gender-sensitive interview.**

- Ensure that the interviewer is a woman who will show respect and compassion towards the survivor.
- Make her feel welcome. Stand up, have her seated first, then sit down in a slanted position facing her, and introduce oneself. Personal body space can vary from six (6) inches to three (3) feet. If there are other chairs in the room, let her choose where she would like to be seated.
- Allow the survivor to tell her story and express her emotions. Avoid interruptions.
- Use active listening. Concentrate exclusively on what the survivor is saying.
- Use active observation.
- Use casual eye contact.
- Use words that are clear, simple, and easily understood.
- Maintain a non-judgmental attitude. Avoid making swift conclusion followed by dispensing advice regarding the survivor's situation.
- Control your emotions so that your reactions do not inhibit the survivor.
- After the interview, stand up and usher the survivor outside respectfully.
- Properly document the interview immediately to ensure that important and necessary details are noted.

4. **Take immediate responsive action/referral**

- Attend to emergency cases based on existing protocols. Avoid re-victimization of survivors.
- Prepare a safety plan or a contingency plan for the woman/girl survivor in case of a life-threatening and escalated violent behavior of the perpetrator.

ANNEX F SALIENT LAWS ON GENDER

Constitutional Bases

- The State values the dignity of every human person and guarantees full respect for human rights (Article II, Section 11, 1987 Constitution).
- The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men (Article II, Section 14, 1987 Constitution).

Summary of Salient Laws on Genders or Relating to Women and People of Diverse SOGIESC

R.A. No. 7877 (Anti-Sexual Harassment)	
Year enacted	1995
Policy	The State shall: <ol style="list-style-type: none"> 1. value the dignity of every individual; 2. enhance the development of its human resources; 3. guarantee full respect for human rights; and 4. uphold the dignity of workers, employees, applicants for employment, students, or those undergoing training, instruction, or education.¹⁰³
Coverage	Limited to sexual harassment in the context of a work, education, and training-related environment. ¹⁰⁴
Punishable Acts or Crimes	Sexual harassment may either be: (1) work-related sexual harassment ¹⁰⁵ ; or (2) education or training-related sexual harassment ¹⁰⁶ . <i>The law also punishes (1) any person who directs or induces another to commit any act of sexual harassment; or (2) any person who cooperates in the commission thereof by another without which it would not have been committed.</i> ¹⁰⁷

103 Anti-Sexual Harassment Act of 1995, § 2.

104 Sexual harassment requires three (3) elements for an accused to be convicted:

- (1) that the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person has authority, influence, or moral-ascendancy over another;
- (2) the authority, influence, or moral ascendancy exists in a work-related, training-related, or education-related environment; and
- (3) the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who has authority, influence, or moral-ascendancy over another makes a demand, request, or requirement of a sexual favor.

105 Anti-Sexual Harassment Act of 1995, § 3. Work-related sexual harassment is committed when:

- (1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive, or diminish employment opportunities or otherwise adversely affect said employee;
- (2) The above acts would impair the employee’s rights or privileges under existing labor laws; or
- (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

106 Anti-Sexual Harassment Act of 1995, § 3. Education or training-related sexual harassment is committed against: (1) one who is under the care, custody or supervision of the offender; or (2) one whose whose education, training, apprenticeship or tutorship is entrusted to the offender. It occurs when:

- (1) when the sexual favor is made a condition to giving a passing grade, or granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
- (2) when the sexual advances result in an intimidating, hostile, or offensive environment for the student, trainee, or apprentice.

107 Anti-Sexual Harassment Act of 1995, § 3.

Penalties	Imprisonment of not less than one (1) month nor more than six (6) months or a fine of not less than Php 10,000 nor more than Php 20,000, or both such fine and imprisonment at the discretion of the court. ¹⁰⁸
Prescriptive period	3 years. ¹⁰⁹
Subject to KP?	No.

R.A. No. 9262 (Anti-Violence Against Women and Children)

R.A. No. 9262 (Anti-Violence Against Women and their Children)	
Year enacted	2004
Policy	<p>The State shall:</p> <ol style="list-style-type: none"> 1. value the dignity of women and children; 2. guarantee full respect for human rights; and 3. recognize the need to protect the family and its members, particularly women and children, from violence and threats to their personal safety and security; and 4. exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and other international human rights instruments of which the Philippines is a party.¹¹⁰

108 Anti-Sexual Harassment Act of 1995, § 7.

109 Anti-Sexual Harassment Act of 1995, § 7.

110 Anti-Violence Against Women and Their Children Act of 2004, § 2.

Coverage	<p>Limited to acts or series of acts in the context of a sexual or dating relationship.</p> <p>VAWC includes: (1) physical violence¹¹¹; (2) sexual violence¹¹²; (3) psychological violence¹¹³; and (4) economic abuse.¹¹⁴</p>
Punishable Acts or Crimes	<p>Violence against Women and their Children (VAWC) refers to “any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse.”¹¹⁵</p>

111 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (A). Section 3 (a) (A) states that:
SECTION. 3. Definition of Terms.- As used in this Act: X X X A. “Physical Violence” refers to acts that include bodily or physical harm;

112 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (B) (a) to (c). Section 3 (a) (B) (a) to (c) states that:
SECTION. 3. Definition of Terms.- As used in this Act: X X X B. “Sexual violence” refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
a) Rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
b) Acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
c) Prostituting the woman or child.

113 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (C). Section 3 (a) (C) states that:
SECTION. 3. Definition of Terms.- As used in this Act: X X X C. “Psychological violence” refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children;

114 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (D) (1) to (4). Section 3 (a) (D) (1) to (4) states that:
SECTION. 3. Definition of Terms.- As used in this Act: X X X D. “Economic abuse” refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:
1. Withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
2. Deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. Destroying household property;
4. Controlling the victims’ own money or properties or solely controlling the conjugal money or properties

115 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a).

Penalties	<p>1. Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.</p> <p>If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of <i>prision mayor</i>; those constituting less serious physical injuries shall be punished by <i>prision correccional</i>; and those constituting slight physical injuries shall be punished by <i>arresto mayor</i>.</p> <p>2. Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than <i>arresto mayor</i>.</p> <p>3. Acts falling under Section 5(c) and 5(d) shall be punished by <i>arresto mayor</i>;</p> <p>4. Acts falling under Section 5(e) shall be punished by <i>prision correccional</i>;</p> <p>5. Acts falling under Section 5(f) shall be punished by <i>arresto mayor</i>;</p> <p>6. Acts falling under Section 5(g) shall be punished by <i>prision mayor</i>; and</p> <p>7. Acts falling under Section 5(h) and Section 5(i) shall be punished by <i>prision mayor</i>.</p> <p>If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed.</p> <p>In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than Php 100,000 but not more than Php 300,000; as well as (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.</p>
Prescriptive period	<p>Acts falling under Sections 5(a) to 5(f) shall prescribe in 20 years.</p> <p>Acts falling under Sections 5(g) to 5(l) shall prescribe in 10 years.¹¹⁶</p>
Subject to KP?	No.

Violence Against Women and Their Children (VAWC)

- Violence against Women and their Children (VAWC) refers to “any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.”¹¹⁷
- VAWC includes but is not limited to: (1) physical violence; (2) sexual violence; (3) psychological violence; and (4) economic abuse.

¹¹⁶ Anti-Violence Against Women and Their Children Act of 2004, § 24.

¹¹⁷ Anti-Violence Against Women and Their Children Act of 2004, § 3.

The Anti-VAWC Act recognizes the unequal relations between a man and a woman in an abusive relationship where the woman is usually at a disadvantage.¹¹⁸ Thus, the law protects the woman and her children.¹¹⁹ The victim-child, who is a minor (legitimate or illegitimate) and a person aged 18 years old and above who does not have the ability to decide for herself/himself because of an emotional, physical, and mental illness can make use of the law. Furthermore, any child under the care of a woman is also protected under the law.

GARCIA VS. DRILON: Recognizing gender inequality/Upholding CEDAW

- The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. As Justice McIntyre succinctly states, “the accommodation of differences ... is the essence of true equality.”
- In 1979, the U.N. General Assembly adopted the CEDAW, which the Philippines ratified on August 5, 1981. Subsequently, the Optional Protocol to the CEDAW was also ratified by the Philippines on October 6, 2003. This Convention mandates that State parties shall accord to women equality with men before the law and shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations on the basis of equality of men and women.

118 Garcia v. Drilon, G.R. No. 179267, June 25, 2013.

119 *Id.*

ARAZA VS. PEOPLE: Marital infidelity as Psychological violence (R.A. No. 9262)

- Psychological violence is an indispensable element of violation of Section 5(i) of R.A. No. 9262. Equally essential is the element of emotional anguish and mental suffering, which are personal to the complainant. Psychological violence is the means employed by the perpetrator, while emotional anguish or mental suffering are the effects caused to or the damage sustained by the offended party. The law does not require proof that the victim became psychologically ill due to the psychological violence done by her abuser. Rather, the law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering, jurisprudence only requires that the testimony of the victim to be presented in court, as such experiences are personal to this party.

NOTE:

- It must be emphasized that under the Anti-VAWC Act, VAWC may be committed by a male or female. Women can also be liable under the law, particularly the lesbian partners/girlfriends or former partners of the victim with whom she has or had a sexual or dating relationship.
- Under the Anti-VAWC Act, the offended party may file a criminal action, or apply for a Protection Order either as an independent action or as an incident in civil or criminal action and other remedies.
- All forms of amicable settlement under the KP such as conciliation, mediation, and arbitration shall not apply to cases of VAWC.

Any citizen having personal knowledge of the circumstances involving the commission of the crime may file a complaint because VAWC is considered a public crime. Cases may be filed in the Regional Trial Court designated as a family court of the place where the crime was committed.¹²⁰

Protection Orders

- A protection order is an order issued by the Barangay or the Court to prevent further acts of violence against a woman or her child and to grant other necessary relief under the law.¹²¹
- The relief granted under a protection order serves the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life.¹²²
- There are three (3) kinds of protection orders:
 - (1) Barangay Protection Orders (BPO);¹²³

120 Anti-Violence Against Women and Their Children Act of 2004, § 7.

121 Anti-Violence Against Women and Their Children Act of 2004, § 8.

122 Anti-Violence Against Women and Their Children Act of 2004, § 8.

123 Anti-Violence Against Women and Their Children Act of 2004, § 14. Section 14 states that:

SECTION 14. Barangay Protection Orders (BPOs); Who May Issue and How. - Barangay Protection Orders (BPOs) refer to the protection order issued by the *Punong Barangay* ordering the perpetrator to desist from committing acts under Sec. 5 (a) and (b) of this Act. A *Punong Barangay* who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. If the *Punong Barangay* is unavailable to act on the application for a BPO, the application shall be acted upon by any available *Barangay Kagawad*. If the BPO is issued by a *Barangay Kagawad* the order must be accompanied by an attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time for the issuance of the BPO. BPOs shall be effective for 15 days. Immediately after the issuance of an ex parte BPO, the *Punong Barangay* or *Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any barangay official to effect is personal service. The parties may be accompanied by a non-lawyer advocate in any proceeding before the *Punong Barangay*.

- (2) Temporary Protection Orders (TPO);¹²⁴ and
- (3) Permanent Protection Orders (PPO).¹²⁵

- All TPOs and PPOs issued are enforceable anywhere in the Philippines and a violation thereof shall be punishable with a fine ranging from Php 5,000 to Php 50,000 and/or imprisonment of six (6) months.¹²⁶ It must be noted that the violation of any provision of a TPO or PPO issued shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.¹²⁷ On the other hand, a violation of a BPO shall be punishable by imprisonment of 30 days also without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.¹²⁸

Aside from providing for the security of the woman-complainant and her children through availing of the barangay, temporary or permanent protection orders, the Anti-VAWC Act also identifies the duties of barangay officials, law enforcers, prosecutors, court personnel, social welfare, and health care providers, and the LGUs to provide the necessary protection and support of VAWC victims.

IMPORTANT!

All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential and all public officers and employees and public or private clinics to hospitals shall respect the right to privacy of the victim.

R.A. No. 9710 (Magna Carta for Women)

¹²⁴ Anti-Violence Against Women and Their Children Act of 2004, § 15. Section 15 states that:

SECTION. 15. Temporary Protection Orders. – Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after ex parte determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for 30 days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

¹²⁵ Anti-Violence Against Women and Their Children Act of 2004, § 16. Section 16 states that:

SECTION 16. Permanent Protection Orders. – Permanent Protection Order (PPO) refers to protection order issued by the court after notice and hearing. Respondents non-appearance despite proper notice, or his lack of a lawyer, or the non-availability of his lawyer shall not be a ground for rescheduling or postponing the hearing on the merits of the issuance of a PPO. If the respondents appears without counsel on the date of the hearing on the PPO, the court shall appoint a lawyer for the respondent and immediately proceed with the hearing. In case the respondent fails to appear despite proper notice, the court shall allow ex parte presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the applicant is made. The court shall, to the extent possible, conduct the hearing on the merits of the issuance of a PPO in 1 day. Where the court is unable to conduct the hearing within 1 day and the TPO issued is due to expire, the court shall continuously extend or renew the TPO for a period of 30 days at each particular time until final judgment is issued. The extended or renewed TPO may be modified by the court as may be necessary or applicable to address the needs of the applicant. The court may grant any, some or all of the reliefs specified in Sec. 8 hereof in a PPO. A PPO shall be effective until revoked by a court upon application of the person in whose favor the order was issued. The court shall ensure immediate personal service of the PPO on respondent. The court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application. Regardless of the conviction or acquittal of the respondent, the Court must determine whether or not the PPO shall become final. Even in a dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.

¹²⁶ Anti-Violence Against Women and Their Children Act of 2004, § 12.

¹²⁷ Anti-Violence Against Women and Their Children Act of 2004, § 21.

¹²⁸ Anti-Violence Against Women and Their Children Act of 2004, § 21.

R.A. No. 9710 (Magna Carta for Women)	
Year enacted	2009
Policy	The State shall: <ol style="list-style-type: none"> 1. Recognize the economic, political, and sociocultural realities affect women's current condition; 2. Affirms the role of women in nation building; 3. Ensures the substantive equality of women and men; 4. Promote empowerment of women and pursue equal opportunities for women and men; 5. Ensure equal access to resources and to development results and outcome; and 6. Realize that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality.¹²⁹
Coverage	Covers the State, private sector, society in general and all individuals who are enjoined to contribute to the recognition, respect, and promotion of the rights of women. ¹³⁰
Punishable Acts or Crimes	Public and private entities and individuals found to have committed discrimination against women shall be subject to the sanctions. ¹³¹ <p>Discrimination Against Women refers to "any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges."¹³²</p>
Penalties	Upon finding of the CHR that a department, agency, or instrumentality of government, government-owned and-controlled corporation, or local government unit has violated any provision of the Act and its implementing rules and regulations, the sanctions under administrative law, civil service, or other appropriate laws shall be recommended to the Civil Service Commission and/or the DILG. <p>If the violation is committed by a private entity or individual, the person directly responsible for the violation shall be liable to pay damages.¹³³</p>
Subject to KP?	No.

- RA 9710 or the *Magna Carta of Women* recognizes women's rights as human rights. It is the Philippines' comprehensive women's human rights law that seeks to eliminate discrimination against women and forward the rights of women. Towards this end, the Magna Carta of Women enjoins the State, private sector, society in general and all individuals to contribute to the recognition, respect, and

129 The Magna Carta of Women, § 2.

130 The Magna Carta of Women, § 5.

131 The Magna Carta of Women, § 35.

132 The Magna Carta of Women, § 4(c). Section 4(c) states that:

XXX A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices.

Provided, finally, that discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under the Act.

133 The Magna Carta of Women, § 41.

promotion of the rights of women.

- The Magna Carta of Women specifies that the State, as a duty bearer, shall ensure that all women are protected from all forms of violence. This means that all government offices, including local government units (LGUs), government-owned and controlled corporations (GOCCs), and the *Lupon* and barangay officials shall:
 - (1) refrain from discriminating against women and violating their rights;
 - (2) protect women against discrimination and from violation of their rights by private corporations, entities, and individuals; and
 - (3) promote and fulfill the rights of women in all spheres, including their rights to substantive equality and non-discrimination.
 - Agencies of the government thus shall give priority to the defense and protection of women against gender-based offenses and help women attain justice and healing.¹³⁴
 - Among the measures provided for under the law are: (1) increase in the recruitment and training of women in the police force, forensics, and other services availed of by women who are victims of gender-related offenses; (2) right to protection and security in situations of armed conflict and militarization; (3) mandatory training on human rights and gender sensitivity; and (4) the institutionalization of a Violence Against Women's Desk in every barangay.¹³⁵

Discrimination Against Women

- Discrimination against women refers to any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
- It is also any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges.

Rights of women under the Magna Carta

1. Protection from all forms of violence, including those committed by the State;
2. Protection and security in times of disaster, calamities, and other crisis situations;
3. Participation and representation;
4. Equal treatment before the law;
5. Equal access and elimination of discrimination against women in education, scholarships, and training;
6. Equal participation in sports;
7. Non-discrimination in employment in the field of military, police, and other similar services;
8. Non-discriminatory and non-derogatory portrayal of women in media and film;
9. Comprehensive health services and health information and education; and
10. Leave benefits.

R.A. No. 11648 (Raising Age of Sexual Consent)

134 The Magna Carta of Women, § 9.

135 The Magna Carta of Women, § 9.

- By a person having carnal knowledge of another person
- Circumstances: force, threat, intimidation, fraudulent machinations, otherwise unconscious
- When the offended party is under 16 years or is demented
- Provided: no criminal liability
 - when age between parties is not more than 3 years
 - sexual act in question is proven to be consensual, non-abusive, and non-exploitative
- This exception for victims under 13 years old

Evolving SC Decisions on Rape: Resistance and Consent

- “[R]esistance is not an element of the crime of rape. It need not be shown by the prosecution. Neither is it necessary to convict an accused. The main element of rape is “lack of consent.” ‘Consent,’ ‘resistance,’ and ‘absence of resistance’ are different things. Consent implies agreement and voluntariness. It implies willfulness. Similarly, resistance is an act of will. However, it implies the opposite of consent. It implies disagreement.” (People v. Quintos 746 Phil. 809 (2014) [Per J. Leonen, Second Division])
- “The Philippines, as State Party to the CEDAW, recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. One of such measures is R.A. No. 8353 insofar as it eradicated the archaic notion that marital rape cannot exist because a husband has absolute proprietary rights over his wife’s body and thus her consent to every act of sexual intimacy with him is always obligatory or at least, presumed.” (People v. Jumawan 746 Phil. 809 (2014) [Per J. Leonen, Second Division])

IPRA cannot be invoked to evade criminal prosecution for Rape

Datu Malingin vs. SPO3 Sandagan et. al [G.R. No. 240056, October 12, 2020]

- Invocation of the provisions of RA 8371 (IPRA) is insufficient to evade criminal prosecution; Penal laws apply without regard to his/her ICC membership.
- Indictment for Rape has nothing to do with his purported membership in an ICC, but by reason of his alleged acts that is covered by the RPC.

Datu Tawahig vs. Lapid, [G.R. No. 221139, March 2019]

- To yield criminal prosecution would be to disregard the State and the Filipino people as the objects of criminal offenses.
- Yielding prosecution would mean sanctioning a miscarriage of justice; Not IPRA intent to facilitate miscarriage of justice.

ANNEX G PRIMER ON SAFE SPACES ACT

PART 1: FOUNDATIONAL CONCEPTS AND OVERVIEW OF THE ANTI-SEXUAL HARASSMENT ACTS AND SAFE SPACES ACT

Q: What is sexual harassment?

A: Republic Act (R.A.) No. 7877 otherwise known as the *Anti-Sexual Harassment Act* defines Work, Education, or Training-related Sexual Harassment as:

1. Committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person;
2. [Who] Having authority, influence, or moral ascendancy over another in a work or training or education environment; [and]
3. Demands, requests, or otherwise requires any sexual favor from the other, regardless of whether the demand, request, or requirement for submission is accepted by the object of said act.¹³⁶

Q: How is sexual harassment committed?

A: The Anti-Sexual Harassment Act distinguishes between work-related and education/training-related sexual harassment, as follows¹³⁷:

WORK-RELATED SEXUAL HARASSMENT	EDUCATION OR TRAINING-RELATED SEXUAL HARASSMENT
<p>Work-related sexual harassment is committed when:</p> <p>(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment, or continued employment of said individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges or the refusal to grant the sexual favor results in limiting, segregating, or classifying the employee which in any way would discriminate, deprive, or diminish employment opportunities or otherwise adversely affect said employee;</p> <p>(2) The above acts would impair the employee's rights or privileges under existing labor laws; or</p> <p>(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.</p>	<p>Education or Training-related sexual harassment is committed against:</p> <p>(1) One who is under the care, custody or supervision of the offender; or</p> <p>(2) One whose education, training, apprenticeship, or tutorship is entrusted to the offender.</p> <p>Education or Training-related sexual harassment is committed when:</p> <p>(1) When the sexual favor is made a condition to giving a passing grade, or granting of honors and scholarships, or the payment of a stipend, allowance, or other benefits, privileges, or considerations; or</p> <p>(2) When the sexual advances result in an intimidating, hostile, or offensive environment for the student, trainee, or apprentice.</p>

¹³⁶ Anti-Sexual Harassment Act of 1995, § 3.

¹³⁷ Anti-Sexual Harassment Act of 1995, § 3.

Q: What are the other acts punishable under the Anti-Sexual Harassment Act?

A: These are:

1. Any person who directs or induces another to commit any act of sexual harassment; or
2. Any person who cooperates in the commission thereof by another.¹³⁸

Q: Can a case of sexual harassment prosper between co-employees or co-classmates/trainees?

A: No, what the Anti-Sexual Harassment Act contemplates is a situation when the offender is one who, having authority, influence or moral ascendancy over another.

Q: Is sexual harassment exclusive to women victims?

A: No, the Anti-Sexual Harassment Act does not distinguish. Both men and women can be victims of sexual harassment.

Q: What is the Safe Spaces Act?

A: Republic Act (R.A.) No. 11313 or the Safe Spaces Act otherwise known as *Bawal Bastos Law* provides protective measures and prescribes penalties to stop gender-based sexual harassment (GBSH). The Bawal Bastos Law aims to achieve equality, security, and safety not only in private but also on the streets, in public spaces, online, workplaces, and educational and training institutions.¹³⁹

Q: What is the difference between the Anti-Sexual Harassment Act and the Safe Spaces Act?

A: The Safe Spaces Act expands the scope of what may constitute as sexual harassment, who may commit sexual harassment, and where it may be committed.

1. The scope of what may constitute as sexual harassment is expanded under the Safe Spaces Act. In comparison to the Anti-Sexual Harassment Act which covers sexual favors specifically when made as condition for employment, rehiring, or favorable compensation or benefits in a work environment or a passing grade in class, granting honors, or scholarships in educational or training institutions, the crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.¹⁴⁰
2. The Anti-Sexual Harassment Act covers only persons in authority who could be charged as offenders. There are no provisions for harassment by subordinates or peers. Authority, influence, or moral ascendancy of the perpetrator over the offended party is no longer required to constitute sexual harassment under the Safe Spaces Act.
3. The Anti-Sexual Harassment Act covers Work, Education, and Training-related environments. The Safe Spaces Act expands this by including streets and public spaces, public utility vehicles, and even online spaces.

NOTE: The new law does not supersede the original Anti-Sexual Harassment Act. If someone's offense qualifies under both the Safe Spaces and Anti-Sexual Harassment Acts, they can be charged for counts under both laws. Offenses can also intersect other laws like the Anti-Violence Against Women and Children Act.

Q: What is gender? How is it different from sex?

A: Gender refers to a set of socially ascribed characteristics, norms, roles, attitudes, values, and expectations identifying the social behavior of men and women, and the relations between them. On the other hand, sex refers to the biological and physiological characteristics of male, female, or intersex individuals based on their reproductive organs and hormones.

138 Anti-Sexual Harassment Act of 1995, § 3.

139 Safe Spaces Act, § 2.

140 Safe Spaces Act, § 4.

Q: What is gender-based sexual harassment (GBSH)?

A: GBSH constitutes any acts that are committed through any unwarranted, unwanted, and uninvited sexual actions or remarks against any person, of any gender identity, regardless of the motive for committing such action or remarks.

Q: How is GBSH committed?

A: GBSH may be committed on/in:

1. [the] Streets and Public Spaces¹⁴¹;
2. Online¹⁴²;
3. [the] Workplace¹⁴³; and
4. Educational and Training Institutions.¹⁴⁴

PART 2: CRIMES UNDER THE SAFE SPACES ACT COVERED BY THE KATARUNGANG PAMBARANGAY**Q: What crimes under the Safe Spaces Act are covered by the Katarungang Pambarangay?**

A: The first and second offenses of GBSH in streets and public spaces in the first degree of the Safe Spaces Act are covered by the Katarungang Pambarangay.¹⁴⁵

NOTE: Katarungang Pambarangay's jurisdiction is limited by law. In general, the Katarungang Pambarangay are authorized to settle criminal offenses punishable by imprisonment not exceeding one (1) year or a fine not exceeding Php 5,000. Those exempted by law take the case(s) out of the jurisdiction of the Katarungang Pambarangay

Q: What acts constitute the first and second offenses of GBSH in the streets and public spaces? And what are their penalties?

A:

**GBSH IN THE STREETS AND PUBLIC SPACES
FIRST DEGREE (VERBAL GBSH)**

GBSH in the streets and public places in the first degree includes:

1. cursing,
2. wolf-whistling,
3. catcalling,
4. leering and intrusive gazing,
5. taunting,
6. pursing,
7. unwanted invitations,
8. misogynistic, transphobic, homophobic, and sexist slurs,
9. persistent unwanted comments on one's appearance,
10. relentless requests for one's personal details such as name, contact, and social media details or destination,
11. the use of words, gestures, or actions that ridicule on the basis of sex, gender, or sexual orientation,

141 Safe Spaces Act, § 4-6.

142 Safe Spaces Act, § 12.

143 Safe Spaces Act, § 16.

144 Safe Spaces Act, § 21.

145 Safe Spaces Act, § 11.

identity, and/or expression including sexist, homophobic, and transphobic statements and slurs,
 12. the persistent telling of sexual jokes,
 13. use of sexual names, comments, and demands, and
 14. any statement that has made an invasion of a person's personal space or threatens the person's sense of personal safety.¹⁴⁶

FIRST OFFENSE	SECOND OFFENSE
Php 1,000 fine and 12-hour community service with Gender Sensitivity Seminar	Arresto menor (6 to 10 days imprisonment) or Php 3,000 fine

Q: What crimes are not covered by the KP?

