# KATARUNGANG PAMBARANGAY LAW: ITS GOALS, PROCESSES, AND IMPACT ON THE RIGHT AGAINST SELF-INCRIMINATION

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> Social policy will be comprehended not as an emergency factor in legal argument, but rather as a gravitational field that gives weight to any rule or precedent, whether it be in constitutional law . . . or in the most technical details of legal procedure.
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> FELIX COHEN

*The Genesis of the Katarungang Pambarangay Law*

On June 10, 1978, Presidential Decree No. 1508 was promulgated, establishing a system of amicably settling disputes at the barangay level, without resort to judicial or court intervention. Known commonly as the Katarungang Pambarangay Law, P.D. No. 1508 seeks to promote, among others, the speedy administration of justice, by providing all avenues to an amicable settlement, thereby reducing considerably the dockets in our courts of justice.[1]

The system of amicable settlement is prevalent in Asian nations. In the People's Republic of China, a body called "People's Conciliation Committee" is charged with the duty of settling disputes and minor criminal cases through conciliation.[2] Its counterpart in the Union of Soviet Socialist Republic is the "Comrade's Court," which sanctions certain forms of anti-social behavior of minor importance, not meriting the attention of regular courts.[3] In Japan, informal means of dispute resolution in the form of extrajudicial reconcilement and conciliation is being resorted to,[4] a carry over from the Tokugawa Legal System which prominently featured conciliation among members of a "kumi" (town or village) through the intervention of the respective family heads.[5]

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[1] Pres. Decree No. 1508 (1978), Whereas clause, para. 2.

[2] SHAO-CHUAN LENG, JUSTICE IN COMMUNIST CHINA: A SURVEY OF THE JUDICIAL SYSTEM OF THE CHINESE PEOPLE'S REPUBLIC 176 (1967).

[3] DAVID, MAJOR LEGAL SYSTEMS — SOVIET LAW 196-197 (1966).

[4] VON MEHREN, LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY — DISPUTE RESOLUTION IN CONTEMPORARY JAPAN 50-52 (1963).

[5] 2 WIGMORE, A PANORAMA OF THE WORLD'S LEGAL SYSTEMS — JAPANESE LEGAL SYSTEM 489 (1928).

The West also resorts to para-legal means of dispute settlement, particularly conciliation. In Norway, disputes are first conciliated before a council called the "Forliksrad," before these may be docketed in the regular courts.[6] In the United States of America, where strict adherence to the court system as the principal public dispute processor is an institution, the delegation of certain problems to specialized para-legal bodies for initial resolution has become commonplace.[7] Among others, a system of court-annexed arbitration has been adopted, where disputes enters the courts only after they have been defined as legal claims.[8] Mediation, in the scheme of American justice, rely on consensual agreement between disputants, just like in Asian context.[9]

In the Philippines, amicable settlement of disputes dates back to the Pre-Spanish era. Then, all disputes were brought before the elders of the barangay for mediation, conciliation, or arbitration.[10] In those days, the system dispensed justice efficiently and without delay. With the passage of time, however, society and its needs have burgeoned to such proportions that required more sophisticated modes of administering justice. Thus, our judicial institutions have grown. Yet, justice appears to be more elusive now than before, and that no amount of modern legal technique or procedure would give unto each man his due share of the law.

Consider, for instance, the year 1977, when 358,589[11] cases were pending before our courts. This figure represents at least twice as many persons in search of justice for the past years. Considering further, that of cases filed in a given year, only about 85%[12] are disposed of, pending court cases will escalate to a more staggering figure and continue to perniciously clog our court dockets. Thus, the need for reform in the over-all set-up of our administration of justice.

The seed of reform was formally germinated in 1976, when the late Chief Justice Fred Ruiz Castro advocated the creation of "neighborhood para-legal committees."[13] He envisioned these bodies to take care of small-claims suits arising between members of a political unit. He observed that most of the disputes which are our present concern are homegrown —

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[6] WORLD PEACE THROUGH LAW CENTER, LAW AND JUDICIAL SYSTEMS OF NATIONS (NORWAY), 6 (1968).

[7] Sander, *Varieties of Dispute