A:

1. The third offense of GBSH in the streets and public spaces in the first degree¹⁴⁷;

GBSH IN THE STREETS AND PUBLIC SPACES FIRST DEGREE
THIRD OFFENSE
Arresto mayor (1 month and 1 day to 6 months imprisonment) and Php 10,000 fine

3. GBSH in the streets and public spaces in the second degree¹⁴⁸;

GBSH IN THE STREETS AND PUBLIC SPACES SECOND DEGREE (DEMONSTRATED GBSH)		
GBSH in the streets and public places in the second degree includes: <ol style="list-style-type: none"> making offensive body gestures at someone; and exposing private parts for the sexual gratification of the perpetrator with the effect of demeaning, harassing, threatening, or intimidating the offended party including: <ol style="list-style-type: none"> flashing of private parts, public masturbation, groping, and similar lewd sexual action. 		
FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
Php 10,000 fine and 12 hour community service with Gender Sensitivity Seminar	Arresto menor (11 to 30 days imprisonment) or Php 15,000 fine	Arresto mayor (1 month and 1 day to 6 months imprisonment) and Php 20,000 fine

5. GBSH in the streets and public spaces in the third degree¹⁴⁹;

GBSH IN THE STREETS AND PUBLIC SPACES THIRD DEGREE
GBSH in the streets and public places in the third degree includes: <ol style="list-style-type: none"> stalking; any of the acts that constitute GBSH in the streets and public places in the first and second degree, when accompanied by touching, pinching, or brushing against the body of the offended person; or any touching, pinching, or brushing against the genitalia, face, arms, anus, groin, breasts, inner thighs,

146 Safe Spaces Act, § 11.

147 Safe Spaces Act, § 11 (a).

148 Safe Spaces Act, § 11 (b).

149 Safe Spaces Act, § 11(c).

face, buttocks, or any part of the victim’s body even when not accompanied by acts that constitute GBSH in the streets and public places in the first and second degree.		
FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
Arresto menor (11 to 30 days imprisonment) or Php 30,000 fine with Gender Sensitivity Seminar	Arresto mayor (1 month and 1 day to 6 months imprisonment) and Php 50,000 fine	Arresto mayor in its maximum (5 months and 11 days to 6 months imprisonment) and Php 100,000 fine

7. GBSH online¹⁵⁰;
8. GBSH in the workplace¹⁵¹; and
9. GBSH in educational and training institutions.¹⁵²

NOTE: Crimes whose maximum punishment exceeds one (1) year of imprisonment or Php 5,000 fine are not covered by the Katarungang Pambarangay.

Q: When is there a violation of the Safe Spaces Act online? What is GBSH online? And what is the penalty?

A: GBSH online includes:

1. acts that use information and communications technology in terrorizing and intimidating victims through physical, psychological and homophobic, and sexist remarks and comments online whether publicly or through direct and private messaging;
2. invasion of Victim’s privacy through cyberstalking and incessant massaging;
3. Uploading and sharing of any of the victim’s photos, videos, or any information online;
4. Impersonating identities of victims online;
5. Posting lies about victims to harm their reputation; or
6. Filing false abusive reports to online platforms to silence victims.¹⁵³

The penalty for GBSH online is *prision correccional* in its medium period (2 years, 4 months and 1 day to 4 years and 2 months imprisonment) or a fine of not less than Php 100,000 but not more than Php 500,000, or both, at the discretion of the court.¹⁵⁴

Q: Who are the implementing bodies for online GBSH?

A: The PNP Anti-Cybercrime Group (PNPACG) as the National Operational Support Unit of the PNP is primarily responsible for the implementation of pertinent Philippine laws on cybercrime, shall receive complaints of gender-based online sexual harassment and develop an online mechanism for reporting real-time gender-based online sexual harassment acts and apprehend perpetrators.

The Cybercrime Investigation and Coordinating Center (CICC) of the Department of Information and Communications Technology (DICT) shall also coordinate with the PNPACG to prepare appropriate and effective measures to monitor and penalize gender-based online sexual harassment.¹⁵⁵

Q: When are GBSH in streets, public spaces, and online considered “qualified”? What are the implications?

A: GBSH is considered qualified when any of the following circumstances are present:

1. If the act takes place in a common carrier or public utility vehicle (PUV);

150 Safe Spaces Act, § 12.
 151 Safe Spaces Act, § 16.
 152 Safe Spaces Act, § 21.
 153 Safe Spaces Act, § 12.
 154 Safe Spaces Act, § 14.
 155 Safe Spaces Act, § 13.

2. If the offended party is a minor, senior citizen, person with disability (PWD), or breastfeeding mother nursing her child;
3. If the offended party is diagnosed with a mental problem tending to impair consent;
4. If the perpetrator is a member of uniformed services and the act was done while in uniform; and
5. If the act takes place in the premises of a government agency offering frontline services to the public and the perpetrator is a government employee.

When GBSH is considered qualified, the penalty next higher in degree will be applied.¹⁵⁶

Q: How is GBSH committed in the workplace?

A: GBSH in the workplace includes:

1. An act or series of acts involving any unwelcome sexual advances, requests, or demand for sexual favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance, or opportunities;
2. A conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically, or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems; and
3. A conduct that is unwelcome and pervasive and creates an intimidating, hostile, or humiliating environment for the recipient.¹⁵⁷

Q: What other acts are punishable in relation to GBSH committed in the workplace? What are the penalties?

A: Employers may be held responsible for:

1. Non-implementation of employers' duties¹⁵⁸; or
2. Not taking action on reported acts of GBSH committed in the workplace.¹⁵⁹

¹⁵⁶ Safe Spaces Act, § 15.

¹⁵⁷ Safe Spaces Act, § 16.

¹⁵⁸ Safe Spaces Act, § 17. Section 17 provides:

Section 17. Duties of Employers. -Employers or other persons of authority, influence or moral ascendancy in a workplace shall have the duty to prevent, deter, or punish the performance of acts of gender-based sexual harassment in the workplace. Towards this end, the employer or person of authority, influence or moral ascendancy shall:

- (a) Disseminate or post in a conspicuous place a copy of this Act to all persons in the workplace;
- (b) Provide measures to prevent gender-based sexual harassment in the workplace, such as the conduct of anti-sexual harassment seminars;
- (c) Create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment which shall:
 - (1) Adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;
 - (2) Designate a woman as its head and not less than half of its members should be women;
 - (3) Be composed of members who should be impartial and not connected or related to the alleged perpetrator;
 - (4) Investigate and decide on the complaints within ten (10) days or less upon receipt thereof;
 - (5) Observe due process;
 - (6) Protect the complainant from retaliation; and
 - (7) Guarantee confidentiality to the greatest extent possible;
- (d) Provide and disseminate, in consultation with all persons in the workplace, a code of conduct or workplace policy which shall:
 - (1) Expressly reiterate the prohibition on gender-based sexual harassment;
 - (2) Describe the procedures of the internal mechanism created under Section 17(c) of this Act; and
 - (3) Set administrative penalties.

¹⁵⁹ Safe Spaces Act, § 19.

NON-IMPLEMENTATION OF EMPLOYERS' DUTIES	NOT TAKING ACTION ON REPORTED ACTS OF GBSH IN THE WORKPLACE
A fine of not less than Php 5,000 nor more than Php 10,000	A fine of not less than Php 10,000 nor more than Php 15,000

Q: What other acts are punishable in relation to GBSH committed in educational and/or training institutions? What are the penalties?

A: School heads may be held responsible for:

1. Non-implementation of school heads' duties¹⁶⁰; or
2. Failure to act on reported acts of GBSH committed in the educational institution.¹⁶¹

NON-IMPLEMENTATION OF SCHOOL HEADS' DUTIES	NOT TAKING ACTION ON REPORTED ACTS OF GBSH IN THE EDUCATIONAL INSTITUTION
A fine of not less than Php 5,000 nor more than Php 10,000	A fine of not less than Php 10,000 nor more than Php 15,000

Q: What if the person who committed the acts of GBSH in the educational institution is a minor? Is s/he liable?

A: No, minor students who are found to have committed acts of GBSH shall only be held liable for administrative sanctions by the school as stated in their school handbook.¹⁶²

Q: When do these crimes prescribe?

A: Any action arising from the violation of any of the provisions of this Act shall prescribe as follows¹⁶³:

CRIME/S	PRESCRIPTIVE PERIOD
Verbal GBSH in Streets and Public Spaces	ONE (1) year
Demonstrated GBSH in Streets and Public Spaces	THREE (3) years

¹⁶⁰ Safe Spaces Act, § 22. Section 22 provides:

Section 22. Duties of School Heads. -School heads shall have the following duties:

- (a) Disseminate or post a copy of this Act in a conspicuous place in the educational institution;
- (b) Provide measures to prevent gender-based sexual harassment in educational institutions, like information campaigns;
- (c) Create an independent internal mechanism or a CODI to investigate and address complaints of gender-based sexual harassment which shall:
 - (1) Adequately represent the school administration, the trainers, instructors, professors or coaches and students or trainees, students and parents, as the case may be;
 - (2) Designate a woman as its head and not less than half of its members should be women;
 - (3) Ensure equal representation of persons of diverse sexual orientation, identity and/or expression, in the CODI as far as practicable;
 - (4) Be composed of members who should be impartial and not connected or related to the alleged perpetrator;
 - (5) Investigate and decide on complaints within ten (10) days or less upon receipt, thereof;
 - (6) Observe due process;
 - (7) Protect the complainant from retaliation; and
 - (8) Guarantee confidentiality to the greatest extent possible.
- (d) Provide and disseminate, in consultation with all persons in the educational institution, a code of conduct or school policy which shall:
 - (1) Expressly reiterate the prohibition on gender-based sexual harassment;
 - (2) Prescribe the procedures of the internal mechanism created under this Act; and
 - (3) Set administrative penalties.

¹⁶¹ Safe Spaces Act, § 23.

¹⁶² Safe Spaces Act, § 24.

¹⁶³ Safe Spaces Act, § 36.

GBSH in Streets and Public Spaces through stalking and physical advances	TEN (10) years
Online GBSH	Imprescriptible
GBSH in the Workplace	FIVE (5) years
GBSH in Educational and Training Institutions	

Q: How can the barangay assist in confronting GBSH that do not fall under the jurisdiction of the Katarungang Pambarangay?

A: Some of the ways that the barangay can assist in addressing GBSH in general are:

1. Providing measures to prevent GBSH through information campaigns and seminars;
2. Undergoing and conducting Gender Sensitivity Training (GST);
3. Establishing an Anti-Sexual Harassment hotline or desk in all barangay halls manned by members who are knowledgeable on GBSH and the forms of assistance made available by the local government unit (LGU);
4. Receiving and recording reports/complaints and acting as a referral mechanism for complaints; and
5. Creating mechanisms for handling documentation of complaints including those covered by the KP system.

While the KP only covers the first two (2) degrees of GBSH in streets and public places, the barangay may still provide assistance to the complainants not falling under its scope by referring them to the proper offices such as PNPACG in cases of online GBSH.¹⁶⁴

¹⁶⁴ See Secs. 9 & 14, IRR of R.A. No. 11313.

MODULE 4: What is a Child-Friendly Katarungang Pambarangay?

Children are often viewed as beneficiaries of programs instead of being direct stakeholders. The barangay, being the smallest local government and the usual first responders, must be equipped with the required understanding, knowledge, and skills to ensure that the rights of children in their community are protected.

This module seeks to discuss the relevant concepts of children's rights, the laws affecting children, and the concrete steps that the Lupon and barangay officials can take when dealing with children.

PRELIMINARY SESSION

Session Objectives

At the end of the session, the participants should be able to:

1. Develop increased awareness of the possible discrimination and barriers faced by children and the need to protect them; and
2. Understand the importance of having a children's rights lens in performing their functions as *Lupon* and barangay officials in resolving conflicts at the barangay level.

Methodologies: Case study and Input

Total Recommended Duration: 30 minutes

	Group Size	Recommended Duration	Materials
1 Case study	All participants in plenary	20 minutes	Laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	10 minutes	



Key Learnings

- Barangay officials are generally one of the first responders to any calls for help within their community. The initial step that they take will significantly affect the children - whether the situation will be aggravated, addressed, or mitigated.

Suggested Session Outline

1. Case study

a) Ask the participants to read and reflect on the case study

CASE STUDY

Maria is a 15-year-old second-year high school student. She is the eldest of four (4) children. Her father, Andres works as a jeepney driver while her mother, Juana, works in a factory in the next city. Because of her parents' work schedule, Maria and her younger siblings are often left with Juana's sister, Nita, who also lives with the family. Nita relies on Maria as the eldest to help around the house and to take care of the younger children.

Unknown to Andres and Juana, Nita often screams at Maria when the younger children do not follow instructions. Nita would also pinch and hit Maria for an unexplainable reason. It is because of this experience that Maria and her siblings grew afraid of Nita.

The family's next door neighbor, Lucy, always hears the shouting and the crying from Maria's house. She also noticed the bruises on Maria's arms that Maria would automatically cover when she met Lucy outside their house.

This prompted Lucy to tell Michael, a barangay *tanod* living on the next street, everything she knows in one of her visits to Michael's house. Lucy often visits his house as she is a good friend of Michael's wife, Anna.

Three (3) weeks passed. Lucy continued to hear Nita's screaming and Maria and the other children crying. Deciding that she could not take it anymore, Lucy went straight to the barangay hall and reported what she knows to the barangay captain and secretary. The barangay captain informed Andres and Juana of the report and referred the case right away to the city social welfare office and the PNP.

b) Debrief this activity using the following questions:

1. What was the situation of the child in the case?
2. What good practices of barangay officials did you see, if any? Explain.
3. What actions of the barangay officials do you think should be changed? Why?
4. What do you think would have happened if the barangay did not take action?

2. Input

- c) Barangay officials play a big role in protecting the marginalized and vulnerable groups. Their actions can dictate what will happen to the persons involved in a dispute.
- d) Children experience challenges that are not experienced by all such as having to rely on another person for access to resources. These characteristics and challenges add layers to the children accessing the existing justice system.
- e) We have many laws protecting children. Local government units (LGUs) are starting to enact ordinances that aim to address the issues faced by the children in their community. These laws and ordinances explain the existing circumstance and cite the 1987 Constitution, and government regulations in explaining why there is a need to remedy the current situation.
- f) It is important for first responders such as the barangay to keep these child protection policies in mind, as well having an awareness of the issues that a child may face when dealing with the barangay such as, but not limited to, concerns on privacy and protection from neglect or abuse. Overall best interest of the child should be considered.

References:

See Annex H (What Makes a Child-Friendly Katarungang Pambarangay?) at page page 156.

SESSION 1: UNDERSTANDING CHILDREN'S RIGHTS

The Lupon and barangay officials should be able to handle cases of children whether as victims, witnesses, or as Children in Conflict with the Law (CICL). A child-friendly Katarungang Pambarangay requires the Lupon and barangay officials to be conscious and aware of the need to respect, promote, and protect the rights of children as they perform their duties in settling disputes.

This session aims to deepen the understanding of why Lupon and barangay officials are obliged to be child-friendly, as well as guide and enhance their skills in the implementation of children-related laws.

Session objective

At the end of the session, the participants should be able to appreciate and explain children's rights.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour and 30 minutes

	Group Size	Recommended Duration	Materials
1 Group Activity	All participants in plenary	45 minutes	Yarn, scissors, Laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	45 minutes	



Key learnings

- The definition of a child is those below 18 years of age. Philippine law expands this definition to include those over 18 but are unable to fully take care of themselves or protect themselves from abuse, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.
- Child development is dependent on inputs received from parents, caregiver, family, friends, people in the community, and his/her/their environment. Without positive inputs, the development of a child may be low.
- Children as well as adults have human rights. Children and young people are entitled to additional rights which recognize that young people have special needs to help them survive and develop to their full potential. Children also have the right to special protection because of their vulnerability to exploitation and abuse.
- Child rights are about protecting every child and creating for them an enabling environment that will help ensure that the child has reached his/her/their full potential and eventually become active citizens.
- The four (4) main pillars/categories of child rights are (1) survival, (2) development, (3) participation, and (4) protection.
- The 4 guiding principles of the Convention on the Rights of the Child (CRC) are (1) the right to life, survival, and development; (2) the best interest of the child; (3) non-discrimination; and (4) the views of the child.

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

(The activity aims to introduce the concept of children's rights, the related principles thereto, and the barriers to accessing their rights in order to understand the plight of children within the legal system.)

Activity 14: Rights Web

Procedures:

- 1) Ask the participants to stand in a circle. Hand the ball of yarn to one person. That person mentions a right and tosses one end of the yarn while holding on to the other. The recipient then names another right, holds a portion of the yarn and tosses the other end to another. Repeat the process until everyone is linked into the web.
- 2) Explain the following:
The web signifies that all children have the same rights, just like all participants hold the same yarn.
 - a) Ask two to three (2 - 3) participants to tug their string one at a time so that the tug is felt by others around the circle. Like the yarn, all rights are linked together.
 - b) Give the following several scenarios:
 - i) a 16-year old was trafficked;
 - ii) a 12 yr old had to stop going to school because of financial difficulties; and
 - iii) a 7-year old was diagnosed as malnourished.
 - c) Ask the participants what right is being denied in each of the scenarios. After they have identified the right, see if any of the participants mentioned those rights. If no one mentioned it, assign one of the participants as representing that right. Cut the yarn of that participant. Ask the participants the following:
 - i) What will happen to the web if the yarn is cut or they drop their yarn?
 - ii) Discuss the impact of the cutting of the yarn vis-a-vis the relation of all the rights.

Processing:

- 1) Use the following guide questions:
 - a) Did you learn anything from this activity?

2. Input

- a) Define who is considered a child under the Convention on the Rights of the Child (CRC) and under Philippine laws.
 - The definition of a child is those below 18 years of age.
 - Philippine law expands this definition to include those over 18 but are unable to fully take care of themselves or protect themselves from abuse, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.
- b) Discuss the life cycle of a child.
- c) Ask the participants: Do children have rights? What are children's rights?
 - Children as well as adults have human rights. Children and young people are entitled to

additional rights which recognize that young people have special needs to help them survive and develop to their full potential. Children also have the right to special protection because of their vulnerability to exploitation and abuse.

- Children’s rights are about protecting every child and creating for them an enabling environment that will help ensure that the child has reached his/her/their full potential and eventually become active citizens.
- d) Discuss that children’s rights are about protecting every child and creating for them an enabling environment that will help ensure that the child has reached his/her/their full potential and eventually become active citizens.
- e) Highlight why children’s rights matter by explaining that children are individuals, they start life as totally dependent beings, and the healthy development of children is crucial to the well-being of any society.
 - Children are neither the objects nor possessions of parents nor of the state, nor are they mere people-in-the-making; they have equal status as human beings imbued with human dignity.
 - Children must rely on adults for the nurture and guidance they need to grow toward independence. Such nurture is ideally found from adults in children’s families, but when primary adult caregivers cannot meet children’s needs, it is up to the State as the primary duty bearer to find an alternative in the best interests of the child.
 - Because they are still developing, children are especially vulnerable – more so than adults – to poor living conditions such as poverty, inadequate health care, nutrition, safe water, housing, and environmental pollution. The effects of disease, malnutrition, and poverty threaten the future of children and therefore the future of the societies in which they live.
- f) Explain and relate the four (4) main pillars/categories of children’s rights with their inputs from the activity, namely:
 - Right to Survival;
 - Right to Protection;
 - Rights to Development; and
 - Right to Participation.
- g) Connect the discussion of children’s rights with the four (4) guiding principles under the Convention on the Rights of the Child (CRC), specifically:
 - Right to life, survival, and development;
 - Best interest of the child;
 - Non-discrimination; and
 - The views of the child.

Suggested Materials

1. Ateneo Human Rights Center’s Children’s Rights: Treating Children as Right Holders (Atty. Klarise Anne Estorninos-Cajucom)
Available at: <https://www.youtube.com/watch?v=3cUiMc7GsaY>
2. Convention on the Rights of the Child (CRC)
Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
3. Committee on the Rights of the Child’s General Comment No. 2 (The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child)
Available at: <https://digitallibrary.un.org/record/490983?ln=en>
4. Committee on the Rights of the Child’s General Comment No. 14 (The Right of the Child to have His or Her Best Interests Taken as a Primary Consideration)
Available at: <https://digitallibrary.un.org/record/778523?ln=en>

5. Committee on the Rights of the Child's General Comment No. 12 (The Right of the Child to be Heard)
Available at: <https://digitallibrary.un.org/record/671444?ln=en>

References:

See Annex *H* (What Makes a Child-Friendly Katarungang Pambarangay?) at page page 156.

SESSION 2: SALIENT LAWS ON CHILDREN

Article XV, Section 3(2) of the 1987 Constitution provides that the State shall defend the rights of children, including special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. This session discusses the legal and policy framework in support of children's rights, particularly the salient laws on children. The session also tackles the basic steps in addressing children's issues in the Katarungang Pambarangay.

Session objectives

At the end of the session, the participants should be able to:

1. Explain the salient features of laws affecting children in relation to the functions of the *Lupon* and barangay officials under the Katarungang Pambarangay system; and
2. Demonstrate skills of the *Lupon* and barangay officials in handling cases involving children as victims, witnesses, or Children in Conflict with the Law (CICL).
3. Discuss the salient features of R.A. 7610 (Anti-Child-Abuse), R.A. No. 9262 (Anti-Violence Against Women and their Children), R.A. No. 9208 (Anti-Trafficking) as amended, P.D. 603 (Child Welfare Code), and R.A. No. 9344 as amended by R.A. 10630 (Juvenile Justice and Welfare); and
4. Identify areas in the Katarungang Pambarangay system that the *Lupon* and the barangay officials can practice to be child-friendly.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour and 30 minutes

	Group Size	Recommended Duration	Materials
1 Group Activity	4 groups	30 minutes	Laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	60 minutes	



Key Learnings

- The Philippines has comprehensive laws that promote and protect children's rights.
- R.A. No. 7610 or the Anti-Child Abuse Act provides a stronger deterrence and special protection against child abuse, exploitation, and discrimination and in such regard, provides sanctions for their commission. It also furthers the best interests of children and as such, its provisions are guided by this standard.
- R.A. No. 9262 or the Anti-Violence against Women and Children (VAWC) Act aims to address the discrimination brought about by biases and prejudices and violence committed against women and children as they are usually the victims due to unequal power relations between men and women.
- R.A. No. 9208 as amended or the Expanded Anti-Trafficking in Persons Act defines and criminalizes trafficking in persons. Trafficking in persons is an illegal act and is considered a violation of human rights.
- R.A. No. 9344 as amended or the Juvenile Justice Welfare Act covers the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.
- In the context of the *Katarungang Pambarangay*, it is important to recognize that children

come into contact with the justice system in many different ways. When faced with the justice system, children are thrown into an intimidating world which they may or may not fully understand. Adapting justice to their needs is therefore necessary.

- Katarungang Pambarangay is one of the existing structures that can assist children - whether as victims, witnesses, or even children in conflict of the law (CICL) in the conduct of diversion to reform and rehabilitate CICL to change for the better.

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

Activity 15: Paint me a picture!

Procedures:

- 1) Divide the participants into four (4) groups. Each group will cover one age group:
 - a) 0 - 2 years old
 - b) 3 - 5 years old
 - c) 6 - 12 years old
 - d) 13 - below 18 years old
- 2) Ask the participants of the group to think of a children's rights or issue covering the ages assigned to them. The groups should depict that right using only their bodies and personal effects and without movement. The group will have five (5) minutes to discuss how to illustrate the right.
- 3) After 5 minutes, the facilitator will ask the groups one by one to present the right they chose in plenary.
- 4) One of the members will explain the child rights they depicted, guided by the following questions:
 - a) What is the right depicted?
 - b) What are the issues surrounding that right?

Processing:

- 1) Use of the following guide question:
 - a) Can you think of other rights aside from those depicted?
 - b) What happens when the rights of children are not provided?
 - c) Can you think of laws that are applicable in those cases?
- 2) Ask: Why is it important for the *Lupon* and barangay officials to know the rights of children?

2. Input

- a) Connect the earlier discussion on child rights with the concept of child-friendliness. Explain what child-friendliness is.

What is Child-friendliness?

- A child-friendly environment is “a supportive educational and community environment

that is inclusive, healthy, friendly, protective and rights-based.”¹⁶⁵ This is characterized as promoting inclusiveness, gender-sensitivity, tolerance, dignity, and personal empowerment.

- b) Ask the participants: As frontliners, how can *Lupon* and barangay officials be child-friendly in performing their functions?
- c) What are salient laws on children?

R.A. No. 7610 (Anti-Child Abuse Act)	
Year enacted	1992
Policy	<p>The State shall:</p> <ol style="list-style-type: none"> 1. Provide special protection to children from all forms of abuse, neglect, cruelty, exploitation, and discrimination, and other conditions, prejudicial to their development; 2. Provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination; 3. Intervene on behalf of the child when the parent, guardian, teacher, or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same; 4. Protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control; and 5. Ensure that the best interests of children shall be the paramount consideration in all actions concerning them.¹⁶⁶
Coverage	Covers the special protection of children against abuse, exploitation, and discrimination.
Punishable Acts or Crimes	<p>“Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:</p> <ol style="list-style-type: none"> (1) Psychological and physical abuse, neglect, cruelty, sexual abuse, and emotional maltreatment; (2) Any act by deeds or words which debases, degrades, or demeans the intrinsic worth and dignity of a child as a human being; (3) Unreasonable deprivation of his/her basic needs for survival, such as food and shelter; or (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his/her growth and development or in his/her permanent incapacity or death.¹⁶⁷ <p>Also punishable under the law are acts of:</p> <ol style="list-style-type: none"> (1) Child Prostitution and Other Sexual Abuse¹⁶⁸;

165 UNESCO International Bureau of Education, Child-friendly environment, available at <https://www.ibe.unesco.org/en/glossary-curriculum-terminology/c/child-friendly-environment#:~:text=A%20supportive%20educational%20and%20community,tolerance%2C%20dignity%20and%20personal%20empowerment> (last accessed 1 June 2023).

166 Anti-Child Abuse Act, § 2.

167 Anti-Child Abuse Act, § 3(b).

168 Anti-Child Abuse Act, § 5.

	(2) Attempt to Commit Child Prostitution ¹⁶⁹ ; (3) Child Trafficking ¹⁷⁰ ; (4) Attempt to Commit Child Trafficking ¹⁷¹ ; (5) Obscene publications and indecent shows ¹⁷² ; and (6) Other acts of abuse that are prejudicial to the development of the child. ¹⁷³
Penalties	See Sections 5-10.
Subject to KP?	No.

R.A. No. 9208 as amended by R.A. No. 10364 and R.A. No. 11862

Year enacted	2003 (Amended in 2012 and 2022)
Policy	The State shall: <ol style="list-style-type: none"> 1. value the dignity of every human person and guarantees the respect of individual rights. 2. give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation, and reintegration into the mainstream of society in a manner that is culturally-responsive, gender- and age-appropriate, and disability-inclusive; and 3. recognize the equal rights and inalienable rights and inherent human dignity of all members of the human family in all relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.¹⁷⁴
Coverage	Covers trafficking in persons in general.
Punishable Acts or Crimes	Trafficking in persons is defined as “the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others, or the engagement of others for the production or distribution or both of materials that depict child sexual abuse or exploitation, or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal or sale of organs.

169 Anti-Child Abuse Act, § 6.

170 Anti-Child Abuse Act, § 7.

171 Anti-Child Abuse Act, § 8.

172 Anti-Child Abuse Act, § 9.

173 Anti-Child Abuse Act, § 10.

174 Expanded Anti-Trafficking Against Persons, § 2.

	<p>“The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding paragraph.”¹⁷⁵</p> <p>Punishable under the law are:</p> <ol style="list-style-type: none"> (1) Acts of Trafficking in Persons¹⁷⁶; (2) Attempted Trafficking in Persons ¹⁷⁷; (3) Acts that Promote Trafficking in Persons¹⁷⁸; (4) Qualified Trafficking in Persons¹⁷⁹; and (5) Use of Trafficking in Persons¹⁸⁰.
Penalties	See Section 10.
Prescriptive Period	<p>Trafficking cases shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6, or against a child, shall prescribe in 20 years.</p> <p>The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage, or in the case of a child victim, from the day the child reaches the age of majority, and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.¹⁸¹</p>
Subject to KP?	No.

R.A. No. 9262 (Anti-Violence Against Women and their Children)

Year enacted	2004
Policy	<p>The State shall:</p> <ol style="list-style-type: none"> 1. value the dignity of women and children; 2. guarantee full respect for human rights; and 3. recognize the need to protect the family and its members, particularly women and children, from violence and threats to their personal safety and security; and 4. exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and other international human rights instruments of which the Philippines is a party.¹⁸²

175 Expanded Anti-Trafficking Against Persons, § 3(a).

176 Expanded Anti-Trafficking Against Persons, § 4.

177 Expanded Anti-Trafficking Against Persons, § 4 (a).

178 Expanded Anti-Trafficking Against Persons, § 5.

179 Expanded Anti-Trafficking Against Persons, § 6.

180 Expanded Anti-Trafficking Against Persons, § 11.

181 Expanded Anti-Trafficking Against Persons, § 12.

182 Anti-Violence Against Women and Their Children Act of 2004, § 2.

Coverage	Limited to acts or series of acts in the context of a sexual or dating relationship. VAWC includes: (1) physical violence ¹⁸³ ; (2) sexual violence ¹⁸⁴ ; (3) psychological violence ¹⁸⁵ ; and (4) economic abuse. ¹⁸⁶
Punishable Acts or Crimes	Violence against Women and their Children (VAWC) refers to “any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse.” ¹⁸⁷
Penalties	<ol style="list-style-type: none"> 1. Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of <i>prison mayor</i>; those constituting less serious physical injuries shall be punished by <i>prison correccional</i>; and those constituting slight physical injuries shall be punished by <i>arresto mayor</i>. 2. Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than <i>arresto mayor</i>. 3. Acts falling under Section 5(c) and 5(d) shall be punished by <i>arresto mayor</i>; 4. Acts falling under Section 5(e) shall be punished by <i>prison correccional</i>; 5. Acts falling under Section 5(f) shall be punished by <i>arresto mayor</i>; 6. Acts falling under Section 5(g) shall be punished by <i>prison mayor</i>; and 7. Acts falling under Section 5(h) and Section 5(i) shall be punished by <i>prison mayor</i>. <p>If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed.</p> <p>In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than Php 100,000 but not more than Php 300,000; as well as (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.</p>
Prescriptive period	Acts falling under Sections 5(a) to 5(f) shall prescribe in 20 years. Acts falling under Sections 5(g) to 5(l) shall prescribe in 10 years. ¹⁸⁸
Subject to KP?	No.

183 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (A).

184 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (B) (a) to (c).

185 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (C).

186 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (D) (1) to (4).

187 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a).

188 Anti-Violence Against Women and Their Children Act of 2004, § 24.

R.A. No. 9344 as amended by R.A. No. 10630 (Juvenile Justice and Welfare Act)**Rights of the Child in Conflict with the Law (Sec. 5):***(Note: The list is not exclusive.)*

1. Right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment;
2. Right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;
3. Right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;
4. Right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age. In particular, a child deprived of liberty shall be separated from adult offenders at all times. No child shall be detained together with adult offenders. He/she shall be conveyed separately to or from court. He/she shall await hearing of his/her own case in a separate holding area. A CICL shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;
5. Right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent, and impartial authority, and to a prompt decision on such action;
6. Right to bail and recognizance, in appropriate cases;
7. Right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
8. Right to have his/her privacy respected fully at all stages of the proceedings;
9. Right to diversion if he/she is qualified and voluntarily avails of the same;
10. Right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;
11. Right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose a fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;
12. In general, the right to automatic suspension of sentence;
13. Right to probation as an alternative to imprisonment, if qualified under the Probation Law;
14. Right to be free from liability for perjury, concealment or misrepresentation; and
15. Other rights as provided for under existing laws, rules and regulations.

The State further adopts the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or “Beijing Rules”, United Nations Guidelines for the Prevention of Juvenile Delinquency or the “Riyadh Guidelines”, and the United Nations Rules for the Protection of Juveniles Deprived of Liberty.

Minimum Age of Criminal Responsibility (Sec. 6, as amended by 10630)

AGE	CRIMINAL LIABILITY	CIVIL LIABILITY
15 and below	NO, Intervention	YES
15 years, 1 day but below 18, without discernment	NO, Intervention	YES
15 years, 1 day but below 18, with discernment	YES, Diversion	YES
18 and above	YES	YES

- A child is deemed to be 15 years of age on the day of the fifteenth anniversary of his/her birthdate.

Difference between Intervention and Diversion

INTERVENTION

(Sec. 18)

- A Comprehensive juvenile intervention program covering at least a 3-year period shall be instituted in LGUs from the barangay to the provincial level.
- **Series of activities which are designated to address issues that caused the child to commit an offense.**
- **It may take the form of an individualized treatment program like counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.**

Children Below the Age of Criminal Responsibility (Sec. 20 as amended)

In General:

- The authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or 'Bahay Pag-asa' managed by LGUs or licensed and/or accredited NGOs monitored by the Department of Social Welfare and Development (DSWD).

Child is considered DANA (Dependent, Abandoned, Neglected or Abused by Parents)

- The child's parents or guardians shall execute a written authorization for the voluntary commitment of the child in a youth care facility or 'Bahay Pag-asa': Provided, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO: Provided, further, That the minimum age for children committed to a youth care facility or 'Bahay Pag-asa' shall be twelve (12) years old.

Who is a Neglected Child under PD 603 (Child and Youth Welfare Code)?

1. Child who commits Serious Crimes (Sec. 20-A)

- A child who is above 12 up to 15 and who commits parricide, murder, infanticide, kidnapping, and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under Republic Act (R.A.) No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than 12 years of imprisonment. Such child shall be mandatorily placed in a special facility within the youth care faculty or 'Bahay Pag-asa' called the Intensive Juvenile Intervention and Support Center (IJISC).

2. Child who are Repeated Offenders (Sec. 20-B)

- A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits an offense for the second time or oftener: Provided, That the child was previously subjected to a community-based intervention program. Such child shall undergo an **intensive intervention** program supervised by the local social welfare and development officer: Provided, further, That, if the best interest of the child requires that he/she be placed in a youth care facility or 'Bahay Pag-asa', the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: Provided, finally, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO pursuant to Presidential Decree No. 603, as amended."

DIVERSION (Sec. 23)

Children over 15 but under 18 who acted with discernment shall undergo diversion programs without court proceedings.

More than 6 years	Court proceeding → Guilty → Automatic Suspension of Sentence → Rehabilitation → If 21 and above, Sec. 51 (Agricultural camps) applies
6 years and below	Diversion* (NO Court intervention) → Diversion Contract → Diversion Program → Final Discharge if complied with all conditions

Note: Diversion is conducted by law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the Local Council for the Protection of Children (LCPC). It may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level.

What is a Status Offense? (Sec. 57, as amended)

Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.

Violations of Local Ordinances by Children (Sec. 57-A)

Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. No penalty shall be imposed on children for said violations, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. Appropriate intervention programs shall be provided for in such ordinances. The child shall also be recorded as a 'child at risk' and not as a 'child in conflict with the law'. The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars."

What are Offenses not Applicable to Children? (Sec. 58)

1. Vagrancy and prostitution under Section 202 of the Revised Penal Code
2. Mendicancy under Presidential Decree No. 1563
3. Sniffing of rugby under Presidential Decree No. 1619

Provided that said persons shall undergo appropriate counseling and treatment program.

What are the prohibited acts? (Secs. 60-61)

1. Branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names;
2. Discriminatory remarks and practices particularly with respect to the child's class or ethnic origin;
3. Employment of threats of whatever kind and nature;
4. Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
5. Employment of degrading, inhumane and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law,

or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and

6. Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

Children in Conflict with the Law 15 Years Old and Below (Sec. 64)

- Upon effectivity of this Act, cases of children 15 years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

d) Emphasize the importance of integrating child-friendliness in the Katarungang Pambarangay,

- In the context of the *Katarungang Pambarangay*, it is important to recognize that children come into contact with the justice system in many different ways. When faced with the justice system, children are thrown into an intimidating world which they may or may not fully understand. Adapting justice to their needs is therefore necessary.
- Katarungang Pambarangay is one of the existing structures that can assist children - whether as victims, witnesses, or even children in conflict of the law (CICL) in the conduct of diversion to reform and rehabilitate CICL to change for the better.

e) Link group outputs and the plenary discussion to the inputs on:

- Guidelines in interviewing a child;
- Protocols in handling child victims; and
- Conduct of Diversion for CICL.

References:

See Annex H (What Makes a Child-Friendly Katarungang Pambarangay?) at page page 156. See also Annex I (Salient Laws on Children) on page page 163.

ANNEX H

WHAT MAKES A CHILD-FRIENDLY KATARUNGANG PAMBARANGAY?

Definition of a Child

- “Children are persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.”¹⁸⁹

NOTE: R.A. No. 7610 expands on the previous definition of the child from R.A. No. 9344, where a child is defined only as being below 18.¹⁹⁰

Child rights and objectives per life stages

LIFE CYCLE	Significant Relationship	Child's Rights	Corresponding objectives
Infancy (0 – 2 years)	Parents	<ul style="list-style-type: none"> • To be registered at birth • To be exclusively breastfed immediately after birth • To receive complete and timely immunization from common childhood diseases • To have safe water and sanitation • To receive health services and primary health care • To receive parental care and support • To have a name, identity, and nationality 	To provide the child with proper nutrition as well as a safe and wholesome environment for proper growth and total development.
Early Childhood (3 – 5 years)	Family	<ul style="list-style-type: none"> • To experience early childhood care and stimulation for development • To avail of free micronutrient supplement 	To ensure the continued health, well-being proper growth, and wholesome development of the child with proper nutrition and age-appropriate physical, mental, and psycho-social stimulation.
Childhood (6 – 12 years)	School and neighborhood	<ul style="list-style-type: none"> • To receive free and compulsory elementary education • To avail of open and flexible learning system 	To provide the child with basic learning skills to function and survive in the community and society.

¹⁸⁹ An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation, and Discrimination, and for Other Purposes [Anti-Child Abuse Act], Republic Act No. 7610 (1992), § 3(a).

¹⁹⁰ An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344(2005), § 4(c).

		<ul style="list-style-type: none"> • To participate in quality and relevant education that is appropriate to the child's development stage and evolving capacity • To education and information • To freedom of expression • To freedom of thought, conscience, and religion • To freedom of association • To privacy 	
Adolescence (13 - 18 years)	Peers	<ul style="list-style-type: none"> • To receive free secondary education • To further avail of open and flexible learning systems • To further participate in quality and relevant education appropriate to the child's development stage and evolving capacity • To participate in the development process • To education and information • To freedom of expression • To freedom of thought, conscience, and religion • To freedom of association • To privacy 	To provide the adolescent with life skills to allow him/her to overcome the threats to well-being and to develop as a happy, competent, and responsible adult.

NOTE: Child development is dependent on inputs received from parents, caregiver, family, friends, people in the community, and his/her/their environment. Without positive inputs, the development of a child may be low.

Do children have rights? What are child rights?

- Children as well as adults have human rights. Children and young people are entitled to additional rights which recognize that young people have special needs to help them survive and develop to their full potential. Children also have the right to special protection because of their vulnerability to exploitation and abuse.
- Child rights are about protecting every child and creating for them an enabling environment that will help ensure that the child has reached his/her/their full potential and eventually become active citizens.
- The rights of the child are linked to the international commitments of the Philippine Government.
 - The Philippine Government is committed to promote and implement the Convention of the Rights of the Child (CRC) to protect the child against all forms of discrimination and consider the best interest of the child in all actions concerning children.

What is the Convention on the Rights of the Child (CRC)?

- The Convention on the Rights of the Child (CRC) is an international human rights treaty that outlines the specific rights that children and young people can claim.
- Nearly every country in the world has committed to the CRC, making it the most widely supported

human rights treaty.

- To make sure that nations are upholding their responsibilities to children under the CRC, the United Nations also created the Committee on the Rights of the Child.
- The CRC covers a whole range of different human rights - civil, political, economic, social, and cultural - and sets out the specific ways these rights should be achieved for children and young people.
 - Some of the rights that are contained in the CRC include:
 - (1) the right to be treated fairly;
 - (2) the right to have a say about decisions affecting you;
 - (3) the right to live and grow up healthy;
 - (4) the right to be safe no matter where you are;
 - (5) the right to get an education; and
 - (6) the right to play and have fun!

Child rights and why they matter¹⁹¹

- Children are individuals.
 - Children are neither the objects nor possessions of parents nor of the state, nor are they mere people-in-the-making; they have equal status as human beings imbued with human dignity.
- Children start life as totally dependent beings.
 - Children must rely on adults for the nurture and guidance they need to grow toward independence. Such nurture is ideally found from adults in children's families, but when primary adult caregivers cannot meet children's needs, it is up to the State as the primary duty bearer to find an alternative in the best interests of the child.
- Children's views should be heard and considered in the political process
 - Children generally do not traditionally take part in political processes. Without special attention to the opinions of children – as expressed at home and in schools, in local communities, and even in governments – children's views go unheard on the many important issues that affect them now or will affect them in the future.
- The healthy development of children is crucial to the future well-being of any society.
 - Because they are still developing, children are especially vulnerable – more so than adults – to poor living conditions such as poverty, inadequate health care, nutrition, safe water, housing, and environmental pollution. The effects of disease, malnutrition, and poverty threaten the future of children and therefore the future of the societies in which they live.
- The costs to society of failing its children are huge.
 - Research findings show that children's earliest experiences significantly influence their future development. The course of their development determines their contribution or cost to society over the course of their lives.

191 UNICEF, Child rights and why they matter, available at <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter> (last accessed 1 June 2023).

Four (4) Main Pillars/Categories of Child Rights

The four (4) main pillars/categories of child rights are (1) survival, (2) development, (3) participation, and (4) protection.¹⁹²

Right to Survival	<p>Since the first moment children are born, they have the right to life. They have the right to a registered name and nationality. They have the right to be cared for and protected by their parents and not be separated from their families. The government needs to safeguard these rights and provide basic services for children to survive and thrive. This includes quality healthcare, age-appropriate nutrition, clean drinking water, and a safe place to live as well as access to future opportunities for development.</p>
Right to Development	<p>Education and development are essential rights. This should begin with the right to access to early childhood development services and access to information from various sources with parents responsible for giving guidance. Children with special needs such as children with disabilities must have equal rights to development and education that enable them to realize their potential and meaningfully participate in society. The right to development also includes the opportunity to further specialized skills and physical and mental abilities that open ways for them to a brighter future and realize their dream.</p>
Right to Participation	<p>Children are members of society. They may be small in size but they fully have the right to freely express their thoughts, views, and opinions, and participate in society, particularly in the areas affecting them. Their voices must be seriously taken into account in line with their age and maturity.</p> <p>Every child and youth has unfathomable potential. While the government has to facilitate and support the participation of children and youth, everyone also needs to take action to support children and youth to participate and exercise their agency as they are also the main driving force in bringing about positive change to society.</p>
Right to Protection	<p>Once children are born and survive, they have the right to be protected from all forms of harm. They must be protected from physical violence and psychological intimidation may they be within and outside their families.</p> <p>The right to protection also includes being protected from child labour, and tasks that are dangerous or impede their education. Likewise, children must be protected from harmful substances and drugs. Another important aspect is protection from trafficking, smuggling, kidnapping, sexual abuse, and all forms of exploitation against children. The government also has the duty to ensure that child victims are rehabilitated and reintegrated into society with dignity.</p> <p>In terms of the justice process, every child not only has the right to fair treatment but also unique attention to children's needs meaning every legal procedure needs to take into account the best interest of children.</p> <p>For children separated from their families, they have the right to be protected and cared for with respect to their ethnic background, language, religion, and culture. In wartime, every child must be protected from war or joining the fighting. When children are refugees, they must have special assistance and protection.</p>

192 UNICEF Thailand, What is the Convention on the Rights of the Child, available at <https://www.unicef.org/thailand/what-is-crc> (last accessed 1 June 2023).

Four (4) Guiding Principles under the Convention on the Rights of the Child (CRC)

The four (4) guiding principles are (1) the right to life, survival, and development; (2) the best interest of the child; (3) non-discrimination; and (4) the views of the child.

- The 4 principles contribute to a general attitude towards children and their rights. They are based on the notion that children too are equal as human beings.¹⁹³
- How do we grant children equal value and at the same time guarantee them the necessary protection? The answer lies in the implementation of the 4 general principles.¹⁹⁴

Right to life, survival, and development	The principle most directly related to children's economic and social rights is formulated in the right to life article. <u>This right goes further than just granting children the right not to be killed; it includes the right to survival and development.</u>
Best interest of the child	Best interests of the child, especially when they are very young, are vulnerable and need special support to be able to enjoy their rights fully. <u>Best interests of the child refer to "the totality of the circumstances and conditions which are most congenial to the survival, protection, and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child."</u> ¹⁹⁵
Non-discrimination	<u>All children should enjoy their rights and should never be subjected to any discrimination "of any kind, irrespective of the child's parents or legal guardian, race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, poverty, disability, birth or other status."</u> ¹⁹⁶ This relates to the obligation of States to provide the equality of opportunities among children.
The views of the child	In order to know what is actually in the interest of the child it is logical to listen to him/her/them.

Child 21

- Child 21 is the Philippine National Strategic Framework for Plan Development for Children, 2000-2025. It provides direction to policy development and program planning for implementation of the Philippines government.
- Child 21 is a strategic framework which integrates the rights of each child in the planning of programs and interventions for them. The framework sets a precedent for future endeavors by policymakers for children.
 - By 2025, we envision the Filipino child to be living in a peaceful and child-friendly society and free and protected by a responsive and enabling environment.

Child-Friendly Governance

- Child 21 goals and objectives can be achieved through the establishment of child-friendly efforts.
- Child 21 envisions a society whose system of governance is committed to fulfill the rights of children

193 UNICEF Armenia, Four principles of the Convention on the Rights of the Child, *available at* <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> (last accessed 1 June 2023).

194 *Id.*, *supra* note 166.

195 Republic Act No. 9344 (2005), § 4(b).

196 *See* Art. 2 of the Convention on the Rights of the Child (CRC).

and provides an enabling mechanism for the creation of a true child-friendly society that is sensitive to the needs of the children.

What is Child-Friendliness?

- A child-friendly environment is “a supportive educational and community environment that is inclusive, healthy, friendly, protective and rights-based.”¹⁹⁷ This is characterized as promoting inclusiveness, gender-sensitivity, tolerance, dignity, and personal empowerment.
- In the context of the *Katarungang Pambarangay*, it is important to recognize that children come into contact with the justice system in many different ways. When faced with the justice system, children are thrown into an intimidating world which they may or may not fully understand. Adapting justice to their needs is therefore necessary.
 - Katarungang Pambarangay is one of the existing structures that can assist children - whether as victims, witnesses, or even children in conflict of the law (CICL) in the conduct of diversion to reform and rehabilitate CICL to change for the better.

Pointers or Protocols in Interviewing a Child

- Interview is a directed conversation with a specific purpose using a question and answer format to accomplish a known purpose by discussion. The main objective of an interview with a child is to listen with an open mind to what the child has to say, if anything, about the alleged event.
- In the conduct of an interview, consider the following: the use of language that a child can understand, creating a non-threatening environment, employing open-ended questions, and active listening.

Phases of Interview

1. Rapport building
 - Make the child feel relaxed and comfortable.
2. Free narrative account
 - Allow the child to tell in his/her/their own words at his/her/their own pace an account of the relevant events.
 - Interviewer should never interrupt the child while he/she is recalling significant events.
3. Questioning
 - Allocate time when the interviewer can ask the child to provide more and focused information but in a way that does not put the child under pressure.
4. Closing the interview
 - All interviews should end appropriately. It means that every effort should be made to ensure that the child does not feel like he/she has failed/disappointed the interviewer and that the child does not finish the interview in a distressed state of mind.

197 UNESCO International Bureau of Education, Child-friendly environment, available at <https://www.ibe.unesco.org/en/glossary-curriculum-terminology/c/child-friendly-environment#:~:text=A%20supportive%20educational%20and%20community,tolerance%2C%20dignity%20and%20personal%20empowerment> (last accessed 1 June 2023).

IMPORTANT!

Some tips in interviewing a child:

1. Always welcome the interviewees with a warm greeting.
2. Use language that the child can easily understand.
3. Use active listening.
4. Avoid asking “why”.
5. Repeat, rephrase, and paraphrase to ensure that every information is understood correctly.
6. Give attention to non-verbal communication.
7. Assure confidentiality.
8. Say thank you after the session.

ANNEX I

SALIENT LAWS ON CHILDREN

Constitutional Bases

- The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs (Article II, Section 13, 1987 Constitution).
- There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children (Article XIII, Section 11, 1987 Constitution).
- The State shall:
 - (1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;
 - (2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;
 - (3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;
 - (4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and
 - (5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills (Article XIV, Section 2, 1987 Constitution).
- The State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development (Article XV, Section 2, 1987 Constitution).

Summary of Salient Laws on Children

R.A. No. 7610 (Special Protection of Children Against Abuse, Exploitation, and Discrimination Act or the Anti-Child Abuse Act)

R.A. No. 7610 (Anti-Child Abuse Act)	
<i>Year enacted</i>	1992
<i>Policy</i>	<p>The State shall:</p> <ol style="list-style-type: none"> 1. provide special protection to children from all forms of abuse, neglect, cruelty, exploitation, and discrimination, and other conditions, prejudicial to their development; 2. provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination; 3. intervene on behalf of the child when the parent, guardian, teacher, or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same;

	<ol style="list-style-type: none"> 4. protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control; and 5. ensure that the best interests of children shall be the paramount consideration in all actions concerning them.¹⁹⁸
Coverage	Covers the special protection of children against abuse, exploitation, and discrimination.
Punishable Acts or Crimes	<p>“Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:</p> <ol style="list-style-type: none"> (1) Psychological and physical abuse, neglect, cruelty, sexual abuse, and emotional maltreatment; (2) Any act by deeds or words which debases, degrades, or demeans the intrinsic worth and dignity of a child as a human being; (3) Unreasonable deprivation of his/her basic needs for survival, such as food and shelter; or (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his/her growth and development or in his/her permanent incapacity or death.¹⁹⁹ <p>Also punishable under the law are acts of:</p> <ol style="list-style-type: none"> (1) Child Prostitution and Other Sexual Abuse²⁰⁰; (2) Attempt to Commit Child Prostitution²⁰¹ (3) Child Trafficking²⁰²;

198 Anti-Child Abuse Act, § 2.

199 Anti-Child Abuse Act, § 3(b).

200 Anti-Child Abuse Act, § 5. Section 5 states that:

Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

- (1) Acting as a procurer of a child prostitute;
- (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
- (3) Taking advantage of influence or relationship to procure a child as prostitute;
- (4) Threatening or using violence towards a child to engage him as a prostitute; or
- (5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

201 Anti-Child Abuse Act, § 6. Section 6 states that:

There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle, or other similar establishments, vessel, vehicle, or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse. There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments.

202 Anti-Child Abuse Act, § 7. Section 7 states that:

Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of *reclusion temporal* to *reclusion perpetua*. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.

	(4) Attempt to Commit Child Trafficking ²⁰³ ; (5) Obscene publications and indecent shows ²⁰⁴ ; and (6) Other acts of abuse that are prejudicial to the development of the child. ²⁰⁵
Penalties	See Sections 5-10.
Subject to KP?	No.

R.A. No. 9208 as amended by R.A. No. 10364 and R.A. No. 11862 (Anti-Trafficking of Persons Act)

R.A. No. 9208 as amended by R.A. No. 10364 and R.A. No. 11862	
Year enacted	2003 (Amended in 2012 and 2022)
Policy	The State shall: <ol style="list-style-type: none"> 1. value the dignity of every human person and guarantees the respect of individual rights; 2. give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation, and reintegration into the mainstream of society in a manner that is culturally-responsive, gender- and age-appropriate, and disability-inclusive; and 3. recognize the equal rights and inalienable rights and inherent human dignity of all members of the human family in all relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.²⁰⁶

203 Anti-Child Abuse Act, § 8. Section 8 states that:

There is an attempt to commit child trafficking under Section 7 of this Act:

- (a) When a child travels alone to a foreign country without valid reason therefor and without clearance issued by the DSWD or written permit or justification from the child’s parents or legal guardian;
- (c) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking; or
- (d) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or
- (e) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-during institutions who can be offered for the purpose of child trafficking.

A penalty lower two (2) degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act.

204 Anti-Child Abuse Act, § 9. Section 9 states that:

Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period.

205 Anti-Child Abuse Act, § 10.

206 Expanded Anti-Trafficking Against Persons, § 2.

Coverage	Covers trafficking in persons in general.
Punishable Acts or Crimes	<p>Trafficking in persons is defined as “the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others, or the engagement of others for the production or distribution or both of materials that depict child sexual abuse or exploitation, or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal or sale of organs.</p> <p>“The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding paragraph.”²⁰⁷</p> <p>Punishable under the law are:</p> <ol style="list-style-type: none"> (1) Acts of Trafficking in Persons²⁰⁸; (2) Attempted Trafficking in Persons ²⁰⁹; (3) Acts that Promote Trafficking in Persons²¹⁰; (4) Qualified Trafficking in Persons²¹¹; and (5) Use of Trafficking in Persons²¹².
Penalties	<i>See Section 10.</i>
Prescriptive Period	<p>Trafficking cases shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6, or against a child, shall prescribe in 20 years.</p> <p>The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage, or in the case of a child victim, from the day the child reaches the age of majority, and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.²¹³</p>
Subject to KP?	No.

207 Expanded Anti-Trafficking Against Persons, § 3(a).

208 Expanded Anti-Trafficking Against Persons, § 4.

209 Expanded Anti-Trafficking Against Persons, § 4 (a).

210 Expanded Anti-Trafficking Against Persons, § 5.

211 Expanded Anti-Trafficking Against Persons, § 6.

212 Expanded Anti-Trafficking Against Persons, § 11.

213 Expanded Anti-Trafficking Against Persons, § 12.

Recall:

R.A. No. 9262 (Anti-Violence Against Women and Children)

R.A. No. 9262 (Anti-Violence Against Women and their Children)	
Year enacted	2004
Policy	The State shall: <ol style="list-style-type: none"> 1. value the dignity of women and children; 2. guarantee full respect for human rights; and 3. recognize the need to protect the family and its members, particularly women and children, from violence and threats to their personal safety and security; and 4. exert efforts to address violence committed against women and children in keeping with the fundamental freedoms guaranteed under the Constitution and the Provisions of the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and other international human rights instruments of which the Philippines is a party.²¹⁴
Coverage	Limited to acts or series of acts in the context of a sexual or dating relationship. VAWC includes: (1) physical violence ²¹⁵ ; (2) sexual violence ²¹⁶ ; (3) psychological violence ²¹⁷ ; and (4) economic abuse. ²¹⁸
Punishable Acts or Crimes	Violence against Women and their Children (VAWC) refers to “any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse.” ²¹⁹
Penalties	<ol style="list-style-type: none"> 1. Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. <p>If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prison mayor; those constituting less serious physical injuries shall be punished by prison correccional; and those constituting slight physical injuries shall be punished by arresto mayor.</p> <p>Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.</p>

214 Anti-Violence Against Women and Their Children Act of 2004, § 2.

215 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (A).

216 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (B) (a) to (c).

217 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (C).

218 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a) (D) (1) to (4).

219 Anti-Violence Against Women and Their Children Act of 2004, § 3 (a).

	<p>2. Acts falling under Section 5(c) and 5(d) shall be punished by <i>arresto mayor</i>;</p> <p>3. Acts falling under Section 5(e) shall be punished by <i>prision correccional</i>;</p> <p>4. Acts falling under Section 5(f) shall be punished by <i>arresto mayor</i>;</p> <p>5. Acts falling under Section 5(g) shall be punished by <i>prision mayor</i>; and</p> <p>6. Acts falling under Section 5(h) and Section 5(i) shall be punished by <i>prision mayor</i>.</p> <p>If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed.</p> <p>In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than Php 100,000 but not more than Php 300,000; (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.</p>
Prescriptive period	<p>Acts falling under Sections 5(a) to 5(f) shall prescribe in 20 years.</p> <p>Acts falling under Sections 5(g) to 5(l) shall prescribe in 10 years.²²⁰</p>
Subject to KP?	No.

Protocols in the management of child victims of abuse, neglect, and exploitation

1. The barangay must designate a child and gender-sensitive *kagawad or tanod*, preferably a female, who shall be in charge of its barangay help desk that shall receive and monitor all child abuse and VAWC-related cases and refer the child victim to the proper agency for appropriate intervention.
2. The barangay must observe the following when receiving a report:
 - a) Enter the report in the barangay blotter exclusively for child abuse and domestic violence cases. The blotter must be kept confidential at all times.
 - b) If the reporter is not the victim, interview the reporting person.
 - c) If a report is made by the child victim, do not interview the child except to take the child's personal circumstances and to determine the necessity of referring the child for immediate medical attention. Only the designated barangay help desk person shall talk to the child. If the alleged offender is in the barangay hall, do not interview the child in the presence of the former.
3. Within 24 hours, contact the Local Social Welfare and Development Office (LSWDO) and refer the case to the social worker for validation of complaint and assessment.
 - a) If the LSWDO is unavailable and the case seemed to be high risk, the child shall be directly endorsed to the *Punong Barangay*, a city/provincial crisis center, or non-government organization (NGO) temporary shelter. Such endorsement to a crisis center or temporary shelter shall be made by the barangay to LSWDO.
4. If the main request is assistance in filing a case, refer the child to the police for conduct of proper police investigation.
5. Refer the child to the nearest women and children protection unit (WCPU), or, if none exists, to the medico legal officer or the city or municipal health officer.
6. Contact the child's parents/guardians. However, if the alleged perpetrator is a member of the family, the barangay shall immediately refer the LSWDO and/or law enforcement officer who shall decide

whether or not to notify the parents or guardians.

7. Do not conduct any mediation or conciliation relative to the case. Instead, advise the parties that child abuse cases cannot be subject of any compromise agreement.
8. Beyond the reporting stage, assistance may be extended to other parties directly involved in helping the child. The barangay may accompany the social worker during home visits and assist in monitoring the situation and safety of the child and the family.
9. The media shall not be allowed to have any access to the child, the child's family, and the barangay blotter.
10. Observe confidentiality at all times.

R.A. No. 9344 as amended by R.A. No. 10630 (Juvenile Justice and Welfare Act)

Definition of Terms (Sec. 4)

1. **“Child”** refers to a person under the age of eighteen (18) years.
2. **“Child at Risk”** refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family, and social circumstances, such as, but not limited to, the following:
 - (1) being abused by any person through sexual, physical, psychological, mental, economic, or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
 - (2) being exploited including sexually or economically;
 - (3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
 - (4) coming from a dysfunctional or broken family or without a parent or guardian;
 - (5) being out of school;
 - (6) being a street child;
 - (7) being a member of a gang;
 - (8) living in a community with a high level of criminality or drug abuse; and
 - (9) living in situations of armed conflict.
3. **“Child in Conflict with the Law”** refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.
4. **“Juvenile Justice and Welfare System”** refers to a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, re-integration, and aftercare to ensure their normal growth and development.
5. **“Youth Detention Home”** refers to a 24-hour child-caring institution managed by accredited local government units (LGUs) and licensed and/or accredited non government organizations (NGOs) providing short-term residential care for children in conflict with the law who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.
6. **“Youth Rehabilitation Center”** refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licensed and/or accredited NGOs monitored by the DSWD, which provides care, treatment, and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. Physical mobility of residents of said centers may be restricted pending court disposition of the charges against them.

Rights of the Child in Conflict with the Law (Sec. 5):

(Note: The list is not exclusive.)

1. Right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment;
2. Right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;

3. Right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;
4. Right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age. In particular, a child deprived of liberty shall be separated from adult offenders at all times. No child shall be detained together with adult offenders. He/she shall be conveyed separately to or from court. He/she shall await hearing of his/her own case in a separate holding area. A CICL shall have the right to maintain contact with his/her family through correspondence and visits, save in exceptional circumstances;
5. Right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action;
6. Right to bail and recognizance, in appropriate cases;
7. Right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
8. Right to have his/her privacy respected fully at all stages of the proceedings;
9. Right to diversion if he/she is qualified and voluntarily avails of the same;
10. Right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;
11. Right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose a fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;
12. In general, the right to automatic suspension of sentence;
13. Right to probation as an alternative to imprisonment, if qualified under the Probation Law;
14. Right to be free from liability for perjury, concealment or misrepresentation; and
15. Other rights as provided for under existing laws, rules and regulations.

The State further adopts the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or “Beijing Rules”, United Nations Guidelines for the Prevention of Juvenile Delinquency or the “Riyadh Guidelines”, and the United Nations Rules for the Protection of Juveniles Deprived of Liberty.

Minimum Age of Criminal Responsibility (Sec. 6, as amended by 10630)

AGE	CRIMINAL LIABILITY	CIVIL LIABILITY
15 and below	NO, Intervention	YES
15 years, 1 day but below 18, without discernment	NO, Intervention	YES
15 years, 1 day but below 18, with discernment	YES, Diversion	YES
18 and above	YES	YES

- A child is deemed to be 15 years of age on the day of the fifteenth anniversary of his/her birthdate.

How should the age of the minor proved? (Sec. 7)

As a rule, the child in conflict with the law shall enjoy the presumption of minority until he/she is proven to be 18 years old or older. The age may be determined from the child’s birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any

appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

Difference between Intervention and Diversion

INTERVENTION

(Sec. 18)

- A Comprehensive juvenile intervention program covering at least a 3-year period shall be instituted in LGUs from the barangay to the provincial level.
- **Series of activities which are designated to address issues that caused the child to commit an offense.**
- **It may take the form of an individualized treatment program like counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.**

Children Below the Age of Criminal Responsibility (Sec. 20 as amended)

In General:

- The authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or 'Bahay Pag-asa' managed by LGUs or licensed and/or accredited NGOs monitored by the DSWD.

Child is considered DANA (Dependent, Abandoned, Neglected or Abused by Parents)

- The child's parents or guardians shall execute a written authorization for the voluntary commitment of the child in a youth care facility or 'Bahay Pag-asa': Provided, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO: Provided, further, That the minimum age for children committed to a youth care facility or 'Bahay Pag-asa' shall be twelve (12) years old.

Who is a Neglected Child under PD 603 (Child and Youth Welfare Code)?

1. Child who commits Serious Crimes (Sec. 20-A)

- A child who is above 12 up to 15 and who commits parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than 12 years of imprisonment. Such child shall be mandatorily placed in a special facility within the youth care faculty or 'Bahay Pag-asa' called the Intensive Juvenile Intervention and Support Center (IJISC).

2. Child who are Repeated Offenders (Sec. 20-B)

- A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits an offense for the second time or oftener: Provided, That the child was previously subjected to a community-based intervention program. Such child shall undergo an intensive intervention program supervised by the local social welfare and development officer: Provided, further,

That, if the best interest of the child requires that he/she be placed in a youth care facility or 'Bahay Pag-asa', the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: Provided, finally, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO pursuant to Presidential Decree No. 603, as amended."

DIVERSION (Sec. 23)

Children over 15 but under 18 who acted with discernment shall undergo diversion programs without court proceedings.

More than 6 years	Court proceeding → Guilty → Automatic Suspension of Sentence → Rehabilitation → If 21 and above, Sec. 51 (Agricultural camps) applies
6 years and below	Diversion* (NO Court intervention) → Diversion Contract → Diversion Program → Final Discharge if complied with all conditions

Note: Diversion is conducted by law enforcement officer or *Punong Barangay* with the assistance of the local social welfare and development officer or other members of the LCPC. It may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level.

Exploitation of Children for Commission of Crimes (Sec. 20-C)

- Any person who, in the commission of a crime, makes use, takes advantage of, or profits from the use of children, including any person who abuses his/her authority over the child or who, with abuse of confidence, takes advantage of the vulnerabilities of the child and shall induce, threaten or instigate the commission of the crime, shall be imposed the penalty prescribed by law for the crime committed in its **maximum period**.

What is a Status Offense? (Sec. 57, as amended)

- Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child.

Violations of Local Ordinances by Children (Sec. 57-A)

- Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. No penalty shall be imposed on children for said violations, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. Appropriate intervention programs shall be provided for in such ordinances. The child shall also be recorded as a 'child at risk' and not as a 'child in conflict with the law'. The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars."

What are Offenses not Applicable to Children? (Sec. 58)

- Vagrancy and prostitution under Section 202 of the Revised Penal Code

2. Mendicancy under P.D. No. 1563
3. Sniffing of rugby under P.D. No. 1619

Provided that said persons shall undergo appropriate counseling and treatment program.

What are the prohibited acts? (Sec. 60-61)

1. Branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names;
2. Discriminatory remarks and practices particularly with respect to the child's class or ethnic origin;
3. Employment of threats of whatever kind and nature;
4. Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
5. Employment of degrading, inhumane and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and
6. Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

Children in Conflict with the Law 15 Years Old and Below (Sec. 64)

- Upon effectivity of this Act, cases of children 15 years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

Diversion proceedings

- Diversion is an alternative, child-appropriate process of determining the responsibility and identifying ways of managing a CICL without resorting to formal court proceedings. It also refers to the program that the CICL is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.
- Diversion process shall be centered on a restorative approach and as far as applicable shall use restorative justice processes which may include but not limited to (a) victim offender mediation; (b) community and family group conferencing; (c) circle sentencing; (d) peacemaking circles; (e) reparative probation and community boards and panels; and (f) existing community accepted justice practices that embody restorative justice.
- Protocols in the conduct of diversion proceedings are as follows: be neutral, send message clearly, focus on the issue, be calm, never use offensive words, observe confidentiality at all times, respect the one speaking, maintain proper decorum, allow both parties to share their sides, paraphrase and acknowledge, be patient, and ensure follow-up session.
- The formulation of the diversion plan considers the remorse feeling of the child on the offense committed and capacity to make reparation.

Step-by-Step Guide to the Conduct of Diversion for Children in Conflict with the Law (CICL)

1. Diversion may be conducted during the police investigation stage, before the law enforcement officer, or preliminary investigation stage before the Prosecutor. It may likewise be conducted at the Katarungang Pambarangay before the Punong Barangay.
 - a. Diversion allowed in Katarungang Pambarangay when a child is above 15 but below 18 years of age, assessed to have acted with discernment and has allegedly committed an offense with imposable sentence of not more than six (6) years, and the victim is willing to

- participate in the program.
2. Diversion at the Katarungang Pambarangay level shall be managed by a Diversion Committee chaired by the *Punong Barangay*, as the Chair of the *Lupong Tagapamayapa*.
 3. The members of the Diversion Committee may include the following:
 - (1) LSWDO;
 - (2) *Barangay Kagawad* (Chairperson of the Committee on Children, Women, and Family);
 - (3) A member of the *Lupong Tagapamayapa*;
 - (4) A member of the Barangay Council for the Protection of Children (BCPC);
 - (5) Chief *Tanod*;
 - (6) Member of Task Force on Child and Youth Development in the Barangay;
 - (7) NGO Representative;
 - (8) Parent-Teacher Association (PTA) President; and
 - (9) A representative of a faith-based organization.
 4. The Diversion Committee shall be constituted by the authority handling the diversion (i.e., *Punong Barangay*) and perform the following:
 - a. Formulate the diversion program;
 - b. Responsible for convening the dialogue between the CICL, the parents or guardians, and the victims; and
 - c. Assist the authority implementing the diversion in identifying the appropriate programs for the CICL and the family.
 5. The supervision of the Diversion Program at this level shall be done by the *Punong Barangay*, with the assistance of the BCPC.
 6. Monitoring of the Diversion Program is conducted by the members of the BCPC and the community volunteers to be designated by the BCPC. This may be done in consultation and in collaboration with the LSWDO.
 7. When there is no Diversion, the *Punong Barangay* handling the case shall, within three (3) days from the determination of the absence of jurisdiction or termination of the diversion proceedings as provided below, forward the records of the case to the:
 - a. Law enforcement officer or Prosecutor – when the child or the parents or guardian does not consent to a diversion.
 - b. Prosecutor or the Court – when the case involves an offense with an imposable penalty of more than six (6) years imprisonment.

IMPORTANT!

R.A. No. 9344 as amended protects the rights of a CICL and considers the best interest of the child throughout the process of diversion. The confidentiality of the records and proceedings is of utmost importance. All discussions during the diversion proceedings should not be divulged orally or in written form to anybody who is not involved in the case. There must also be a system of coding to conceal the identity of the child and non-use of records in other proceedings, except when beneficial to the offender and with his/her written consent.

There can be no liability for perjury when the child does not disclose his/her being a CICL.

Handling a child for the conduct of diversion proceeding

Step 1: Diversion Proceeding

1. The Diversion Committee shall conduct the diversion proceedings. The *Punong Barangay* shall consider the following in handling the Diversion Proceedings:
 - a. Explain to the child and the child's family the objectives and the value of the diversion as well as the consequence of not undergoing the process.

- b. Ask the child about the circumstances of the offense, the motives or purpose behind the offense, and the factors that led the child to commit the offense.
 - c. Ask the child about some personal circumstances, including details of the child's parents and family, peers, and educational status.
 - d. Make the child understand the consequences of his/her actions and the corresponding responsibilities.
 - e. Make the child understand and realize his or her accountability and guide the child to take responsibility for repairing the harm done, in lieu of the filing a formal case in the Court.
 - f. Determine if diversion is appropriate and desirable.
2. Diversion proceedings should be conducted at a time that shall not interfere with the CICL's attendance in school and at a neutral place where the identities of the CICL and the parties concerned are kept confidential.
 3. The proceedings must be child-friendly and sensitive to the needs, welfare, and the protection of the rights of the child.
 4. The language used should be simple and understandable to the child.
 5. The venue should provide privacy to avoid unnecessary interruptions, distractions, and/or participation of other unconcerned persons.

Step 2: Formulation of a diversion program

1. The Diversion Committee shall consider the following *factors* in formulating the diversion program:
 - (1) Child's feeling of remorse for the offense committed;
 - (2) Parent's ability to guide the child and supervise the CICL;
 - (3) Victim's view about the propriety of the measures to be imposed;
 - (4) Availability of community-based programs for rehabilitation and reintegration of the child;
 - (5) Records of prior offense, if any; and
 - (6) Circumstances of the child including his/her health condition, physical capacity as well as cultural, social, economic, and religious circumstances.
2. CICL and the offended party shall together identify appropriate services. LSWDO shall assist in the identification of appropriate community-based diversion programs.

Forms of diversion programs at the level of the Punong Barangay:

- (1) Restitution of property (i.e., the return of the property to the rightful owner);
- (2) Reparation of the damage caused (i.e., the repair of the damaged property by the CICL himself/herself);
- (3) Indemnification for consequential damage
(NOTE: This includes the following: (a) Reimbursement of the expenses incurred by the owner in the repair or restoration of the damaged property or in mending the injury; (b) Payment of the actual cost of restoring the damaged property; and (c) Replacement of the lost/sold/broken property.);
- (4) Written or oral apology
(NOTE: the oral and written apologies should include the promise of the CICL not to commit the same offense again and the acceptance of possible punishment for re-offending, to be agreed upon by the child, his/her parents/guardian, and the concerned authority conducting the diversion proceedings.);
- (5) Confiscation and forfeiture of the proceeds or instruments of the crime. (NOTE: Proceeds of the crime shall be given to the offended party, as part of the indemnification by the CICL.);
- (6) Care, guidance and supervision orders
(NOTE: This includes giving advice to the CICL and her/his parents/guardians (when necessary) by the authority conducting the diversion proceedings; home/school visit by the representative of the LCPC/LSWDO; and reporting to the LCPC representative/ LSWDO based on the agreed schedule/duration.);

- (7) Counseling for the CICL and the child's family:
(NOTE: It is helping the child and his/her family become aware of themselves, and the ways in which they react to the behavioral influences of their environment. Thus, finding better and right responses to the various circumstances in the environment, Individual and Family Group Counseling Approach may be an effective tool to use.)
- (8) Attendance in trainings, seminars, and lectures (conducted by LSWDO or other local agencies/ organizations) on the following:
 - (a) anger management skills;
 - (b) problem-solving and/or conflict-resolution skills;
 - (c) values formation; and
 - (d) other life skills which will aid the CICL in dealing with situations which can lead to repetition of the offense.
- (9) Participation in available community-based programs/services or education, vocation, and life skills programs including community service in coordination with the school, Local Council for the Protection of Children, Sanguniang Kabataan, and Pag-asa Youth Association of the Philippines.

Other forms of diversion program

- (1) Assist in caring for infants and other children with special needs, the elderly, and those with disabilities in government, and non-government institutions;
- (2) Act as a caregiver, tutor, reader, etc. to preschool children in Day Care Centers, street children, senior citizens, and other institutions;
- (3) Conduct tree planting, vegetable gardening, garbage collection, cleaning of surroundings, drainage of canals, and other environmental sanitation activities;
- (4) Assist in the repair of the center's facilities such as recreational and sports centers, furniture, kitchen, bedrooms, and other significant structures;
- (5) Assist in the construction or repair of playground and sport facilities as well as initiate beautification projects such as painting, decorations of pathways, planting of ornamental plants, etc; and
- (6) Assist other government agencies providing programs for the youth such as: the Department of Labor and Employment (DOLE) Department of Tourism (DOT), Department of Public Works and Highways (DPWH), Department of Health (DOH), Department of Environment and Natural Resources (DENR).

Step 3: Acceptance and signing of diversion program

1. The consent of the child and the parents or guardians shall be obtained in arriving at a Contract of Diversion.
2. Diversion proceedings shall be completed within 45 days from referral.
3. A Contract of Diversion may be entered during the Diversion Proceedings when the child voluntarily admits the commission of the offense. The voluntary admission of the child during the diversion proceedings shall not be considered an admission of guilt and shall not be used against the child.
4. The written contract shall be signed by:
 - a. Child;
 - b. Parents or guardian of the child;
 - c. Authority that conducted the diversion proceedings (the *Punong Barangay*, the law enforcement officer, or the Prosecutor);
 - d. Member of the BCPC assisting the *Punong Barangay*, in cases of Diversion Proceedings at the Katarungang Pambarangay level; and
 - e. LSWDO, in cases of Diversion Proceedings by the law enforcement officer or by the Prosecutor.
5. The Diversion Contract places the responsibility or accountability upon the child to restore the harm

done, in view of the offense committed. It shall also contain the individualized diversion program and stipulate the rights, responsibilities, or accountabilities of the child, the parents or guardian, and the offended party, when applicable.

6. The *Punong Barangay* shall obtain the agreement of the offended party in the formulation of the individualized diversion program contained in the Contract of Diversion by:
 - a. Explaining to the offended party the benefits of forgiveness and diversion and the need to reform the CICL within the auspices of the community, instead of detention homes or rehabilitation centers, once the CICL expresses remorse and a willingness to ask for forgiveness from the offended party; and
 - b. Assuring the offended party that the LSWDO, together with the local government and the community, will be responsible for reforming and monitoring the CICL through various diversion programs.
7. The acceptance of the offended party is not required for a Contract of Diversion to be valid.

The Barangay Council for the Protection of Children (BCPC)

- The BCPC is a council organized at the barangay level to serve as the umbrella organization for all children's concerns. It is a council fully harnessed to be an efficient and effective advocate of child rights and implementer of all children's programs in the barangay.
- The BCPC is organized to ensure the survival, development, and participation of children and youth at the barangay or community level.
- The *Punong Barangay* is the BCPC chairperson and shall spearhead the organization of the council.

Compositions of the BCPC are:

- (1) Chairperson (*Punong Barangay*)
- (2) Co-chair (to be elected by BCPC members)
- (3) Secretary (Barangay Secretary)
- (4) Members:
 - (a) Brgy. *Kagawad*
 - (b) Brgy. Nutrition Scholar
 - (c) Brgy. Day Care Worker
 - (d) Brgy. Health Nurse/Midwife
 - (e) DepEd Principal/Teacher-in-Charge/Guidance Counselor Chief
 - (f) Barangay *Tanod*
 - (g) Sangguniang Kabataan Chairperson
 - (h) Child Representatives
 - (i) PTA President or his/her representative
 - (j) NGO Representatives (includes interfaith groups)
 - (k) PO Representatives
 - (l) Other sectors or groups of children involved in children's welfare

Functions of the BCPC and Lupong Tagapamayapa in the Diversion Process

- R.A. No. 9344 as amended has given more emphasis on the LCPC's crucial role in the protection of our children. The LCPC shall be strengthened as the primary agency to coordinate with and assist the LGUs in the formulation of a comprehensive plan for juvenile delinquency prevention and to oversee its proper implementation.

	BCPC	Lupong Tagapamayapa
<i>Diversion Proceedings</i>	<ul style="list-style-type: none"> Assists in the conduct of conferencing/mediation/conciliation/adoption of indigenous modes of conflict resolutions administered by the Barangay Chairperson/<i>Lupong Tagapamayapa</i> Assists in the identification and implementation of diversion support services or referral to concerned entities to avail of its services. 	
<i>Implementation of the Diversion Program</i>	<ul style="list-style-type: none"> Ensure the implementation of the diversion plan. Coordinate with other members of the community, to supervise and monitor the CICL and follow up with the victim. Submit periodic progress report of the CICL's activities to the LSWDO. 	<ul style="list-style-type: none"> Monitor the CICL and follow up with the victim. (This means to: (1) Gather collateral information about the CICL and the victim; and (2) Report to the <i>Punong Barangay</i>). Monitoring reports must be properly documented and submitted to the <i>Punong Barangay</i> every month.

NOTE: Authority conducting (*Punong Barangay/Lupong Tagapamayapa* of the Katarungang Pambarangay) the diversion proceeding shall be responsible in ensuring that the agreed diversion program is implemented. The LSWDO shall also assist in the identification and implementation of diversion support services or referral to concerned entities to avail of its services

Implementation of the Diversion Program

- Upon determination of the appropriate diversion program and the signing of contract by the CICL above 15 but below 18 years of age who acted with discernment, the *Lupong Tagapamayapa* shall coordinate with the BCPC.
- Community volunteers such the parents, barangay workers, youth organizations, people organizations, and other concerned citizens who are child advocates may be organized to assist in the implementation of the diversion program.
- Support services may also be provided to the families of the CICL such as family counseling, economic opportunities, and capability building.
- Implementation of diversion program should not exceed 2 years.
- The C/MSWDO shall provide the necessary services to the victim.

Delivery of Diversion Services

The following should be taken into consideration:

- Focus on interventions that build on the strengths of children rather than their weaknesses;
- Encourage cooperation among various community members;
- Interventions must be appropriate to the developmental stage of the child;
- Focus on education and strong family support; and
- Focus on continuing school, positive peer role models, and creating opportunities for work, especially among the adolescent population.

Supervise and Monitor the Implementation of the Diversion program

- Supervision of the diversion program at the barangay level shall be done by the *Punong Barangay/*

Lupong Tagapamayapa with the assistance of the BCPC. Essentially, *Lupong Tagapamayapa* and the BCPC supervise and monitor the implementation of the Diversion Plan.

PD 603	R.A. No. 9344 as amended	KP
Establish and maintain a database on children in the barangay.	Establish and maintain a database on CICL, which includes children who undergo interventions, diversions and rehabilitation programs, and aftercare support services.	Establish and maintain a database on CICL, which includes children who undergo diversion. Report submitted to BCPC.

NOTE: The effectiveness of diversion programs will be found in monitoring changes in attitudes and behaviors (recidivism rates) of the CICL over time.

Other Functions of the BCPC in relation to the implementation of the RA 9344, as amended

PD 603	R.A. No. 9344 as amended
<ul style="list-style-type: none"> Assist parents, whenever necessary in securing expert guidance counseling from the proper government or private welfare agency. 	<ul style="list-style-type: none"> Assist parents, whenever necessary in securing expert guidance counseling from the proper government or private welfare agency.
<ul style="list-style-type: none"> Encourage the proper performance of the duties of parents, and provide learning opportunities on the adequate rearing of children on positive-child relationships. 	<ul style="list-style-type: none"> Hold classes and seminars on the proper rearing of children. It shall distribute to parents available literature and other information on child guidance. The council shall assist parents, with behavioral problems whenever necessary, in securing expert guidance counseling from the proper government or private welfare agency.
<ul style="list-style-type: none"> Take steps to prevent juvenile delinquency and assist parents of children with behavioral problems so that they can get expert advice. 	
	<ul style="list-style-type: none"> Review existing policies of units providing services to CICL, determine barriers to access to these services, and take the necessary actions to improve access to these.
	<ul style="list-style-type: none"> Coordinate the organizations devoted to the welfare of children in coordination with the Sanguniang Kabataan and source their cooperation
Prepare AWWP (Annual Work and Financial Plan) for children and Recommend appropriations to Sanggunian	MC 2012-120 Allocation of 1% Internal Revenue Allocation (IRA) for the Strengthening and Implementation of the Programs. Projects and Activities of the Local Councils for the Protection of Children Per Section 15 of RA 9344 <ol style="list-style-type: none"> 1% IRA Outsource Charged to the 20% Development Funds of the LGUs

- Approved Action Plan of the BCPC with corresponding budget proposal that includes the following:
 - (1) Updating of children's situation or data bank on children;
 - (2) Work and financial plan preparation approved by Sangguniang Barangay;
 - (3) Monitoring the 4 Gifts for Children (Barangay Development Plan for Children, Barangay Investment Plan for Children, Barangay Code for Children, and Barangay State of Children Report);
 - (4) Referral to agencies of CNSP and follow up on action taken; and
 - (5) Ensuring and monitoring the enforcement of laws and policies for children.

Terminate the Diversion Program

- Agreements set in the contract have been complied with by all parties.
- CICL has been rehabilitated.

MODULE 5: What is an Indigenous Peoples- Relevant Katarungang Pambarangay?

An understanding of one's cultures and respect for cultural diversity helps not only in dealing with various people but also in impartially and justly resolving disputes in communities, especially those involving Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs) because they have distinct cultures, traditions, and customary laws depending on what IPs/ICCs they belong to.

This module aims to deepen the understanding of the Lupon and barangay officials of the indigenous peoples' rights and Republic Act No. 8371 or the Indigenous Peoples' Rights Act of 1997 (IPRA). The module also explores the areas in which Lupon and barangay officials can be cultural-sensitive and how they can advocate for cultural diversity and the respect of indigenous peoples' rights in relation to the Katarungang Pambarangay system in order to address the needs and concerns of IPs/ICCs.

PRELIMINARY SESSION

Session Objectives

At the end of the session, the participants should be able to:

1. Develop respect for cultural diversity and increased awareness or sensitivity to the plight of the indigenous peoples and the need to protect their rights; and
2. Understand the importance of integrating cultural sensitivity in performing their functions as *Lupon* and barangay officials in resolving conflicts at the barangay level.

Methodologies: Case Study and Input

Total Recommended Duration: 30 minutes

	Group Size	Recommended Duration	Materials
1 Case Study	All participants in plenary	20 minutes	Laptop, PowerPoint presentation, and multimedia projector
2 Input	All participants in plenary	10 minutes	



Key learnings

- Cultural sensitivity begins with awareness - that is, awareness of the differences and similarities between cultures as well as respect for cultural diversity. Recognizing the unique history, culture, and traditions of the indigenous peoples and their plight is a fundamental first step to respecting, promoting, and fulfilling indigenous peoples' rights.
- The barangays are the basic political unit of government, but it is the most important as it is closest to its community and constituents. Barangay officials are also the first to respond to cases and issues in the home and the community. Communities count on the barangay officials for guidance and action as well as other support services. This is important for indigenous peoples who are at the margins of society. Thus, the *Lupon* and barangay officials should be aware of the importance of cultural sensitivity in their functions in order to address the needs and concerns of indigenous peoples.

Suggested Session Outline

1. Case study
 - a) Ask the participants to read and reflect on the case study.

CASE STUDY: Sitio Tongbala

Geca is an Aeta Mag-Antsi in Sitio Tongbala in Capas, Tarlac. Sitio Tongbala is the farthest sitio in Capas almost three to four (3-4) hours from the nearest town and another hour from the town center. For the Aeta Mag-Antsi, life is difficult - they are at the margins of society, which means that they have little to no access to their basic rights and services. Geca only reached Grade 6, because while she wanted to go to school, there were no nearby schools in Capas and moving down the mountains to attend classes also meant leaving their families to work on their *gasaks* or farms all on their own. Geca's cousin Tinay also did not go to school, because she was ashamed. When she tried enrolling, she felt inferior to her *unat* or Tagalog classmates and was often discriminated against for how she looked.

One day, while Geca and Tinay were on their *gasak*, a man in a suit watched them from a distance. Afraid, they went home and told their community elders of what they saw. The next day, the community woke up to trucks and fences on their land and all across half the mountain, and guards barring the community from passing by that side of the mountain.

Helpless, the community elders walked for hours to reach the barangay hall with some community members following them, including Geca and Tinay. Dario, their tribal chief, went up to a barangay worker asking for help. The barangay worker, who did not understand the native language of the Aeta, asked Dario to write his complaint instead. Dario told her that he did not know how to read or write. The barangay worker said, "Ah, *ganun. Tanda niyo na, kuya. Hindi kayo marunong magsulat?*" before passing Dario to another barangay worker, Kiko. Kiko asked Dario if there was anyone who knew Tagalog from their community to help assist him. Dario called Geca over, and Geca reported the trucks and guards they saw in their community. Kiko filled up the complaint form and explained what was written on the form to Geca, who then explained it to Dario. After explaining what was written, Kiko asked them to sign on the blotter report, so they could refer further assistance to the community and coordinate with NCIP.

b) Process the activity by using the following guide questions:

- What was the main problem encountered by Aeta Mag-Antsi of Sitio Tongbala in the case? What were the other problems of the community or issues of the indigenous peoples that were mentioned in the case study?
- What good practices of barangay officials did you see, if any? Explain.
- What actions of the barangay officials do you think should be changed? Why?
- Can you think of other ways the barangay officials could have helped the community?

2. Input

- c) Discuss that land-grabbing is an issue faced by indigenous peoples, and how the issue is not just a land rights issue but a human rights issue because the land is integral to the identity of indigenous peoples; thus, taking away their land means taking away their identity, culture, and lives.
- d) Explain what culture is in relation to the importance of respect for cultural diversity.
 - Culture is what makes each one of us distinct from another. It varies from one place to another. One culture or tradition may be acceptable to one but may not be to another. This is the reason why each one of us has to give due respect and regard to such a culture.
 - There is a diversity of cultures. Indigenous peoples, in particular, have distinct cultures, traditions, practices, and customary laws, which must be recognized, respected, and promoted especially because indigenous peoples and communities are more often than not the victims of discrimination and exploitation.

- e) Highlight the importance of cultural sensitivity.
 - Indigenous peoples have been labeled as “uncivilized”, second-class citizens, or the Other. This comes with stereotypes of indigenous peoples’ being *madumi*, *walang alam*, *mang-mang*, *mahirap*, *tamad*, and *namumulubi*.
 - Cultural sensitivity grows when we start to see the influences of our own culture and acknowledge that we have biases. It is about reducing the number of assumptions we make about people based on our biases.
 - With cultural awareness and sensitivity comes a responsibility to act respectfully.
- f) Emphasize that respecting cultural diversity and understanding the plight of the indigenous peoples - how they are discriminated against and seen as victims or passive recipients rather than participants of development - is vital in being able to conduct Katarungang Pambarangay in a culturally-sensitive manner.
 - The goal of cultural sensitivity is for *all* people to feel respected and safe, in this context, when they interact with the barangay.
 - Culturally sensitive approaches are free of racism and discrimination. It comes from a place of empathy, understanding, and accommodation to consider where they are coming from in order to respond to their needs and concerns.

References:

See *Annex J (What Makes an Indigenous Peoples-Relevant Katarungang Pambarangay?)* at page 203.

SESSION 1: FOUNDATIONAL PRINCIPLES ON INDIGENOUS PEOPLES' RIGHTS (CONTEXT AND IPRA AS A LANDMARK LEGISLATION)

This session explains the basic concepts and foundational principles of indigenous peoples' rights. The session helps the Lupon and barangay officials understand the plight of the indigenous peoples through a discussion of who indigenous peoples are, what indigenous cultural communities are, and why there is a need for a law to protect them.

Session objectives

At the end of the session, the participants should be able to:

1. Understand the context of Republic Act No. 8371 or the Indigenous Peoples' Rights Act (IPRA) and in general, the plight of the indigenous peoples; and
2. Discuss what legal protection indigenous peoples/indigenous cultural communities have under the existing legal system as well as the basic concepts and foundational principles of indigenous peoples' rights.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour

	Group Size	Recommended Duration	Materials
1 Group Activity	All participants in plenary	30 minutes	Metacards, markers, Laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	30 minutes	



Key learnings

- Republic Act No. 8371 or the Indigenous Peoples' Rights Act (IPRA) is the law for the recognition and protection of the rights of indigenous peoples (IPs)/indigenous cultural communities (ICCs) in the Philippines. It is the fruit of decades of struggle within and outside the halls of Congress, which aims to correct the historical injustices against the Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs). The IPRA recognizes not only the need to protect the lands of the IPs/ICCs but *all* the human rights of Filipino IPs/ICCs.
- The four (4) bundles of rights under IPRA are: (1) ancestral domain and land rights; (2) self-governance and empowerment; (3) social justice and human rights; and cultural integrity.
- Land, together with all the resources is of indispensable importance to IPs/ICCs because their identity – culture, traditions, as well as socio-economic structures – and well-being are inextricably linked to it.
- The right to self-determination refers to “the right of a people to determine its own destiny.” IPs/ICCs have the right to freely choose their political status and establish their own economic, social, and cultural development.
- IPs/ICCs have the right to use their own justice systems, including conflict resolution institutions, peace-building processes or mechanisms, and other customary laws and

practices within their respective communities.²²¹

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

(The activity aims to help the participants understand the plight of the indigenous peoples.)

Activity 16: Draw MIT (Most Important Thing!)

Procedures:

- 1) Distribute the metacards and markers to each of the participants.
- 2) Give the participants five (5) minutes to draw on the metacard the most important thing that they own - "*Kunwari masusunog ang bahay mo, ano ang kukunin mo bago ka tumakbo palabas?*" Tell them that it needs to be an object, not a person or a memory.
- 3) After 5 minutes, ask the participants to one by one show the group their metacard and explain why they chose to draw the object. To manage a large group, you can ask instead for 5-10 volunteers to show their drawings and explain why it is important to them to the plenary.
- 4) Once everyone has finished describing their object, ask the following questions:
 - a) What if [participant A] comes and takes away the object of [participant B]? What would you do or feel?
 - b) What if [participant B] decides to sell [participant A]'s object without [participant A]'s consent? What would you do or feel?
 - c) What if a stranger - who has a lot of money - comes into your town and takes away everyone's objects?

Processing:

- N/A; See Abstraction/Input.

2. Input

- a) Connect with the preliminary session. Discuss that the purpose of the activity was to give the participants a glimpse and demonstrate what has happened and continues to happen to IPs/ ICCs to this day. For these participants, they each chose something that is important to them (e.g., their phone, documents, etc.), but for the IPs/ ICCs, what is most important to them is their land. On a daily basis, they confront issues of land-grabbing and the blatant disregard of their rights.
- b) Explain who IPs and what ICCs are. Connect with why there is a need for a law to protect them.

What are IPs? Who are ICCs?

- IPs/ ICCs are a group of people continuously living as an organized community on communally bounded and defined territory to which they claim ownership having occupied, possessed,

²²¹ An Act to Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Fund Therefor, and for Other Purposes [Indigenous Peoples' Rights Act of 1997], Republic Act No. 8371 (1997), § 15.

and utilized such territories since time immemorial.²²² They share “common bonds of language, customs, traditions, and other distinctive cultural traits” and are distinct from other non-indigenous Filipinos.²²³

Why is there a need for a law to protect IPs/ICCs?

- The IPs/ICCs have, for centuries, been victims of structural and systemic oppression and marginalization. Some of the vulnerabilities and issues have been brought about by and are rooted from colonization.
- Colonization is one of the biggest sources of marginalization.
 - This is seen not only in the economic domination of the colonizer. With the coming of the colonizers, most of the socio-political and legal systems, structures, social norms, and cultures of generations were destroyed when colonial governments imposed their values and systems on the indigenous.
 - During colonization, manipulation schemes and strategies were employed by the colonizers to remove the IPs/ICCs from their land and exploit their resources.
- Another source or cause of vulnerability may be development aggression. This has resulted in the IPs/ICCs being forced out of their ancestral domains and lands by private companies for mining or illegal logging, and in some cases, even the government itself.

c) Discuss the basic concepts and foundational principles on indigenous peoples’ rights, as well as what legal protection IPs/ICCs have under the existing legal system.

What does the 1987 Philippine Constitution say about the protection of the rights of IPs/ICCs?

- The 1987 Philippine Constitution provides that: “[t]he State shall recognize, respect, and protect the rights of [IPs or ICCs] to preserve and develop their cultures, traditions, and institutions” and “shall consider these rights in the formulation of national plans and policies.”²²⁴
- Further, the 1987 Constitution also guarantees the following:
 1. Recognition and promotion of the rights of IPs/ICCs within the framework of national unity and development²²⁵;
 2. Protection of the rights of IPs/ICCs to their ancestral lands to ensure their economic, social, and cultural well-being²²⁶;
 3. Applicability of the customary laws governing property rights or relations in determining the ownership and extent of ancestral domain (subject to the creation of a law)²²⁷;
 4. Promotion of non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs²²⁸; and
 5. Creation of a consultative body to advise the President on policies affecting the IPs/ICCs, the majority of the members of which shall come from such communities (subject to the creation of the law).²²⁹

222 Indigenous Peoples’ Rights Act of 1997, § 3(h).

223 Indigenous Peoples’ Rights Act of 1997, § 3(h).

224 PHIL. CONSTI. art. XIV, § 17.

225 PHIL. CONSTI. art. II, § 22.

226 PHIL. CONSTI. art. XII, § 5.

227 PHIL. CONSTI. art. XII, § 5.

228 PHIL. CONSTI. art. XIV, § 2(4).

229 PHIL. CONSTI. art. XVI, § 12.

What is the IPRA all about?

- The IPRA is the law for the recognition and protection of the rights of IPs/ICCs in the Philippines. It is the fruit of decades of struggle within and outside the halls of Congress, which aims to correct the historical injustices against the IPs/ICCs. The IPRA recognizes not only the need to protect the lands of the IPs/ICCs but *all* the human rights of Filipino IPs/ICCs.
- At the heart of the IPRA is affording the IPs/ICCs the rights and freedoms that are theirs in the first place. Broadly, these rights and freedoms include: free, prior, and informed consent (FPIC), ancestral domain and land rights, empowerment, self-governance, and social justice provisions. The IPRA also establishes the National Commission on Indigenous People (NCIP) as the primary government agency mandated to promote the interest and well-being of the IPs/ICCs.

What are the four (4) bundles of rights under IPRA?

- The rights of IPs/ICCs can be categorized into four (4) main categories:
 1. Ancestral domains and lands;
 2. Self-governance and empowerment;
 3. Social justice and human rights; and
 4. Cultural integrity.

Ancestral domains vs. Ancestral lands

ANCESTRAL DOMAINS	ANCESTRAL LANDS
Broader in scope.	Part of the ancestral domain.
All AREAS generally belonging to IPs/ICCs such as lands, inland waters, coastal areas, and natural resources.	Limited to LANDS only.
Owned by the IPs/ICCs.	Owned by individuals, families, and clans who are members of the IPs/ICCs.

NOTE: Both ancestral domains and ancestral lands cover not only the physical environment but the total environment, including the spiritual and cultural bonds to areas which the IPs/ICCs possess, occupy, and use and to which they have claims of ownership.²³⁰

What is the indigenous concept of ownership?

- The indigenous concept of ownership sustains the view that the ancestral domain and all resources found therein shall serve as the material bases of their cultural integrity.²³¹ In other words, land, together with all the resources is of indispensable importance to IPs/ICCs because their identity – culture, traditions, as well as socio-economic structures – and well-being, are inextricably linked to it.
- The indigenous concept of ownership “maintains the view that ancestral domains are the IPs/ICCs’ private but community property, which belongs to all generations. It is private simply because it is not part of the public domain. But its private character ends there. The ancestral domain is owned in common by the IPs/ICCs and not by one particular person.”²³²

230 Indigenous Peoples’ Rights Act of 1997, § 4.

231 Indigenous Peoples’ Rights Act of 1997, § 5.

232 Cruz, et.al v. Secretary of Environmental and Natural Resources, *supra* note 11.

What is time immemorial?

- Time immemorial is the period of time as far as memory can go.²³³ This can be proven by testimony of elders, historical accounts, and anthropological studies, among others.

What is native title?

- Native title refers to pre-conquest rights to lands and domains, which as far back as the memory reaches, have been held under a claim of private ownership by IPs/ICCs, never having been public lands and are thus, indisputably presumed to have been held that way since before conquest.
- Under the Torrens system, such native title may be formally recognized through the Certificate of Ancestral Domain Title (CADT) and Certificate of Ancestral Land Title (CALT) in order to claim the rights and privileges under the IPRA.²³⁴

May areas within ancestral domains be sold?

- No, “all areas within ancestral domains, whether delineated or not, are presumed to be communally owned and, pursuant to the indigenous concept of ownership, could not be sold, disposed, nor destroyed.”²³⁵

May ancestral land be transferred?

- Yes, but the right to transfer land or property rights is limited to and among members of the same IPs/ICCs, subject to the customary laws and traditions of the community.²³⁶

What do the rights to self-governance and empowerment include?

- The last rights to self-governance and empowerment include the:
 1. Right to self-determination²³⁷;
 2. Right to use their own justice systems and other customary laws and practices²³⁸;
 3. Right to participate in decision-making in matters which may affect their rights²³⁹;
 4. Right to determine and decide priorities for development²⁴⁰; and
 5. Right to maintain and develop their own indigenous political structures.²⁴¹

What is the right to self-determination?

- The right to self-determination refers to “the right of a people to determine its own destiny.”²⁴² Pursuant to this right, IPs/ICCs have the right to freely choose their political status and establish their own economic, social, and cultural development.²⁴³ The right is related to the rights of self-governance and participation.
- Under the IPRA, the right to self-determination is an aspect of their right to self-governance and empowerment, which includes deciding for themselves their priorities and means for

233 Certain IPs/ICCs are known to have occupied, possessed in the concept of the owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions. See Indigenous Peoples' Rights Act of 1997, § 3(p).

234 Indigenous Peoples' Rights Act of 1997, § 11.

235 Indigenous Peoples' Rights Act of 1997, § 5. See Indigenous Peoples' Rights Act of 1997, § 11.

236 Indigenous Peoples' Rights Act of 1997, § 8(a).

237 Indigenous Peoples' Rights Act of 1997, § 17.

238 Indigenous Peoples' Rights Act of 1997, § 15.

239 Indigenous Peoples' Rights Act of 1997, § 16.

240 Indigenous Peoples' Rights Act of 1997, § 17.

241 Indigenous Peoples' Rights Act of 1997, § 16.

242 Unrepresented Nations and Peoples Organization (UNPO), Self-Determination, available at <https://unpo.org/article/4957>

243 See, mainly U.N. General Assembly Resolution on the Declaration of Indigenous Peoples Rights (UNDRIP), U.N. Doc. A/RES/61/295 (13 September 2007), art. 3; See also Indigenous and Tribal Peoples Convention (ILO Convention No. 169) art. 1, entered into force Sept. 5, 1991, C169 (1991).

development.²⁴⁴ Corollary to the right of IPs/ICCs to determine their priorities and means for development, the right to participation ensures that they are able to participate at all levels of the process of development.

What is the principle of free, prior, and informed consent (FPIC)?

- The IPRA defines FPIC as “the consensus of all members of the IPs/ ICCs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.”²⁴⁵
- FPIC, as an instrument of empowerment, enables IPs/ICCs to exercise their right to self-determination.²⁴⁶ In brief, the IPs/ICCs shall have the right to accept or reject a certain development intervention in their particular communities.²⁴⁷
- FPIC is necessary for any and all instances when the rights of IPs/ICCs are affected by the government, private companies, organizations, or individual persons intending to undertake any policy, program, project, plan, or activity.

What are indigenous political structures (IPS)?

- It refers to organizational and cultural leadership systems, institutions, relationships, patterns, and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, or any other tribunal or body of similar nature (Sec. 3(i), R.A. No. 8371).

What is the Indigenous Peoples Mandatory Representative (IPMR)?

- This is rooted in the right of the IPs/ICCs to participate in decision-making. The authority of the IPMR emanates from the community through the IPS.
- IPMRs are considered as regular members of the Local Legislative Councils and policy-making bodies. It is the primary duty of the IPMR to carry out at all times the collective interests and aspirations of the community.

Suggested Materials

1. Ateneo Human Rights Center’s The Rights of Indigenous Peoples: Issues and Concerns (Dean Sedfrey Candelaria)
Available at: https://www.youtube.com/watch?v=p_nW1M1SVCY&t=135s
2. Republic Act (R.A.) No. 8371 (Indigenous Peoples’ Rights Act)
Available at: https://lawphil.net/statutes/repacts/ra1997/ra_8371_1997.html

References:

See Annex J (What Makes an Indigenous Peoples-Relevant Katarungang Pambarangay?) at page 203.

244 Indigenous Peoples’ Rights Act of 1997, § 13, 16, 17, & 20.

245 Indigenous Peoples’ Rights Act of 1997, § 3 (g).

246 See NCIP Administrative Order No. 1, Rule 4, Part III, § 1.

247 See NCIP Administrative Order No. 1, Rule 4, Part III, § 3.

SESSION 2: PRINCIPLES IN PRACTICE (IPRA AND THE KATARUNGANG PAMBARANGAY)

This session aims to put the foundational principles on indigenous peoples’ rights in practice through explaining the salient features of IPRA in relation to the Katarungang Pambarangay system. The session aims for the Lupon and barangay officials to demonstrate their understanding and skills in handling cases involving indigenous peoples/indigenous cultural communities and tackles the basic steps in addressing indigenous peoples’ rights issues in the Katarungang Pambarangay.

Session objectives

At the end of the session, the participants should be able to:

1. Explain the salient provisions of IPRA in relation to the settlement of disputes; and
2. Identify areas in the Katarungang Pambarangay system that the Lupon and barangay officials can practice to be culturally-sensitive.

Methodologies: Group Activity, Input, and Workshop

Total Recommended Duration: 1 Hour and 30 minutes

	Group Size	Recommended Duration	Materials
1 Group Activity	10-12 participants per group	25 minutes	Yarn, Manila paper, metacards, markers, Laptop, Powerpoint presentation, and multimedia projector
2 Input	All participants in plenary	25 minutes	
3 Workshop	5-8 participants per group	40 minutes	



Key learnings

- The IPs/ICCs have the right to use their traditional justice systems, conflict resolution institutions, or peace-building processes which are oriented to settlements, reconciliation, and healing, and as may be compatible with national laws and accepted international human rights, in all conflict situations between and among IPs/ICCs.
- In upholding the indigenous peoples’ rights to self-governance and empowerment as well as cultural integrity, the IPRA, at its core, guarantees the primacy of customary laws and practices. When disputes involve IPs/ICCs, customary laws and practices shall be used to resolve the dispute.

Suggested Session Outline

This session will consist of three (3) parts and will be undertaken as follows:

1. Group Activity

(The activity is an opportunity for the participants to come together to talk (or ‘yarn’) about their takeaways from the session on indigenous peoples’ rights. By engaging in the yarning circle, the participants enact an indigenous way of sharing knowledge through learning from one another.)

Activity 17: Yarning Circle

Procedures:

- 1) Divide the participants into equal groups.
- 2) In each group, the facilitator will ask the group to form and sit in a circle.
- 3) The facilitator will start the yarning circle by holding the end of the yarn. He/she will introduce the focus question, which is: “What is one thing that you learned about indigenous peoples’ rights?”
- 4) The facilitator encourages participants to take turns to talk and to promote reciprocal sharing and learning. Once a person finishes his/her sharing, he/she will throw the yarn to a person across the circle to form a web, until the entire group finishes.

Processing:

- 1) Circles represent important principles in the indigenous worldview and belief systems – namely, interconnectedness, equality, and continuity. According to traditional teaching, the seasonal pattern of life and renewal and the movement of animals and people were continuous, like a circle, which has no beginning and no end. Circles suggest inclusiveness and the lack of a hierarchy.²⁴⁸
- 2) Explain that a yarning circle (or a dialogue) is an important process that IPs/ICCs use to learn from one another, build respect, and share knowledge.

2. Input

- a) Connect with key learnings by asking the participants to recall the 4 bundles of rights discussed in the previous session. Highlight the principle of self-determination and rights of self-empowerment and governance.
- b) Connect with key learnings from the session on Access to Justice in Module 1. Explain the concept of legal pluralism and the interplay between formal justice systems and traditional justice systems.
 - The scope of the right to access to justice also includes plural justice systems. Plural justice systems refer to the coexistence within a State party of laws, regulations, procedures, and decisions on the one hand, and religious, customary, indigenous, or community laws and practices on the other. Therefore, plural justice systems include multiple sources of law, whether formal or informal, whether State, non-State, or mixed, that individuals may encounter when seeking to exercise their right to access to justice.

Legal Pluralism

- Legal pluralism is generally defined as a situation in which two (2) or more legal systems coexist in the same field. “It is when in a social field more than one source of law, more than one legal order, is observable, that the social order of that field can be said to exhibit legal pluralism.”²⁴⁹
- The framework of legal pluralism in the Philippines finds support in the broad constitutional

²⁴⁸ See Aboriginal Perspective’s The Teacher Toolkit: Circle Traditions – Talking Circle (https://sd73aboriginaleducation.weebly.com/uploads/3/9/9/9/39998163/strategygr01lancircle_talking_circle_intro.pdf_).

²⁴⁹ Mehol K. Sadain, Legal Pluralism: The Prospects for Conflict Resolution in the Philippines (<https://www.pcid.com.ph/wp-content/uploads/2017/03/Legal-Pluralism-March-2011-Occasional-Papers-series-1.pdf>) citing Quotes from John Griffiths, “What is Legal Pluralism” (http://law.gsu.edu/jjuergensmeyer/spring08/bonilla_session1_Griffiths.pdf).

recognition and promotion of the rights of IPs/ICCs within the framework of national unity and development, as well as the recognition, respect, and protection accorded the rights to preserve and develop their cultures, traditions, and institutions.

- **Traditional Justice/Indigenous Justice**²⁵⁰
- Traditional justice system is compromised with the customary laws that it applies; understood as consisting of a community's historically generated rules and norms.
- Customary laws are usually unwritten, passed down orally from generation to generation, and derived from the mores, values, and traditions of indigenous ethnic groups.
- It should not be understood in a narrow juridical sense to mean only the administration of justice; traditional justice in post-conflict settings encompasses a wide array of social goals including accountability, truth-telling, reparation, and reconciliation. In contexts where there is no clear separation between justice (retribution), reconciliation (restoration), and healing, these social goals are seen as inextricably linked together and part of a whole.

c) **What are the salient provisions of IPRA in relation to the settlement of disputes?**

- **Recognition of Socio-Political Institutions and Structures** (Rule IV, Part 1, Sec. 4, R.A. No. 8371)
 - The IPs/ICCs have the right to use their traditional justice systems, conflict resolution institutions, or peace-building processes which are oriented to settlements, reconciliation, and healing, and as may be compatible with national laws and accepted international human rights, in all conflict situations between and among IPs/ICCs.
 - The NCIP shall assist Ps/ICCs to document cases resolved under the indigenous justice systems, conflict resolution mechanisms, and peace-building processes in order to provide references to be used in resolving conflicts involving IPs/ICCs.
- **Right to Resolve Conflicts According to Customary Law** (Rule III, Part II, Sec. 8, R.A. No. 8371)
 - All conflicts pertaining to property rights, claims and ownership, hereditary succession, and settlement of land disputes within ancestral domains/lands shall be resolved in accordance with the customary laws, traditions, and practices of the IPs/ICCs in the area where the conflict arises.

If the conflict between or among IPs/ICCs is not resolved, through such customary laws, traditions, and practices, the Council of Elders/Leaders who participated in the attempt to settle the dispute shall certify that the same has not been resolved. Such certification shall be a condition precedent for the filing of the complaint with the NCIP, through its Regional Offices for adjudication.

- **Primacy of Customary Law** (Chapter IX, Sec. 65, R.A. No. 8371)
 - When disputes involve IPs/ICCs, customary laws and practices shall be used to resolve the dispute.

²⁵⁰ Peacebuilding Initiative, *Traditional & Informal Justice Systems: Definitions & Conceptual Issues* (<http://www.peacebuildinginitiative.org/indexb645.html?pageId=1875>).

d) How do we settle disputes/resolve cases involving IPs/ICCs?²⁵¹*Jurisdictional matters*

IPs/ICCs from the SAME community	<p>STEP #1: IPRA states that the matter must first go through the TRADITIONAL JUSTICE SYSTEM/CUSTOMARY LAW (Primacy of Customary Law).</p> <p>STEP #2: If not settled, the offended party has three (3) options:</p> <ul style="list-style-type: none"> (a) He/she/they may bring the matter to the RHO of the NCIP after the Council of Elders/Leaders issue a certificate of non-resolution or proof that it with through the traditional justice system in accordance with their customary law; OR (b) He/she/they may refer the matter to the Katarungang Pambarangay, if the case/complaint falls under the jurisdiction of the Katarungang Pambarangay; OR (c) Where the matter does not fall under the jurisdiction of the Katarungang Pambarangay, the matter may be brought to the proper law enforcement agencies/government agencies (e.g., PNP/CHR) before filing a case in court.
IPs/ICCs from DIFFERENT communities	<p>STEP #1: Where the NCIP has no jurisdiction, the offended party only has two (2) options:</p> <ul style="list-style-type: none"> (a) He/she/they may refer the matter to the Katarungang Pambarangay, if the case/complaint falls under the jurisdiction of the Katarungang Pambarangay; OR (b) Where the matter does not fall under the jurisdiction of the Katarungang Pambarangay, the matter may be brought to the proper law enforcement agencies/government agencies (e.g., PNP/CHR) before filing a case in court.
IP and non-IP	<p>STEP #1: Where the NCIP has no jurisdiction, the offended party only has two (2) options:</p> <ul style="list-style-type: none"> (c) He/she/they may refer the matter to the Katarungang Pambarangay, if the case/complaint falls under the jurisdiction of the Katarungang Pambarangay; OR (d) Where the matter does not fall under the jurisdiction of the Katarungang Pambarangay, the matter may be brought to the proper law enforcement agencies/government agencies (e.g., PNP/CHR) before filing a case in court.

²⁵¹ National Commission on Indigenous Peoples (NCIP), 2018 NCIP Rules of Procedure (NCIP Administrative Order No. 1, Series of 2018) (April 18, 2018).

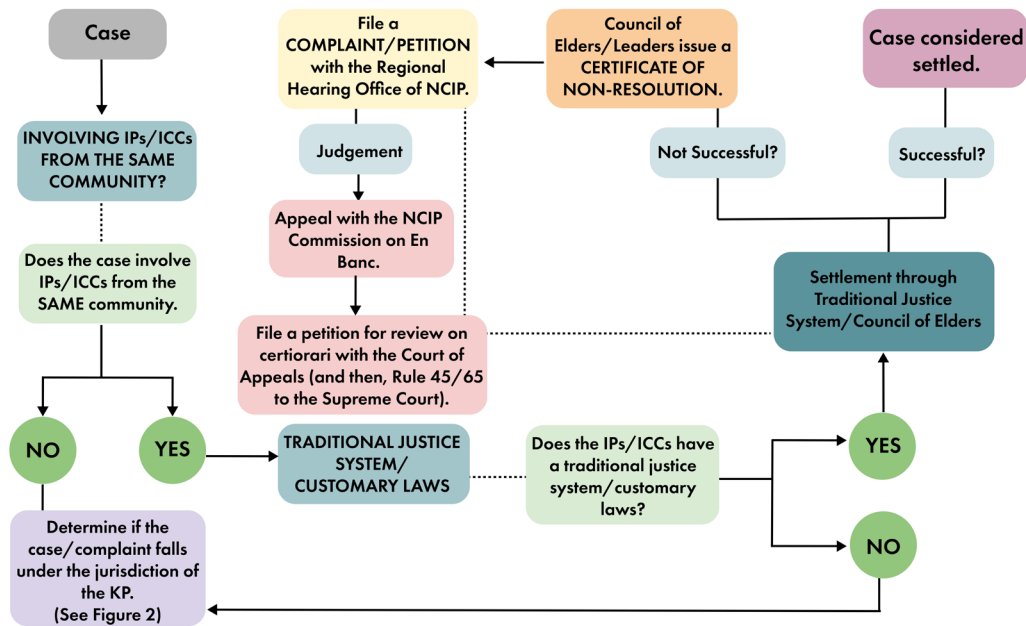


Figure 6: Settling/resolving cases involving IPs/ICCs

e) Recall what cultural sensitivity is.

What is cultural sensitivity?

- Cultural sensitivity means (1) being aware that cultural differences and similarities between people exist without assigning them a value – positive or negative, better or worse, right or wrong; and (2) being aware that cultural differences and similarities between people exist and have an effect on values, learning, and behavior.
- Cultural sensitivity grows when we start to see the influences of our own culture and acknowledge that we have biases. It is about reducing the number of assumptions we make about people based on our biases. With cultural awareness and sensitivity comes a responsibility to act respectfully.
- The goal of cultural sensitivity is for *all* people to feel respected and safe, in this context, when they interact with the barangay.
- Culturally sensitive approaches are free of racism and discrimination. It comes from a place of empathy, understanding, and accommodation to consider where they are coming from in order to respond to their needs and concerns.

f) Ask the participants: As frontliners, how can *Lupon* and barangay officials be culturally-sensitive in performing their functions?

What can the *Lupon* and barangay officials do to be culturally-sensitive in performing their functions?²⁵²

- Be aware of assumptions and challenge your assumptions.
- Use non-judgmental questions.

252 Powell, Martine B. (2000). *Practical Guidelines for Conducting Investigative Interviews with Aboriginal People*. Current Issues in Criminal Justice, 12(2), 181-197.

- Do not assume people have resources.
- Be aware that indigenous people have a different culture than non-indigenous people. Do not assume everyone is like you.
- Communicate in a language and manner that is understandable to the indigenous people. Silence does not necessarily mean that the individual does not understand. If needed, allow for someone to assist the indigenous person who speaks their language or an interpreter.
- Questions should be simple and clear. Allow time for an indigenous people to think through questions and their answers.
- The importance of building rapport is relevant when you are dealing with indigenous people who depend heavily on the existence of personal relationships and respect among others in their own society. A relationship needs to be established where his/her anxiety and feelings of insecurity and intimidation are reduced as much as possible.
- Consideration needs to be made of the interview environment to ensure that it minimizes a sense of threat, isolation, distractibility, disorientation, and discomfort. Where possible, the interviewer should seek advice in advance about relevant cultural and linguistic factors that may impact upon the interview. However, irrespective of what prior information the interviewer may have, the interviewee's behavior would still need to be observed carefully for signs of awkwardness, intimidation, embarrassment, and discomfort within the interview setting.
- The interviewer should elicit an uninterrupted free report of the interviewee's version of the event using only general probes or nonverbal prompts or a free narrative. Allow the indigenous peoples to tell his/her/their story.
- Further questioning about the event should not proceed unless the interviewer is certain there is something for the interviewee to tell, and has explored various avenues to help the interviewee provide the information on his/her/their own.

3. Workshop

(The activity puts in practice the principles learned on indigenous peoples' rights and dealing with indigenous peoples by resolving case scenarios on indigenous conflict resolution mechanisms.)

Activity 18: Workshop

Procedures:

- 1) Divide the group into equal groups.
- 2) Distribute the handouts of scenarios, Manila paper, markers, and masking tape.
- 3) In each group, the facilitator shall ask the participants to read the assigned scenario.
- 4) Each group will be given 10-15 minutes to determine the customary laws from the cited justice system and resolve the scenario applying said customary laws.
- 5) At the end of 10-15 minutes, each group will write their final resolution on the Manila paper.
- 6) Choose a representative to present and report the group's output.

Processing:

- 1) Use the following guide questions:
 - a) What are the identified customary practices in handling disputes?
 - b) As a Lupon or barangay official, how would you handle disputes of parties having different cultures?
 - c) What are your insights on the output/discussion?

	CASE SCENARIO	ACTUAL RESOLUTION OF THE CASE
<p>Group 1</p> <p>(Settlement of disputes within the AAAA tribe is through the traditional or customary law where a group of elders from the Council of Elders helps resolve the dispute and discuss the issue through a consensus-building process.)</p>	<p>Two parties belonging to the AAAA tribe, who were also close relatives, had a disagreement while drinking. The argument resulted in one party being stabbed to death by the other. The killer surrendered to the victim’s relatives and out of remorse even requested that they kill him.</p> <p>The case was filed in Court by the police, but because of the desire of the elders to settle the same by reason of kinship, the court brought back the case to the elders for settlement. During the pendency of the case, the accused was taken into custody by other relatives.</p> <p>Resolve the case by applying the above-customary judicial system.</p>	<p>Through the help of the community mediators, who pushed for the settlement through the traditional or customary law, a group of elders from the Council of Elders was chosen by the parties to resolve the dispute. The chosen elders discussed the issue through a consensus-building process and arrived at a resolution, whereby as a penalty: the accused was asked to pay Php100,000 pesos, reimburse the burial and other incidental expenses to the victim’s family, and feed the community members who participated in the settlement process.</p> <p>Note: The remanding of the case to the Council of Elders for settlement has brought permanent peace to the community involved. To date, no “bad blood” exists between the families and relatives of the parties concerned, since the community gives utmost account on the preservation of kinship between and amongst families in the community.</p>

	CASE SCENARIO	ACTUAL RESOLUTION OF THE CASE
<p>Group 2</p> <p>(The indigenous community follows their practice of “TONGTONGA,” in settling disputes. This refers to a consensus-building process among members of the community.)</p>	<p>Juan, a member of the BBBB indigenous community, cleared an area for “kingpin” or swidden farm but failed to follow the established basic tradition and policy of establishing a fire line of 10 meters as well as calling his neighbors to help avoid the fire from spreading. Due to said failure, Juan was unable to control the fire, and the whole mountain was burned.</p> <p>For violating community policies on protecting the forest as well as the Forestry Code, Juan was summoned by Punong Barangay Pedro. Juan immediately admitted his mistake and was asked to face the community and the tribal elders.</p> <p>Resolve the case by applying the above-customary judicial system.</p>	<p>The council of elders of the BBBB community requested the DENR that they be allowed to resolve the case through their customary laws. The DENR agreed.</p> <p>The case was then brought before the community and the elders and was duly decided through the “TONGTONGA,” which refers to a consensus-building process among members of the community.</p> <p>Thereafter, as a penalty, Juan was asked to provide the seedlings and feed community members tasked to plant trees to replace those burned as a result of the fire.</p> <p>Note: Similar cases in the past were settled through consensus building and the penalty was simply a return of the expenses of the victim. In effect, the penalty imposed created a healing of or restoration of relations among the parties.</p>

	CASE SCENARIO	ACTUAL RESOLUTION OF THE CASE
<p>Group 3</p> <p>(The indigenous communities resolve their dispute using their tradition of “TONGTONGON.” The tribal leaders/leaders of both the CCCC and DDDD communities came together and voiced their respective sides of the issues.)</p>	<p>A portion of the ancestral domain of the CCCC indigenous community is located within an area that has been declared a mining reservation. Adjacent to the ancestral domain is the IP community of DDDD. DDDD has been mined for centuries by a mining company. When the gold ores in DDDD were depleted, the mining company left the area without rehabilitating the place.</p> <p>One of the effects of mining in DDDD is the exhaustion of the surface water because the water flows underground following the mine tunnels. The water flowing is no longer viable for farming and for other economic activities. Hence, DDDD wanted that the water supply of CCCC community be made available to them without restriction. CCCC disagreed because they feared that the water will not be enough for their consumption.</p> <p>Resolve the case by applying the above-cited customary judicial system.</p>	<p>The two IP communities decided to resolve their dispute using their tradition of “TONGTONGON.” The tribal leaders/ leaders of both the CCCC and DDDD communities came together and voiced their respective sides of the issues.</p> <p>Consequently, a compromise was reached where both communities agreed to share the water supply; provided that:</p> <ol style="list-style-type: none"> (1) Priority thereto will be given to the CCCC community; (2) Any excess of the water supply may be tapped by the DDDD community; and (3) In the event that CCCC’s population grows, the DDDD community will look for other sources of water. <p>NOTE: The leaders/elders of the CCCC community also decided that instead of feuding with DDDD over water source, the latter should require the mining company to pump out the water underground as it is because of the mining tunnels that the water of DDDD (which was quite abundant and sufficient to meet the needs of the DDDD community) flowed underground.</p>

	CASE SCENARIO	ACTUAL RESOLUTION OF THE CASE
<p>Group 4</p> <p>(The EEEE community has the customary practice of “Pulong” in resolving conflicts/disputes between and among members of the community. The “Pulong”, which literally means “meeting” starts with the parties being called and notified for a dialogue. With the help of the tribal leaders/ elders, the parties involved are encouraged to arrive at a settlement acceptable to both parties.)</p>	<p>Some members of the EEEE community sold their rights to their ancestral lands to those who do not belong to the community, due to economic constraints.</p> <p>A local politician was able to buy and acquire land within the EEEE’s ancestral domain and was able to construct a resort therein without undergoing the usual process of consulting the community prior to its construction. It was claimed that there was prior consultation; but there was no participation from the members of the whole community.</p> <p>Resolve the case by applying the above-mentioned customary justice system.</p>	<p>In the case presented, the tribal leaders and elders resolved to demand from the politician to respect the rights of the community over the ancestral domain.</p>

Suggested Materials

1. Republic Act (
2. R.A.) No. 8371 (Indigenous Peoples’ Rights Act)
Available at: https://lawphil.net/statutes/repacts/ra1997/ra_8371_1997.html
3. Rules and Regulations on Implementing Republic Act No. 8371, Otherwise Known as “The Indigenous Peoples’ Rights Act of 1997” (NCIP Administrative Order No. 1, Series of 1998) (June 9, 1998)
Available at: <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/10/46070>
4. National Commission on Indigenous Peoples (NCIP), 2018 NCIP Rules of Procedure (NCIP Administrative Order No. 1, Series of 2018) (April 18, 2018)
Available at: <https://ncip.gov.ph/wp-content/uploads/2020/09/ncip-ao-no-1-s-2018-rules-of-procedure.pdf>

References:

See Annex J (What Makes an Indigenous Peoples-Relevant Katarungang Pambarangay?) at page page 203.

ANNEX J

WHAT MAKES AN INDIGENOUS PEOPLES-RELEVANT KP?

Who are Indigenous Peoples (IPs)? What are Indigenous Cultural Communities (ICCs)?

- Under the Indigenous Peoples' Rights Act (IPRA), IPs/ICCs are a group of people continuously living as an organized community on communally bounded and defined territory to which they claim ownership having occupied, possessed, and utilized such territories since time immemorial.²⁵³ They share “common bonds of language, customs, traditions, and other distinctive cultural traits” and are distinct from other non-indigenous Filipinos.²⁵⁴

Why is there a need for a law to protect IPs/ICCs?

- The IPs/ICCs have, for centuries, been victims of structural and systemic oppression and marginalization. Some of the vulnerabilities and issues have been brought about by and are rooted from colonization.
- Colonization is one of the biggest sources of marginalization.
 - This is seen not only in the economic domination of the colonizer. With the coming of the colonizers, most of the socio-political and legal systems, structures, social norms, and cultures of generations were destroyed when colonial governments imposed their values and systems on the indigenous.
 - During colonization, manipulation schemes and strategies were employed by the colonizers to remove the IPs/ICCs from their land and exploit their resources.
- Another source or cause of vulnerability may be development aggression. This has resulted in the IPs/ICCs being forced out of their ancestral domains and lands by private companies for mining or illegal logging, and in some cases, even the government itself.

Constitutional Bases on IP Rights

- The 1987 Philippine Constitution provides that: “[t]he State shall recognize, respect, and protect the rights of [IPs or ICCs] to preserve and develop their cultures, traditions, and institutions” and “shall consider these rights in the formulation of national plans and policies.”²⁵⁵
- Further, the 1987 Constitution also guarantees the following:
 - 1) Recognition and promotion of the rights of IPs/ICCs within the framework of national unity and development²⁵⁶;
 - 2) Protection of the rights of IPs/ICCs to their ancestral lands to ensure their economic, social, and cultural well-being²⁵⁷;
 - 3) Applicability of the customary laws governing property rights or relations in determining the ownership and extent of ancestral domain (subject to the creation of a law)²⁵⁸;
 - 4) Promotion of non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs²⁵⁹; and
 - 5) Creation of a consultative body to advise the President on policies affecting the IPs/ICCs the majority of the members of which shall come from such communities (subject to the creation of the law).²⁶⁰

253 Indigenous Peoples' Rights Act of 1997, § 3(h).

254 Indigenous Peoples' Rights Act of 1997, § 3(h).

255 PHIL. CONSTI. art. XIV, § 17.

256 PHIL. CONSTI. art. II, § 22.

257 PHIL. CONSTI. art. XII, § 5.

258 PHIL. CONSTI. art. XII, § 5.

259 PHIL. CONSTI. art. XIV, § 2(4).

260 PHIL. CONSTI. art. XVI, § 12.

What is IPRA all about?

- The IPRA is the law for the recognition and protection of the rights of IPs/ICCs in the Philippines. It is the fruit of decades of struggle within and outside the halls of Congress, which aims to correct the historical injustices against the IPs/ICCs. The IPRA recognizes not only the need to protect the lands of the IPs/ICCs but *all* the human rights of Filipino IPs/ICCs.
- At the heart of the IPRA is affording the IPs/ICCs the rights and freedoms that are theirs in the first place. Broadly, these rights and freedoms include: free, prior, and informed consent (FPIC), ancestral domain and land rights, empowerment, self-governance, and social justice provisions. The IPRA also establishes the National Commission on Indigenous People (NCIP) as the primary government agency mandated to promote the interest and well-being of the IPs/ICCs.

Operating Principles of IPRA

The six (6) operating principles of the IPRA are²⁶¹:

1) <u>Cultural diversity</u>	The beginning of unity is difference. The IPRA encourages the diversity of cultures, traditions, beliefs, and aspirations of IPs/ICCs.
2) <u>Consensus and peace-building</u>	Any determination or decisions in conflicts or disputes affecting or pertaining to IPs/ICCs shall be reached through dialogue and consensus as far as practicable.
3) <u>Cultural integrity</u>	The adherence of IPs/ICCs to their respective customs, beliefs, traditions, indigenous knowledge systems, and practices, and the assertion of their identity as peoples shall remain inviolable.
4) <u>Human dignity</u>	The inherent and inalienable distinct character, sacred human dignity, and unique identity of IPs/ICCs shall be respected.
5) <u>Subsidiarity, solidarity, and total human development</u>	In the pursuit of civil, political, economic, social, and cultural development, the IPs/ICCs shall be the central subject thereof and its active participant and beneficiary.
6) <u>Transparency and capacity-building</u>	The NCIP shall perform its tasks on the basis of transparency and active support and participation by the IPs/ICCs.

Four (4) Bundles of Rights

- The rights of IPs/ICCs can be categorized into 4 main categories:
 - 1) Ancestral domains and lands;
 - 2) Self-governance and empowerment;
 - 3) Social justice and human rights; and
 - 4) Cultural integrity.

Ancestral domains vs. Ancestral lands

²⁶¹ See NCIP Administrative Order No. 1, Rule 1, § 4.

ANCESTRAL DOMAINS	ANCESTRAL LANDS
<p>Broader in scope.</p> <p>All AREAS generally belonging to IPs/ICCs such as lands, inland waters, coastal areas, and natural resources.</p> <p>Owned by the IPs/ICCs.</p>	<p>Part of the ancestral domain.</p> <p>Limited to LANDS only.</p> <p>Owned by individuals, families, and clans who are members of the IPs/ICCs.</p>

NOTE: Both ancestral domains and ancestral lands cover not only the physical environment but the total environment, including the spiritual and cultural bonds to areas which the IPs/ICCs possess, occupy, and use and to which they have claims of ownership.²⁶²

What is the indigenous concept of ownership?

- The right to ancestral domain of the IPs/ICCs is held under the indigenous concept of ownership.
- The indigenous concept of ownership sustains the view that the ancestral domain and all resources found therein shall serve as the material bases of their cultural integrity.²⁶³ In other words, land, together with all the resources is of indispensable importance to IPs/ICCs because their identity – culture, traditions, as well as socio-economic structures – and well-being, are inextricably linked to it.²⁶⁴
- The indigenous concept of ownership “maintains the view that ancestral domains are the IPs/ICCs’ private but community property, which belongs to all generations. It is private simply because it is not part of the public domain. But its private character ends there. The ancestral domain is owned in common by the IPs/ICCs and not by one particular person.”²⁶⁵

Do the rights to ancestral domain and ancestral land exist even without a (paper) title?

- Yes, the right to ancestral domain and ancestral lands are recognized even without a paper title. This is the concept of native title. Native title refers to pre-conquest rights to lands and domains, which as far back as the memory reaches, have been held under a claim of private ownership by IPs/ICCs, never having been public lands and are thus, indisputably presumed to have been held that way since before conquest.
- However, under the Torrens system, such native title may be formally recognized through the Certificate of Ancestral Domain Title (CADT) and Certificate of Ancestral Land Title (CALT) in order to claim the rights and privileges under the IPRA.²⁶⁶

Does the right of ownership of ancestral domains and land cover all resources found therein?

262 Indigenous Peoples’ Rights Act of 1997, § 4.

263 Indigenous Peoples’ Rights Act of 1997, § 5.

264 United Nations Permanent Forum on Indigenous Issues, Indigenous peoples collective rights to lands, territories, and resources, available at <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Peoples-Collective-Rights-to-Lands-Territories-Resources.pdf>

265 Cruz, et.al v. Secretary of Environmental and Natural Resources, *supra* note 11.

266 Indigenous Peoples’ Rights Act of 1997, § 11.

- No, there is nothing in the IPRA that expressly grants the IPs or ICCs ownership over the natural resources within their ancestral domains and lands. “Ownership over the natural resources in the ancestral domains remains with the State and the IPs/ICCs are merely granted the right to manage and conserve them for future generations, benefit and share the profits from their allocation and utilization, and negotiate the terms and conditions for their exploration for the purpose of ensuring ecological and environmental protection and conservation measures.”²⁶⁷ Simply stated, the IPs/ICCs’ rights over the natural resources take the form of management or stewardship.²⁶⁸

May areas within ancestral domains be sold?

- No, “all areas within ancestral domains, whether delineated or not, are presumed to be communally owned and, pursuant to the indigenous concept of ownership, could not be sold, disposed, nor destroyed.”²⁶⁹

May ancestral land be transferred?

- Yes, but the right to transfer land or property rights is limited to and among members of the same IPs/ICCs, subject to the customary laws and traditions of the community.²⁷⁰

What do the rights to self-governance and empowerment include?

- The rights to self-governance and empowerments include the:
 - 1) Right to self-determination²⁷¹;
 - 2) Right to use their own justice systems and other customary laws and practices²⁷²;
 - 3) Right to participate in decision-making in matters which may affect their rights²⁷³;
 - 4) Right to determine and decide priorities for development²⁷⁴; and
 - 5) Right to maintain and develop their own indigenous political structures.²⁷⁵

Right to self-determination

- The right to self-determination refers to “the right of a people to determine its own destiny.”²⁷⁶ Pursuant to this right, IPs/ICCs have the right to freely choose their political status and establish their own economic, social, and cultural development.²⁷⁷ The right is related to the rights of self-governance and participation.
- The importance of the right to self-determination lies in the right of choice as it belongs to the people and not to states or governments.²⁷⁸ The right of choice in relation to self-determination involves the right to choose the development schemes they desire. Under the IPRA, the right to self-determination is an aspect of their right to self-governance and empowerment, which includes

267 Cruz, et.al v. Secretary of Environmental and Natural Resources, *supra* note 11.

268 *Id*, *supra* note 11.

269 Indigenous Peoples’ Rights Act of 1997, § 5. See Indigenous Peoples’ Rights Act of 1997, § 11.

270 Indigenous Peoples’ Rights Act of 1997, § 8(a).

271 Indigenous Peoples’ Rights Act of 1997, § 17.

272 Indigenous Peoples’ Rights Act of 1997, § 15.

273 Indigenous Peoples’ Rights Act of 1997, § 16.

274 Indigenous Peoples’ Rights Act of 1997, § 17.

275 Indigenous Peoples’ Rights Act of 1997, § 16.

276 Unrepresented Nations and Peoples Organization (UNPO), Self-Determination, available at <https://unpo.org/article/4957>

277 See, mainly U.N. General Assembly Resolution on the Declaration of Indigenous Peoples Rights (UNDRIP), U.N. Doc. A/RES/61/295 (13 September 2007), art. 3; See also Indigenous and Tribal Peoples Convention (ILO Convention No. 169) art. 1, entered into force Sept. 5, 1991, C169 (1991).

278 Unrepresented Nations and Peoples Organization (UNPO), *supra* note 31.

deciding for themselves their priorities and means for development.²⁷⁹ Corollary to the right of IPs/ ICCs to determine their priorities and means for development, the right to participation ensures that they are able to participate at all levels of the process of development.

What does the right to participation of IPs/ICCs cover?

- The right of participation includes the right to participate freely and effectively at all levels of decision-making on matters which would affect their rights, lives, and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures.²⁸⁰ It also includes the right to participate in the benefits of this development process, and the right to benefit on equal footing from the rights, opportunities, and services which national laws and regulations may grant to other members of the population.²⁸¹

Free, prior, and informed consent (FPIC)

- The IPRA defines FPIC as “the consensus of all members of the IPs/ICCs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.”²⁸²
- FPIC, as an instrument of empowerment, enables IPs/ICCs to exercise their right to self-determination.²⁸³ In brief, the IPs/ICCs shall have the right to accept or reject a certain development intervention in their particular communities.²⁸⁴
- FPIC is necessary for any and all instances when the rights of IPs/ICCs are affected by the government, private companies, organizations, or individual persons intending to undertake any policy, program, project, plan, or activity.

What are indigenous political structures (IPS)?

- It refers to organizational and cultural leadership systems, institutions, relationships, patterns, and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, or any other tribunal or body of similar nature (Sec. 3(i), R.A. No. 8371).

What is the Indigenous Peoples Mandatory Representative (IPMR)?

- This is rooted in the right of the IPs/ICCs to participate in decision-making. The authority of the IPMR emanates from the community through the IPS.
- IPMRs are considered as regular members of the Local Legislative Councils and policy-making bodies. It is the primary duty of the IPMR to carry out at all times the collective interests and aspirations of the community.

Do IPs/ICCs have the right to use their own justice systems and other customary laws and practices? Is this right absolute?

279 Indigenous Peoples' Rights Act of 1997, § 13, 16, 17, & 20.

280 UNDRIP, *supra*, art. 18; ILO Convention No. 169, *supra*, art. 7.1; Indigenous Peoples' Rights Act of 1997, *supra*, § 2.

281 UNDRIP, *supra*, art. 18; ILO Convention No. 169, *supra*, art. 7.1; Indigenous Peoples' Rights Act of 1997, *supra*, § 2.

282 Indigenous Peoples' Rights Act of 1997, § 3 (g).

283 See NCIP Administrative Order No. 1, Rule 4, Part III, § 1.

284 See NCIP Administrative Order No. 1, Rule 4, Part III, § 3.

- Yes, the IPRA states that IPs/ICCs have the right to do so, including conflict resolution institutions, peace-building processes or mechanisms, and other customary laws and practices within their respective communities.²⁸⁵
- No, while they are given the right to use their own justice systems, the same right is limited insofar as it is compatible with the national legal system and with internationally recognized human rights.²⁸⁶

Plural Justice Systems

- The scope of the right to access to justice also includes plural justice systems. Plural justice systems refers to the coexistence within a State party of laws, regulations, procedures, and decisions on the one hand, and religious, customary, indigenous, or community laws and practices on the other. Therefore, plural justice systems include multiple sources of law, whether formal or informal, whether State, non-State, or mixed, that individuals may encounter when seeking to exercise their right to access to justice.
- **Legal Pluralism**
 - Legal pluralism is generally defined as a situation in which two (2) or more legal systems coexist in the same field. “It is when in a social field more than one source of law, more than one legal order, is observable, that the social order of that field can be said to exhibit legal pluralism.”²⁸⁷
 - The framework of legal pluralism in the Philippines finds support in the broad constitutional recognition and promotion of the rights of IPs/ICCs within the framework of national unity and development, as well as the recognition, respect, and protection accorded the rights to preserve and develop their cultures, traditions, and institutions.
- **Traditional Justice/Indigenous Justice**²⁸⁸
 - Traditional justice system is compromised with the customary laws that it applies; understood as consisting of a community’s historically generated rules and norms.
 - Customary laws are usually unwritten, passed down orally from generation to generation, and derived from the mores, values, and traditions of indigenous ethnic groups.
 - It should not be understood in a narrow juridical sense to mean only the administration of justice; traditional justice in post-conflict settings encompasses a wide array of social goals including accountability, truth-telling, reparation, and reconciliation. In contexts where there is no clear separation between justice (retribution), reconciliation (restoration), and healing, these social goals are seen as inextricably linked together and part of a whole.

What are the salient provisions of IPRA in relation to the settlement of disputes?

- **Recognition of Socio-Political Institutions and Structures** (Rule IV, Part 1, Sec. 4, R.A. No. 8371)
 - The IPs/ICCs have the right to use their traditional justice systems, conflict resolution institutions, or peace-building processes which are oriented to settlements, reconciliation, and healing, and as may be compatible with national laws and accepted international human rights, in all conflict situations between and among IPs/ICCs.
 - The NCIP shall assist IPs/ICCs in documenting cases resolved under the indigenous justice systems, conflict resolution mechanisms, and peace-building processes in order

285 Indigenous Peoples' Rights Act of 1997, § 15.

286 Indigenous Peoples' Rights Act of 1997, § 15.

287 Mehol K. Sadain, Legal Pluralism: The Prospects for Conflict Resolution in the Philippines (<https://www.pcid.com.ph/wp-content/uploads/2017/03/Legal-Pluralism-March-2011-Occasional-Papers-series-1.pdf>) citing Quotes from John Griffiths, “What is Legal Pluralism” (http://law.gsu.edu/jjuergensmeyer/spring08/bonilla_session1_Griffiths.pdf).

288 Peacebuilding Initiative, *Traditional & Informal Justice Systems: Definitions & Conceptual Issues* (<http://www.peacebuildinginitiative.org/indexb645.html?pageId=1875>).

to provide references to be used in resolving conflicts involving IPs/ICCs.

- **Right to Resolve Conflicts According to Customary Law** (Rule III, Part II, Sec. 8, R.A. No. 8371)
 - All conflicts pertaining to property rights, claims and ownership, hereditary succession, and settlement of land disputes within ancestral domains/lands shall be resolved in accordance with the customary laws, traditions, and practices of the IPs/ICCs in the area where the conflict arises.

If the conflict between or among IPs/ICCs is not resolved, through such customary laws, traditions, and practices, the Council of Elders/Leaders who participated in the attempt to settle the dispute shall certify that the same has not been resolved. Such certification shall be a condition precedent for the filing of the complaint with the NCIP, through its Regional Offices for adjudication.

- **Primacy of Customary Law** (Chapter IX, Sec. 65, R.A. No. 8371)
 - When disputes involve IPs/ICCs, customary laws and practices shall be used to resolve the dispute.

How do we settle disputes/resolve cases involving IPs/ICCs?²⁸⁹

Jurisdictional matters

<p>IPs/ICCs from the SAME community</p>	<p>STEP #1: IPRA states that the matter must first go through the TRADITIONAL JUSTICE SYSTEM/CUSTOMARY LAW (Primacy of Customary Law).</p> <p>STEP #2: If not settled, the offended party has three (3) options:</p> <ul style="list-style-type: none"> (a) He/she/they may bring the matter to the RHO of the NCIP after the Council of Elders/Leaders issue a certificate of non-resolution or proof that it with through the traditional justice system in accordance with their customary law; OR (b) He/she/they may refer the matter to the Katarungang Pambarangay, if the case/complaint falls under the jurisdiction of the Katarungang Pambarangay; OR (c) Where the matter does not fall under the jurisdiction of the Katarungang Pambarangay, the matter may be brought to the proper law enforcement agencies/government agencies (e.g., PNP/CHR) before filing a case in court.
<p>IPs/ICCs from DIFFERENT communities</p>	<p>STEP #1: Where the NCIP has no jurisdiction, the offended party only has two (2) options:</p> <ul style="list-style-type: none"> (a) He/she/they may refer the matter to the Katarungang Pambarangay, if the case/complaint falls under the jurisdiction of the Katarungang Pambarangay; OR (b) Where the matter does not fall under the jurisdiction of the Katarungang Pambarangay, the matter may be brought to the proper law enforcement agencies/government agencies (e.g., PNP/CHR) before filing a case in court.

²⁸⁹ National Commission on Indigenous Peoples (NCIP), 2018 NCIP Rules of Procedure (NCIP Administrative Order No. 1, Series of 2018) (April 18, 2018).

IP and non-IP

STEP #1: Where the NCIP has no jurisdiction, the offended party only has two (2) options:

- (a) He/she/they may refer the matter to the Katarungang Pambarangay, if the case/complaint falls under the jurisdiction of the Katarungang Pambarangay; OR
- (b) Where the matter does not fall under the jurisdiction of the Katarungang Pambarangay, the matter may be brought to the proper law enforcement agencies/government agencies (e.g., PNP/CHR) before filing a case in court.

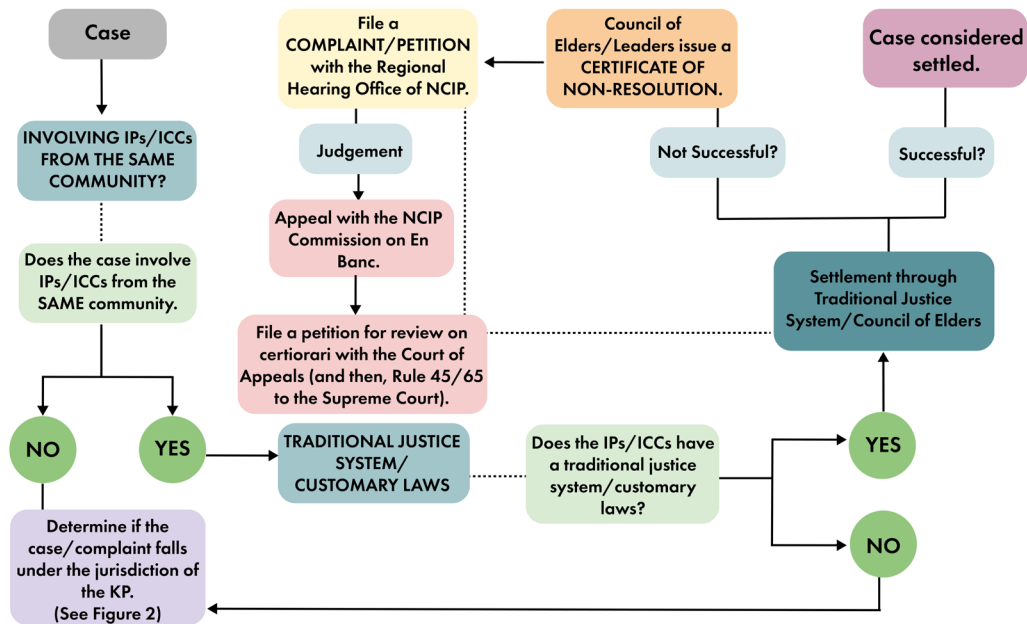


Figure G: Settling/resolving cases involving IPs/ICCs

1. DETERMINE if the case involves IPs/ICCs from the SAME community
 - If NO: Determine if the case/complaint falls under the jurisdiction of the KP system (See Figure 2).
 - If YES: Move on to remedies provided for under the traditional justice system/indigenous dispute resolution processes of the IPs/ICCs or the customary laws.
2. DETERMINE if there is and what is the existing traditional justice system/customary laws of the IPs/ICCs.
 - Ask: *Does the IPs/ICCs have traditional justice system/customary laws? What is it?*
 - If NO: Revert back to the question if the case/complaint falls under the jurisdiction of the KP system (See Figure 2).
 - If YES: The case moves to settlement through the traditional justice system/council of elders.

IMPORTANT!

No case shall be brought before the Commission En Banc or the Regional Hearing Office unless the parties have exhausted all remedies provided for under the customary laws or indigenous dispute resolution processes of the IPs/ICCs.

3. Following the customary laws, SETTLE according to the traditional justice system.
 - If SUCCESSFUL: The case is considered settled.
 - If NOT SUCCESSFUL: Council of elders/leaders issue a CERTIFICATE OF NON-RESOLUTION.

IMPORTANT!

When a complainant/petitioner alleges that there is no known Council of Elders/Leaders who can mediate or if the Elders/Leaders refuse or are disqualified to mediate, the case shall be referred to a mediator/s chosen by them from an identified pool of accredited mediators or one mutually agreed upon by the parties.

In case the parties fail to agree on who will mediate or when one or both of the parties refuse to submit to mediation, the Regional Hearing Officer shall direct the NCIP Provincial Officer, the head of the Service Center, or any qualified officer of the NCIP to mediate the case. If no settlement or compromise is reached after mediation, the assigned mediator shall issue a certification to that effect.

4. Interested persons may file a COMPLAINT/PETITION with the Regional Hearing Office of NCIP.
5. The Regional Hearing Office of NCIP shall render JUDGMENT by determining the applicable customary law in a given case. Resort to civil and other existing laws shall be made only upon showing of a diligent determination of the absence of an applicable customary law.
6. The JUDGMENT of the Regional Hearing Officer may be appealed with the NCIP Commissioner En Banc.
7. The judgment/final order of the NCIP Commission on En Banc may be appealed through a petition for review on certiorari with the Court of the Appeals.
8. The losing party has the final remedies of filing a Rule 45/Rule 65 petition, where applicable to the Supreme Court.

What is cultural sensitivity?

- Cultural sensitivity means (1) being aware that cultural differences and similarities between people exist without assigning them a value – positive or negative, better or worse, right or wrong; and (2) being aware that cultural differences and similarities between people exist and have an effect on values, learning, and behavior.
- Cultural sensitivity grows when we start to see the influences of our own culture and acknowledge that we have biases. It is about reducing the number of assumptions we make about people based on our biases. With cultural awareness and sensitivity comes a responsibility to act respectfully.
- The goal of cultural sensitivity is for *all* people to feel respected and safe, in this context, when they interact with the barangay.
- Culturally sensitive approaches are free of racism and discrimination. It comes from a place of empathy, understanding, and accommodation to consider where they are coming from in order to respond to their needs and concerns.

What can the *Lupon* and barangay officials do to be culturally-sensitive in performing their functions?²⁹⁰

1. Be aware of assumptions and challenge your assumptions.
2. Use non-judgmental questions.
3. Do not assume people have resources.
4. Be aware that indigenous people have a different culture than non-indigenous people. Do not assume everyone is like you.
5. Communicate in a language and manner that is understandable to the indigenous people. Silence does not necessarily mean that the individual does not understand. If needed, allow for someone to assist the indigenous person who speaks their language or an interpreter.
6. Questions should be simple and clear. Allow time for an indigenous people to think through questions and their answers.
7. The importance of building rapport is relevant when you are dealing with indigenous people who depend heavily on the existence of personal relationships and respect among others in their own society. A relationship needs to be established where his/her anxiety and feelings of insecurity and intimidation are reduced as much as possible.
8. Consideration needs to be made to the interview environment to ensure that it minimizes a sense of threat, isolation, distractibility, disorientation, and discomfort. Where possible, the interviewer should seek advice in advance about relevant cultural and linguistic factors that may impact upon the interview. However, irrespective of what prior information the interviewer may have, the interviewee's behavior would still need to be observed carefully for signs of awkwardness, intimidation, embarrassment, and discomfort within the interview setting.
9. The interviewer should elicit an uninterrupted free report of the interviewee's version of the event using only general probes or nonverbal prompts or a free narrative. Allow the indigenous peoples to tell his/her/their story.
10. Further questioning about the event should not proceed unless the interviewer is certain there is something for the interviewee to tell, and has explored various avenues to help the interviewee provide the information on his/her/their own.

290 Powell, Martine B. (2000). *Practical Guidelines for Conducting Investigative Interviews with Aboriginal People*. *Current Issues in Criminal Justice*, 12(2), 181-197.

PART III: TOOLS IN MEDIATION, CONCILIATION, AND ARBITRATION

MODULE 6: Techniques and Skills in Mediation, Conciliation, and Arbitration

Discussions on alternative dispute resolution and Katarungang Pambarangay processes, as well as gender responsiveness, child-friendliness, and indigenous peoples' relevant methods, should be converted from theory to practice. In this module, the participants will learn more about the mediation, conciliation, and arbitration and how to apply the information gained in previous modules.

SESSION 1: LEARNING THE TECHNIQUES AND SKILLS IN RESOLVING CONFLICTS

Session Objectives

At the end of the session, participants should be able to:

1. Discuss the methods, techniques, and skills in resolving conflicts; and
2. Develop effective skills in resolving conflicts.

Methodologies: Group Activity and Input

Total Recommended Duration: 1 Hour and 30 minutes

	Group Size	Recommended Duration	Materials
1 Group Activity	3 groups	45 minutes	Metacards or Manila paper, markers, and masking tape, laptop, PowerPoint presentation, and multimedia projector
2 Input	All participants in plenary	45 minutes	



Key Learnings

- Mediation is characterized as a voluntary, private, and confidential, party having control over process and outcome, interest-based, enforceable outcome, time-saving and cost-effective, mutually satisfactory, and preserves relationships.
- The process of mediation includes the opening statement of the mediator, opening statement of the parties, identifying the problem, private caucus, generation of alternatives, and the drafting and signing of the agreement.
- To be an effective mediator or conciliator, one must prepare oneself, know the role of Mediator or Conciliator, and exercise special skills in mediation.
- Special skills in mediation include: building the trust of the parties, changing positions to interests, active listening, asking appropriate questions, giving feedback, reframing, reflecting, restating, summarizing, observing non-verbal signs and body language, and managing impasse.

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

Activity 19: Sharing of Experiences in Mediation, Conciliation, or Arbitration

Procedures:

- 1) Divide the participants into three (3) groups and assign each group a particular question to be discussed.
- 2) The questions are:
 - a) Describe the mediation and arbitration process (Group 1);
 - b) Enumerate the special skills required of a mediator and an arbitrator (Group 2); and
 - c) Tips in conducting mediation and arbitration (Group 3).
- 3) The group shall discuss their assigned questions based on the participants' experience in conducting mediation, conciliation, or arbitration. Discussion shall be for 15 minutes.
- 4) Share the results of the group's discussion through a creative presentation (i.e., role play, drawing, song). Presentation shall be 10 minutes per group.

Processing:

- 1) Use the following guide questions:
 - a) What are the differences between mediation and arbitration?
 - b) Why are special skills mentioned important?

2. Input

- a) Highlight the correct answers from the inputs of the participants in the activity before proceeding to the discussion.
- b) Review the difference between mediation, conciliation, and arbitration.

Conciliation	Mediation	Arbitration	Litigation
Conciliator (Pangkat Tagapagsundo)	Mediator (Punong Barangay)	Arbitrator (Punong Barangay or Pangkat Chairman or Pangkat	Litigator (Judge)
Plays a direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making proposals for settlement	Facilitates the discussion and assists the parties to decide how to solve the problem. Mediator maintains neutrality or impartiality.	Hears both sides, considers the evidence submitted, and decides the disputes	The judge decides based on the testimonies and evidence presented
Cheaper	Cheaper	Cheaper	Expensive
Consent by the parties to submit to conciliation	Consent by the parties to submit to mediation	Express agreement - included in the contract or on a separate agreement	A case is filed in court when a conflict occurs

Settlement agreement	Settlement agreement - a solution that is acceptable to both parties	Arbitral award rendered by the arbitrators	Judgment
Voluntary Informal	Voluntary Informal Flexible	Voluntary Parties dictate how they will go about the process	Rigid court rules
Private and confidential	Private and confidential	Private and confidential	Public
	Weeks, months	Months to a year	Years
Final and binding between the parties	Final and enforceable	Enforceable	Appealable
Win-win	Win-win	Fair award	One party loses winner takes all

- c) Recall the definition of mediation. Use the characteristics of mediation to compare it with court processes. This can be used as context in discussing the preparations one needs to make to be an effective mediator. This preparation includes appreciating your role and the special skills needed by a mediator.

What is Mediation?

- A voluntary process in which a mediator, selected by disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement (Sec. 3 [q], R.A. No. 9285).

Why mediate? What are the characteristics of mediation?

- Voluntary;
- Private and confidential (See Secs. 9-11, R.A. No. 9285);
- Party control over process and outcome (See Sec. 2, R.A. No. 9285);
- Interest-based;
- Enforceable outcome (See Sec. 17, R.A. No. 9285; See also Article 2041, Civil Code of the Philippines);
- Time-saving and cost-effective;
- Mutually satisfactory; and
- Preserves relationships.

- d) After discussing the preparations and special skills, proceed to discuss the steps in mediation.

Mediation Process

- Opening STATEMENT of the Mediator;
- Opening STATEMENT of the Parties;
- Identifying the PROBLEM;
- PRIVATE Caucus;
- Generation of ALTERNATIVES; and.
- Drafting and Signing of the AGREEMENT.

References:

See Annex K (Techniques and Skills in Resolving Conflicts) on page page 221.

SESSION 2: DEMONSTRATING TECHNIQUES AND SKILLS IN RESOLVING CONFLICTS

Session Objectives:

At the end of the session, participants should be able to:

1. Explain and demonstrate techniques for handling scenarios in a simulated setting; and
2. Differentiate between mediation and arbitration.

Methodologies: Simulation and peer evaluation

Total Recommended Duration: 1 Hour and 30 minutes

	Group Size	Recommended Duration	Materials
1 Simulation	2 groups	85 minutes	Metacards or Manila paper, markers, masking tape, laptop, Powerpoint presentation, and multimedia projector
2 Peer evaluation	All participants in plenary	45 minutes	

Suggested Session Outline

This session will consist of two (2) parts and will be undertaken as follows:

1. Group Activity

Activity 20: Simulation

Procedures:

- 1) Divide the participants into two (2) groups and assign each group a particular dispute to handle. The cases are as follows:

Case 1: Women

Alexa and her family recently moved to Barangay Poblacion. To go to her workplace from her new house, she would have to take a jeepney, go down at the last stop, and walk about a block to her office. The jeepney terminal in the Barangay Poblacion is just two (2) streets away from her house.

One Wednesday morning, one week after Alexa moved in, Aidan approached Alexa while she was on her way to the terminal. Aidan is also a resident of Barangay Poblacion and also takes the jeepney to work. He noticed her the other day but was not able to approach her because the jeepney he was in was already full and was about to leave. He deliberately waited for her this morning so he could talk to her. Aidan approached Alexa while she was in the line and introduced himself. He asked for her name but Alexa politely declined. He insisted and promised that he only has good intentions. Alexa declined again and proceeded to board the next jeepney.

Aidan continued to approach Alexa almost every day for the next three (3) weeks. This prompted Alexa to complain about Aidan in the barangay.

Case 2: Indigenous Peoples and Children

Claudia Buenavista is the owner of a piece of land on a corner street in Barangay Punta Verde. She lives in the house next door but still had a “no trespassing” sign posted on the land. However, due to lack of funds, she was only able to put a wooden fence on one side of the land.

Amor Powers and her 15-year-old daughter Yna are members of the Macaspac tribe. They usually pass by the property of Claudia on their way to the land that they own and farm to a small house that Amor’s husband, Eduardo, recently built.

One rainy day, Amor and Yna were forced to take shelter in a kubo inside the property of Claudia. Claudia, who went to check the land, saw Amor and Yna. A confrontation happened between Claudia and Amor, which resulted in injuries to Amor and Yna. Amor and Yna went to the hospital to get a medical check-up.

Both Amor and Claudia went to the barangay to complain about each other.

- 2) Ask the groups to assign participants who will act as *Lupon* members and the characters in the case study.
- 3) Ask the groups to discuss how they will handle the dispute. The groups will share their discussion through a role play. The role play should show at least the following:
 - (a) Interview of the complainant;
 - (b) Meeting of the parties; and
 - (c) Result of the meeting.
- 4) The groups will have 15 minutes to discuss and another 20 minutes each for the roleplay.
- 5) After the role play, ask the others in plenary the following questions:
 - a) What good practices did you see in the role play?
 - b) What could have been improved?

Processing:

- 1) Use the following guide questions:
 - a) Did you find anything difficult in the process, particularly in handling disputes involving children, women, and indigenous peoples? If yes, please specify. How did you address the challenge? In the alternative, what new lesson/technique/strategy did you learn, if any?
 - b) How would the process be different if the parties elected to have an arbitration?

2. Input

- a) Synthesize the insights of the participants from the activity. Highlight the importance of conducting the processes in a gender-responsive, child-friendly, and indigenous relevant manner.
- b) Using the discussion on special skills, give feedback to the groups as well.

References:

See Annex K (Techniques and Skills in Resolving Conflicts) on page page 221.

ANNEX K

TECHNIQUES AND SKILLS IN RESOLVING CONFLICTS

Standard Basic Alternative Dispute Resolution (ADR) Skills Training

Conciliation	Mediation	Arbitration	Litigation
Conciliator (Pangkat Tagapagkasundo)	Mediator (Punong Barangay)	Arbitrator (Punong Barangay or Pangkat Chairman or Pangkat)	Litigator (Judge)
Plays a direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making proposals for settlement	Facilitates the discussion and assists the parties to decide how to solve the problem. Mediator maintains neutrality or impartiality.	Hears both sides, considers the evidence submitted, and decides the disputes	The judge decides based on the testimonies and evidence presented
Cheaper	Cheaper	Cheaper	Expensive
Consent by the parties to submit to conciliation	Consent by the parties to submit to mediation	Express agreement - included in the contract or on a separate agreement	A case is filed in court when a conflict occurs
Settlement agreement	Settlement agreement - a solution that is acceptable to both parties	Arbitral award rendered by the arbitrators	Judgment
Voluntary Informal	Voluntary Flexible Informal	Voluntary Parties dictate how they will go about the process	Rigid court rules
Private and confidential	Private and confidential	Private and confidential	Public
	Weeks, months	Months to a year	Years
Final and binding between the parties	Final and enforceable	Enforceable	Appealable
Win-win	Win-win	Fair award	One party loses winner takes all

What is Mediation?

- A voluntary process in which a mediator, selected by disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement (Section 3 [q], R.A. No. 9285)

Why mediation?

Characteristics of Mediation

1. Voluntary;
2. Private and confidential (See Secs. 9-11, R.A. No. 9285);
3. Party control over process and outcome (See Sec. 2, R.A. No. 9285);
4. Interest-based;
5. Enforceable outcome (See Sec. 17, R.A. No. 9285; See also Article 2041, Civil Code of the Philippines);
6. Time-saving and cost-effective;
7. Mutually satisfactory; and
8. Preserves relationships.

Phases and Processes of Mediation

Phases of Mediation

- The mediation process can have two (2) distinct phases:
 - (1) First phase - The mediator talks with the offender and victim separately, with the intention of helping to reach a point where they are prepared to meet face to face, to search together for some solution to their conflict.
 - (2) Second phase - There is direct negotiation between the offender and the victim, but the mediator is often present as an unbiased facilitator.

STAGES OF MEDIATION

1. Problem-defining Stages: The first thing to do as a mediator (NOTE: This also applies so for a conciliator) is defining the problem. Mediators should begin by introducing themselves and by giving an opening statement. Next, it is important to set the ground rules for the hearing. After the ground rules, he/she can ask the parties' statements. After each side has spoken, the mediator must summarize both parties' statements to show that you are listening to what they have to say. A reminder here is that it is important to pick only the details that are related to the complaint.
2. Problem-solving Stages: As a mediator, he/she should set the agenda that was based on what the parties initially said in their opening statements. In staying on track on the agenda, it is important to understand and explore the issue. If needed, he/she can hold a private, one-on-one session with the parties involved. After a private session has been made, do the joint session to discuss the matters and to ask them what they think should be their mutual solution. Hopefully, at the end of it all, both parties can come into an agreement.

Processes of Mediation

1. Preparing to work on disputes
 - Clarify issues and options
 - Who should attend
 - Preparation of both parties
 - Neutral venue
2. Setting the scene
 - Welcome both parties
 - Seating arrangements
 - Ground rules

3. Session
 - Invite Party A
 - Invite Party B
 - Summaries/clarifies
 - Exploring issues
 - Focus on present
 - Focus on interest
4. Building Agreements
 - Look at options
 - Look at most achievable
 - Written agreement (i.e., clear and concrete)
 - Timetable for action
 - Sign agreement
5. Closure and follow-up
 - Thank each party
 - May arrange for follow-up session

Step-by-Step Guide to Mediation

1. Opening STATEMENT of the Mediator;
2. Opening STATEMENT of the Parties;
3. Identifying the PROBLEM;
4. PRIVATE Caucus;
5. Generation of ALTERNATIVES; and
6. Drafting and Signing of the AGREEMENT.

Step 1: Preparing for Mediation

- Notifying parties of the schedule
- Ensuring presence of necessary parties
- Securing necessary authority
- Logistics

Step 2: Mediator's Opening Statement

- Introductions
- Process overview
- Purpose of mediation
- Mediator's role
- Emphasis on party autonomy and confidentiality
- Ground rules
- Need for separate meetings (private caucuses)
- Willingness to go ahead

Step 3: Parties' Opening Statements

- Introduction
- Explanation of respective positions/views taken
- Areas of disagreement
- Goals/objectives in mediation

Step 4: Identifying the Problem

- Summarizing the opening statements
- Problem/issue identification

Step 5: Private Caucus

- Only when necessary
- Benefits
- Confidentiality

Step 6: Alternatives

- Brainstorming/generation of alternatives
- Selection of possible solution(s)
- Improving/building on solution(s)
- Finalizing details of the agreement

Step 7: Agreement

- Drafting settlement agreement
- Review and final revisions
- Signing of the agreement
- Closing statement:
 - Acknowledge what they have accomplished; and
 - Review the next steps in compliance with the agreement

How to be an Effective Mediator/Conciliation

How to Prepare for Mediation/Conciliation?

1. Prepare yourself.
 - Empty your cup.
 - Keep an open mind
 - Know your abilities as a mediator/conciliator.
 - Stay flexible and grounded.
 - Respect.
2. Know your role as mediator/conciliator.
 - Set the date for mediation/conciliation.
 - Introduce the parties and explain the process.
 - Set the ground rules.
 - Open communication channels.
 - Gather information and identify the problem.
 - Allow the parties to express their feelings and vent emotions.
 - Help parties identify and understand their interests and priorities.
 - Help facilitate in identifying the parties' alternatives.
 - Assist the parties in crafting the agreement.

Special Skills of the Mediator

In general, the special skills in mediation include: building the trust of the parties, changing positions to interests, active listening, asking appropriate questions, giving feedback, reframing, reflecting, restating, summarizing, observing non-verbal signs and body language, and managing impasse.

1. Building Trust

- Trust requires acceptance by the parties that the Mediator is:
 - (1) Competent to facilitate the discussion effectively;
 - (2) Skillful in managing the process; and
 - (3) Able to communicate, maintain confidentiality, question, build relationships, listen, analyze, identify issues, and generate options for mutual gain.
- During mediation, TRUST means the parties felt that the Mediator is the right person

to facilitate the discussion in terms of competency, experience, expertise, standing, and personality.

- *Why is it important to build trust?*
 - If they trust the mediator, parties are more likely to share important information, be less defensive, able to state their needs, more willing to give and take in negotiations; more accepting of the mediator’s actions; and better able to bridge the gaps between them.
- *How to build trust?*
 - a. Create a relaxed environment.
 - b. Make the parties understand the process and your role as mediator.
 - c. Establish and maintain credibility.
 - d. Treat each party equally and with respect.

2. Changing Positions to Interests

POSITION	INTEREST
What people say they want or need. Identifies a person’s favored situation. May not address the needs and/or concerns of others.	The reasons why people want things. Tells what needs to be addressed in order to reach an agreement. Can be addressed in more than one way.

- *What is the Mediator’s role?*
 - The role of the Mediator is to facilitate communication so that parties are able to share their mutual interests.

For example:

PROBLEM	INTERPRETATION	POSITION	INTEREST	ISSUE
<i>The immediate source of dispute</i>	<i>How people interpret the other party’s behavior</i>	<i>Demands, threats, fixed solutions, proposals, or points of view</i>	<i>What really matters to this person? (Why is X a problem?)</i>	<i>The topic the parties need to discuss and decide.</i>
1. Barking dog	The neighbor (dog owner) is unfriendly and inconsiderate. It violates my privacy.	Buy a muzzle.	I am not well, I need my sleep. I want my home to be a quiet, private place	How to control the barking dog at night?
2. Unfair electric bill	The electric company wants to rip me off. They think I am not smart enough to notice.	I will only pay for the electricity I know I consumed for the month.	I want to be treated fairly by the electric company.	How to apply for a new electric meter without paying for the electric consumption of the previous renter?

3. 3 months unpaid bill	Tenant is a freeloader.	Collect the money due from the customer.	Pay Php1,50 this month or the electric company will cut service.	Collect monthly electric bills from customer.
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- It is important to listen for cues about the parties' interests. This means listening for:
 1. What matters to each person;
 2. What they most hope to resolve;
 3. The effect the problem has;
 4. What issues are particularly hot;
 5. Any common underlying themes;
 6. What is important to him/her/them;
 7. What bothers him/her/them about the situation;
 8. How does it affect him/her/them; and
 9. It sounds like it matters to him/her/them a lot.

4. Active Listening

- Quiet your mind and focus.
- Withhold judgment.
- Look at the speaker.
- how that you are interested in what he/she is saying.
- Lean slightly toward the speaker. Keep an open and relaxed posture.
- Try to listen for what is not being said. Observe how things are being said. Emotions and attitudes behind the words may be more important than talk.

5. Asking Questions

- Why do we ask questions?
 - (1) To show that you're listening (especially at the early trust-building stage);
 - (2) To gather and organize information (particularly at the problem-solving stage); and
 - (3) To express in question form what otherwise would be an academic statement and to test reality.
- *Pointers on Asking Questions:*
 - (1) Generally, questions should be open-ended.
 - (2) Avoid potentially problematic questions.
 - Examples are: (a) problem and past-focused questions (e.g., "What contributed to things getting this bad?"); (b) rhetorical or pseudo questions (e.g., "Don't you think forgetting the past is more useful?"); and (c) Why questions (e.g., "Why didn't you ask permission first?").
 - (3) Instead, ask purposeful questions.

6. Giving Feedback

- It is important to give feedback to: (1) to confirm that you have been listening; and (2) to check that your perception of what you think you heard/observed is right.

7. Reframing, Reflecting, and Restating

- This refers to restating what a party has said to capture the essence, remove negative overtones, and move the process forward. It is a way to translate a positional statement into a statement of interests or needs.
 - Examples: "hysterical" to "crying" or "liar" to "a person who disagreed" or "sees differently"

8. Summarizing

- It is important to summarize: (1) to gather and pull together important facts; (2) to condense the feelings and content of the speaker; (3) to establish basis for further discussion; and (4) to review progress.
- How to summarize?
 - Give an outline of what has been said.
 - Highlight the important points of the narrative.
 - Omit extraneous information.

9. Observing Non-verbal Signs and Body Language

- This means observing the following:
 - Body language of parties when they entered the room and how they respond to each other;
 - Tone of voice; and
 - Predominant' emotion portrayed in a party's posture and in their gestures at key stages in the mediation.

10. Managing impasse

- This may be done through: convening, preparing, and communicating.
 - Convening involves effective convening by the mediator of all the concerned parties, asking a lot of questions, and being unafraid to push to better understand all of the dynamics of the negotiation
 - Preparing means ensuring that each person needs to know enough about the case so that they can analyze settlement proposals and make informed decisions.
 - Communicating is important because impasse results when there is failure at the communication stage. This means that the mediator may not have discovered or addressed a party's underlying interest.

Do's and Don'ts in Mediation/Conciliation

DO's	DON'Ts
1. Do remind parties that they own the mediation/conciliation and its outcome is theirs to determine. 2. Do remind parties of the confidentiality of the mediation/conciliation process. 3. Do active listening and build trust. 4. Do feel free to empathize with each party's perspective while maintaining neutrality. 5. Do ask questions gracefully without indicating bias. 6. Do tackle ambiguities or inconsistencies in the parties' understanding of the agreement. 7. Do write the agreement then and there.	1. Do not try to minimize the other person's feelings. 2. Do not make negative judgement. 3. Do not misrepresent or omit relevant facts 4. Do not speak in a condescending or sarcastic way. 5. Do not demand that the other party apologize or admit the wrong doing. 6. Do not make offensive or hostile non-verbal expressions. 7. Do not act like a judge or permit parties to treat you like one. 8. Do not lose control of the proceeding. 9. Do not offer any opinion, skepticism, or favor with either of the parties.

Techniques/Strategies in Mediation/Conciliation Restorative Justice Models

1. Victim-Offender Mediation

- This process offers victims an opportunity to meet the offenders in a safe and structured setting and engage in a mediated discussion of the crime.
- In general, this process aims to:
 - (1) Support the healing environment of the victim by providing a safe and controlled setting;
 - (2) Allow offenders to learn about the impact of their crimes and take direct responsibility for their behavior; and
 - (3) Provide an opportunity for the victim and offender to develop a mutually acceptable plan to address the harm caused by the crime.
- *How is this done?*

VICTIM	OFFENDER
<ul style="list-style-type: none"> ● Explain how the crime has affected them. ● Given the opportunity to ask questions about the incident. ● Help develop a plan for restoring losses. 	<ul style="list-style-type: none"> ● Given the opportunity to tell their story. ● Take direct responsibility by making amends in some form.

2. Family Group Conferencing

- This process involves the community of people most affected by the crime – victim, offender, and the family and friends and key supporters of both – in deciding the resolution of the criminal incident.
- This process aims to:
 - (1) Allow for victim involvement in the decisions regarding appropriate sanctions;
 - (2) Increase the offender’s awareness of the impact of his/her/their behavior and provide him/her/them an opportunity to take full responsibility for it;
 - (3) Engage the collective responsibility of the offender’s support system for making amends and shaping the offender’s future behavior; and
 - (4) Allow both the victim and offender to reconnect with the community’s key support systems.
- Procedure:
 - a. Invite to participate in the conference and explain the process.
 - b. Identify key supporters who will also be invited to participate.
 - c. Ask for a narration of the incident by the offender or victim.
 - d. Victim is given the opportunity to express feelings and ask questions relative to the incident.
 - e. Victim will be asked to identify desired outcomes from the conference. Other participants will also be asked to contribute to the problem-solving process.
 - f. Session ends with the participants signing the agreement that outlines their expectations and commitments.

3. Circle Process

- This process is a holistic reintegrative strategy designed not only to address the criminal behavior of the offender but also to consider the needs of the victims, their families, and the community.
- This process aims to:
 - (1) Promote the healing process for all affected parties;
 - (2) Provide an opportunity for the offender to make amends;

- (3) Empower victims, offenders, their family and friends, and members of the community;
- (4) Address the underlying causes of criminal behavior;
- (5) Build a sense of community and its capacity of resolving conflict; and
- (6) Promote and share community values.
- Procedure:
 - a. Application by the offender to participate in the circle process.
 - b. Participation in the healing circle for the victim.
 - c. Participation in the healing circle of the offender.
 - d. Circle to develop consensus on the resolution of the problem.
 - e. Follow-up circles to monitor the progress of the offender.

Reminders for Authorities Conducting the Mediation/Conciliation

DON'Ts	DO's
Do not take sides.	Be neutral. The mediator/conciliator shall be neutral, impartial, and independent during the entire mediation process. Remember that the role of the mediator is to assist the disputing parties in settling their differences.
	Send a message clearly. Use a language that is understood by all. Avoid words and expressions that have different meanings to different people and non-verbal communication like facial expressions that may not be acceptable to other people. Avoid long and winding explanations
	Listen generously. Show interest by listening sincerely and attentively. Listening will help you gather adequate information in order to correctly guide parties in reaching agreements. Before expressing your comments, impressions, and conclusions, make sure that you have understood the whole situation.
Do not gossip.	Focus on the issue. Focus on the issue of resolving the conflict or case. Remember that the mediator/conciliator is there not to satisfy his/her/their own curiosity or the desire to satisfy his/her/their need for information.
Do not instigate.	Be calm. Focus on the issue, i.e., what the offense and its effect, and what both parties could do to reach a win-win solution.
Do not cut people off.	Respect the one speaking. Allow time for each party for their own story to be heard fully and tell them to let the other person finish talking before speaking.
Do not allow name-calling and shouting.	Maintain proper decorum. At the start of the conference, make it a ground rule not to make name calling and shouting. Provide an atmosphere where both sides could talk properly and in a subdued manner.
Do not lecture or give advice while dialogue is ongoing.	Allow both parties to share their sides. Remember that the main purpose of the proceeding is for both parties to talk about the wrong done and repair the hurts/harms brought by it. Advice and possible options/directions could be given to both parties after the dialogue.
Do not rush.	Paraphrase and acknowledge. It helps in understanding the situation if the authority conducting the mediator/conciliation uses words that are more understandable and in a gentle/subtle manner. Both parties can be better understood by listening actively, acknowledging, and paraphrasing their arguments. Express views without provocations or aggravating the situation. This is an effective tool to “disarm” or calm both parties while understanding their point of view.

Do not be emotionally affected.	Be patient. Being the one who controls the procedural aspects and determines the course of the activity, the success of the proceeding is basically dependent on your mood/ disposition.
	Never use offensive words. Do not use degrading words.
	Observe confidentiality at all times.

KP FORM NO. 1

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE PUNONG BARANGAY

_____, 20____

NOTICE TO CONSTITUTE THE LUPON

To All Barangay Members and All Persons Concerned:

In compliance with Section 1 (a). Chapter 7, Title One, Book III, Local Government Code of 1991 (Republic Act No. 7160), of the Katarungang Pambarangay Law, notice is hereby given to constitute the Lupon Tagapamayapa of this Barangay. The persons I am considering for appointment are the following:

- | | | |
|----------|-----------|-----------|
| 1) _____ | 10) _____ | 19) _____ |
| 2) _____ | 11) _____ | 20) _____ |
| 3) _____ | 12) _____ | 21) _____ |
| 4) _____ | 13) _____ | 22) _____ |
| 5) _____ | 14) _____ | 23) _____ |
| 6) _____ | 15) _____ | 24) _____ |
| 7) _____ | 16) _____ | 25) _____ |
| 8) _____ | 17) _____ | |
| 9) _____ | 18) _____ | |

They have been chosen on the basis of their suitability for the task of conciliation considering their integrity, impartiality, independence of mind, sense of fairness and reputation for probity in view of their age, social standing in the community, tact, patience, resourcefulness, flexibility, open mindness and other relevant factors. The law provides that only those actually residing or working in the barangay who are not expressly disqualified by law are qualified to be appointed as Lupon members.

All persons are hereby enjoined to immediately inform me of their opposition to or endorsement of any or all of the proposed members or recommend to me other persons not included in the list but not later than the _____ day of _____ 20____ (the last day for posting this notice).

 Punong Barangay

IMPORTANT : This notice is required to be posted in three (3) conspicuous places in the barangay for at least three (3) weeks.

WARNING : Tearing or defacing this notice shall be subject to punishment according to law.

KP FORM NO. 2

Republic of the Philippines
Province of _____
CITY/MUNICIPALITY OF _____
Barangay _____

OFFICE OF THE PUNONG BARANGAY

_____, 20____
(Date)

A P P O I N T M E N T

TO: _____

Pursuant to Chapter 7, Title One Book III, Local Government Code of 1991 (Republic Act No. 7160), you are hereby appointed MEMBER of the Lupon Tagapamayapa of this Barangay effective upon taking your oath and until a new Lupon is constituted on the third year following your appointment.

Punong Barangay

ATTESTED:

Barangay Secretary

KP FORM NO. 3

Republic of the Philippines
Province of _____
CITY/MUNICIPALITY OF _____
Barangay _____

OFFICE OF THE PUNONG BARANGAY

_____, 20____
(Date)

NOTICE OF APPOINTMENT

Sir/Madam:

Please be informed that you have been appointed by the Punong Barangay as a MEMBER OF THE LUPON TAGAPAMAYAPA effective upon taking your oath of office, and until a new Lupon is constituted on the third year following your appointment. You may take your oath of office before the Punong Barangay on _____.

Very truly yours,

Barangay Secretary

KP FORM NO. 4

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE PUNONG BARANGAY

(Date) _____, 20____

LIST OF APPOINTED LUPON MEMBERS

Listed hereunder are the duly appointed members of the Lupon Tagapamayapa in this Barangay who shall serve as such upon taking their oath of office and until a new Lupon is constituted on the third year following their appointment.

_____	11)	_____	1)
_____	12)	_____	2)
_____	13)	_____	3)
_____	14)	_____	4)
_____	15)	_____	5)
_____	16)	_____	6)
_____	17)	_____	7)
_____	18)	_____	8)
_____	19)	_____	9)
_____	20)	_____	10)

 Punong Barangay

ATTESTED:

 Barangay/Lupon Secretary

IMPORTANT: This notice is required to be posted in three (3) conspicuous places in the barangay for at least three (3) weeks.

WARNING: Tearing or defacing this notice shall be subject to punishment according to law.

KP FORM NO. 5

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE PUNONG BARANGAY**OATH OF OFFICE**

Pursuant to Chapter 7, Title One, Book III, Local Government Code of 1991 (Republic Act No. 7160), I _____, being duly qualified and having been duly appointed MEMBER of the Lupon Tagapamayapa of this Barangay, do hereby solemnly swear (or affirm) that I will faithfully and conscientiously discharge to the best of my ability my duties and functions as such member and as member of the Pangkat ng Tagapagkasundo, in which I may be chosen to serve; that I will bear true faith and allegiance to the Republic of the Philippines; that I will support and defend its Constitution and obey the laws, legal orders and decrees promulgated by its duly constituted authorities; and that I voluntarily impose upon myself this obligation without any mental reservation or purpose of evasion.

SO HELP ME GOD. (In case of affirmation, the last sentence will be omitted.)

 Member

SUBSCRIBED AND SWORN to (or AFFIRMED) before me this
 _____ day of _____ 20____.

 Punong Barangay

KP FORM NO. 6

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

(Date) _____, 20____

WITHDRAWAL OF APPOINTMENT

TO: _____

After due hearing and with the concurrence of a majority of all the Lupon Tagapamayapa members of this barangay, your appointment as member thereof is hereby withdrawn effective upon receipt hereof, on the following ground/s:

- incapacity to discharge the duties of your office as shown by

- unsuitability by reason of _____

(Check which ever is applicable and detail or specify the act/s or omission/s constituting the ground/s for withdrawal.)

 Punong Barangay/Lupon Chairperson
 (Cross out whichever is not applicable)

CONFORME (Signatures)

_____ 11) _____ 1)

_____ 12) _____ 2)

_____ 13) _____ 3)

_____ 14) _____ 4)

_____ 15) _____ 5)

_____ 16) _____ 6)
_____ 17) _____ 7)
_____ 18) _____ 8)
_____ 19) _____ 9)
_____ 20) _____ 10)

Received this _____ day of _____ 20____.

(Signature)

NOTE:

The members of the Lupon conforming to the withdrawal must personally affix their signatures or thumb marks on the pertinent spaces above. The withdrawal must be conformed to by more than one-half of the total number of members of the Lupon including the Punong Barangay and the member concerned.

KP FORM NO. 7

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

Barangay Case No. _____ For: _____

Complainant/s _____

_____ -Against- _____

Respondent/s _____

COMPLAINT

I/WE hereby complain against above named respondent/s for violating my/our rights and interest in the following manner:

THEREFORE, I/WE pray that the following relief/s be granted to me/us in accordance with law and /or equity:

Made this _____ day of _____ 20____.

 Complainant/s

Received and filed this _____ day of _____ 20____

 Punong Barangay/Lupon Chairperson
 (Cross out whichever is not applicable)

KP FORM NO. 8

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

**NOTICE OF HEARING
 (MEDIATION PROCEEDINGS)**

TO: _____

 Complainant/s

You are hereby required to appear before me on the ____ day of _____ 20____ at _____ o'clock in the morning/afternoon for the hearing of your complaint.

This ____ day of _____ 20_____.

 Punong Barangay

Notified this _____ day of _____ 20_____.

Complainant/s

KP FORM NO. 9

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

S U M M O N S

TO: _____

_____ **Respondents**

You are hereby summoned to appear before me in person together with your witness, on the _____ day of _____, 20____ at _____ o'clock in the morning/afternoon, then and there to answer to a complaint made before me, copy of which is attached hereto, for mediation/conciliation of your dispute with complainant/s.

You are hereby warned that if you refuse or willfully fail to appear in obedience to this summons, you may be barred from filing any counterclaim arising from said complaint.

FAIL NOT or else, face punishment as for contempt of court. This _____ day of _____ 20_____.

 Punong Barangay/Pangkat Chairperson
 (Cross out whichever is not applicable)

KP FORM NO. 9, Page 2

OFFICER'S RETURN

I served this summon upon respondent _____ on the _____ day of _____ 20____ and upon respondent _____ on the _____ day of _____ 20____, by: (Write name/s of respondent/s before mode by which he/they was/were served.)

Respondent/s

/them said summons in person, or

_____ 2) handling to him/her said summons and he/she/they refused to receive it, or

_____ 3) leaving said summons at his/her/their dwelling with

_____ A person of suitable age and discretion (Name) therein, or

_____ 4) leaving said summons at his/her/their office/place of business with _____, A competent person in charge thereof. (Name)

Officer

Received by Respondent/s/representative/s:

(Signature) (Date)

(Signature) (Date)

KP FORM NO. 10

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE PUNONG BARANGAY
NOTICE FOR CONSTITUTION OF PANGKAT

TO: _____

 Complainant/s Respondent/s

You are hereby required to appear before me on the _____ day of _____ 20____ at _____ o'clock in the morning/afternoon for the constitution of the Pangkat ng Tagapagkasundo which shall conciliate your dispute. Should you fail to agree on the Pangkat membership or to appear on the aforesaid date for the constitution of the Pangkat, I shall determine the membership thereof by drawing lots.

This _____ day of _____ 20_____.

 Complainant/s Respondent/s

KP FORM NO. 11

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____ Complainant/s

-Against-

 Respondent/s

NOTICE TO CHOSEN PANGKAT MEMBER

_____, 20____ Date

TO: _____

Notice is hereby given that you have been chosen member of the Pangkat ng Tagapagkasundo to amicably conciliate the dispute between the parties in the above-entitled case.

 Punong Barangay/Lupon Secretary
(Cross out whichever is not applicable)

Received this _____ day of _____ 20____

 Pangkat Member

KP FORM NO. 12

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

TO: _____

 Complainant/s Respondent/s

**NOTICE OF HEARING
 (CONCILIATION PROCEEDINGS)**

You are hereby required to appear before the Pangkat on the
 _____ day of _____ 20____ at _____ o'clock for
 hearing of the above-entitled case.

This _____ day of _____ 20_____.

 Pangkat Chairperson

Notified this _____ day of _____ 20_____.

Complainant/s Respondent/s

KP FORM NO. 13

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

S U B P O E N A

TO: _____

WITNESSES

You are hereby commanded to appear before me on the _____ day
 of _____ 20____ at _____ o'clock, then and there to testify
 in the hearing of the above-captioned case.

This _____ day of _____ 20_____.

 Punong Barangay/Pangkat Chairperson
(Cross out whichever is not applicable)

KP FORM NO. 14

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

AGREEMENT FOR ARBITRATION

We hereby agree to submit our dispute for arbitration to the Punong Barangay/Pangkat ng Tagapagkasundo (Please cross out whichever is not applicable) and bind ourselves to comply with the award that may be rendered thereon. We have made this agreement freely with a full understanding of its nature and consequences.

Entered into this _____ day of _____,

20_____. Complainant/s Respondent/s

ATTESTATION:

I hereby certify that the foregoing Agreement for Arbitration was entered into by the parties freely and voluntarily, after I had explained to them the nature and consequences of such agreement.

 Punong Barangay/Pangkat Chairperson
(Cross out whichever is not applicable)

KP FORM NO. 15

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____ Complainant/s

 -Against- _____

 Respondent/s

ARBITRATION AWARD

After hearing the testimonies given and careful examination of the evidence presented in this case, award is hereby made as follows.

Made this _____ day of _____ 20____ at _____.

 Punong Barangay/Pangkat Chairperson *(Cross out whichever is not applicable)*

 Member

 Member

ATTESTED:

 Punong Barangay/Lupon Secretary**

* To be signed by either of the two, whoever made the arbitration award ** To be signed by the Punong Barangay if the award is made by the Pangkat Chairperson, and by the Lupon Secretary if the award is made by the Punong Barangay.

KP FORM NO. 16

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____ Complainant/s

 -Against-

 Respondent/s

AMICABLE SETTLEMENT

We, complainant/s and respondent/s in the above-captioned case,
 do hereby agree to settle our dispute as follows:

_____ and bind ourselves to comply honestly and faithfully with the above terms
 of settlement.

Entered into this _____ day of _____

20_____. Complainant/s Respondent/s

ATTESTATION

I hereby certify that the foregoing amicable settlement was entered
 into by the parties freely and voluntarily, after I had explained to them the
 nature and consequences of such settlement.

 Punong Barangay/Pangkat Chairperson

KP FORM NO. 17

Republic of the Philippines
Province of _____
CITY/MUNICIPALITY OF _____
Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
_____ For: _____
Complainant/s _____

-Against-

Respondent/s

REPUDIATION

I/WE hereby repudiate the settlement/agreement for arbitration on the ground that my/our consent was vitiated by:

(Check out whichever is applicable)

- - Fraud. (State details) _____

- - Violence. (State details) _____

- - Intimidation. (State details) _____

This _____ day of _____ 20_____.

Complainant/s Respondent/s

SUBSCRIBED AND SWORN TO before me this _____ day of
_____ 20____ at _____.

Punong Barangay/Pangkat Chairperson/Member

(Cross out whichever is not applicable)

Received and filed* this _____ day of _____
20_____.

Punong Barangay

* Failure to repudiate the settlement or the arbitration agreement within the time limit respectively set in ten (10) days from the date of settlement and five (5) days from the date of arbitration agreement shall be deemed a waiver of the right to challenge on the said grounds.

KP FORM NO. 18

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

**NOTICE OF HEARING
 (RE: FAILURE TO APPEAR)**

TO: _____

 Complainant/s

You are hereby required to appear before me/the Pangkat on the _____ day of _____ 20_____ at _____ o'clock in the morning/afternoon to explain why you failed to appear for mediation/conciliation scheduled on _____, 20_____ and why your complaint should not be dismissed, a certificate to bar the filing of your action in court/government office should not be issued, and contempt proceedings should not be initiated in court for willful failure or refusal to appear before the Punong Barangay/Pangkat ng Tagapagkasundo.

This _____ day of _____ 20_____

 Punong Barangay/Pangkat Chairperson
 (Cross out whichever is not applicable)

Notified this _____ day of _____ 20_____.

Complainant/s

Respondent/s

KP FORM NO. 19

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

**NOTICE OF HEARING
 (RE: FAILURE TO APPEAR)**

TO: _____

 Complainant/s

You are hereby required to appear before me/the Pangkat on the _____ day of _____, 20_____ at _____ o'clock in the morning/afternoon to explain why you failed to appear for mediation/conciliation scheduled on _____, 20_____ and why your counterclaim (if any) should not be dismissed, a certificate to bar the filing of your action in court/government office should not be issued, and contempt proceedings should not be initiated in court for willful failure or refusal to appear before the Punong Barangay/Pangkat ng Tagapagkasundo.

This _____ day of _____ 20_____

 Punong Barangay/Pangkat Chairperson
 (Cross out whichever is not applicable)

Notified this _____ day of _____

20_____. Complainant/s Respondent/s

KP FORM NO. 20

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

CERTIFICATE TO FILE ACTION

This is to certify that:

- 1) There has been a personal confrontation between the parties before the Punong Barangay/Pangkat ng Tagapagkasundo;
- 2) A settlement was reached;
- 3) The settlement has been repudiated in a statement sworn to before the Punong Barangay by _____ on the ground of _____; and
- 4) Therefore, the corresponding complaint for the dispute may now be filed in court/government office.

This _____ day of _____ 20_____.

 Lupon Secretary

Attested:

 Lupon Chairperson

KP FORM NO. 20-A

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

CERTIFICATE TO FILE ACTION

This is to certify that:

- 1) There has been a personal confrontation between the parties before the Punong Barangay but mediation failed;
- 2) The Pangkat ng Tagapagkasundo was constituted but the personal confrontation before the Pangkat likewise did not result into a settlement; and
- 3) Therefore, the corresponding complaint for the dispute may now be filed into court/government office.

This _____ day of _____ 20_____.

 Pangkat Secretary

Attested:

 Pangkat Chairperson

KP FORM NO. 20-B

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

CERTIFICATE TO FILE ACTION

This is to certify that:

- 1) There has been a personal confrontation between the parties before the Punong Barangay but mediation failed;
- 2) The Punong Barangay set the meeting of the parties for the constitution of the Pangkat;
- 3) The respondent willfully failed or refused to appear without justifiable reason at the conciliation proceedings before the Pangkat; and
- 4) Therefore, the corresponding complaint for the dispute may now be filed in court/government office.

This _____ day of _____ 20_____.

 Pangkat Secretary

Attested by:

 Pangkat Chairperson

KP FORM NO. 21

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

CERTIFICATE TO BAR ACTION

This is to certify that the above-captioned case was dismissed pursuant to the Order dated _____, for complainant/s' _____ (name) willful failure or refusal to appear for hearing before the Punong barangay/Pangkat ng Tagapagkasundo and therefore complainant/s is/are barred from filing an action in court/government office.

This _____ day of _____ 20_____.

 Lupon Secretary/Pangkat Secretary

Attested:

 Lupon Chairperson/Pangkat Chairperson
(Cross out whichever is not applicable)

IMPORTANT: If Lupon Secretary makes the certification, the Lupon Chairperson attests. If the Pangkat Secretary makes the certification, the Pangkat Chairperson attests.

KP FORM NO. 22

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

CERTIFICATE TO BAR COUNTERCLAIM

This is to certify that after notice and hearing, the respondent/s
 _____ (name) and _____ (name)
 have been found to have willfully failed or refused to appear without
 justifiable reason before the Punong Barangay/Pangkat ng Tagapagkasundo
 and therefore respondent/s is/are barred from filing his/her/their
 counterclaim (if any) arising from the complaint in court/government office.

This _____ day of _____ 20_____.

 Lupon Secretary/Pangkat Secretary
(Cross out whichever is not applicable)

Attested:

 Lupon Chairperson/Pangkat Chairperson
(Cross out whichever is not applicable)

IMPORTANT: If Lupon Secretary makes the certification, the Lupon
 Chairperson attests. If the Pangkat Secretary makes the
 certification, the Pangkat Chairperson attests.

KP FORM NO. 23

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

MOTION FOR EXECUTION

Complainant/s/Respondent/s state as follows:

1. On _____ the parties in this case signed an
 (date)
 amicable settlement/received the arbitration award rendered by the
 Lupon/Chairperson/Pangkat ng Tagapagkasundo;
- 2) The period of ten (10) days from the above-stated date has expired without
 any of the parties filing a sworn statement of repudiation of the
 settlement before the Lupon Chairperson a petition for nullification
 of the arbitration award in court; and
- 3) The amicable settlement/arbitration award is now final and executory.

WHEREFORE, Complainant/s/Respondent/s requests that the
 corresponding writ of execution be issued by the Lupon Chairperson in this
 case.

 (Date)

 Complainant/s/Respondent/s

KP FORM NO. 24

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

NOTICE OF HEARING
(RE: MOTION FOR EXECUTION)

TO: _____

 Complainant/s Respondent/s

You are hereby required to appear before me on the _____ day
 of _____ 20____ at _____ o'clock in the
 morning/afternoon for the hearing of the motion for execution, copy of
 which is attached hereto, filed by _____.
 (name of complainant/s/respondent/s)

 (Date)

 Punong Barangay/Lupon Chairperson
(Cross out whichever is not applicable)

Notified this _____ day of _____ 20_____.

 (Signature) (Signature) Complainant/s Respondent/s

KP FORM NO. 25

Republic of the Philippines
 Province of _____
 CITY/MUNICIPALITY OF _____
 Barangay _____

OFFICE OF THE LUPON TAGAPAMAYAPA

_____ Barangay Case No. _____
 _____ For: _____
 Complainant/s _____

-Against-

 Respondent/s

NOTICE OF EXECUTION

WHEREAS, on _____, an amicable
 (Date)
 settlement was signed by the parties in the above-entitled case (or an
 arbitration award was rendered by the Punong Barangay/Pangkat ng
 Tagapagkasundo);

WHEREAS, the terms and conditions of the settlement, the
 dispositive portion of the award, read:

The said settlement/award is now final and executory;

WHEREAS, the party obliged _____
 (name)
 has not complied voluntarily with the aforesaid amicable
 settlement/arbitration award, within the period of five (5) days from the date
 of hearing on the motion for execution;

NOW, THEREFORE, in behalf of the Lupon Tagapamayapa and by
 virtue of the powers vested upon me and the Lupon by the Katarungang
 Pambarangay Law and Rules, I shall cause to be realized from the goods

and personal property of _____
(name of party obliged)

the sum of _____
(state amount of settlement or award)

in the said amicable settlement (or adjudged in the said arbitration award),
unless voluntary compliance of said settlement or award shall have been
made upon receipt hereof.

Signed this _____ day of _____ 20____.

Punong Barangay

Copy furnished:

Complainant/s Respondent/s



July 2024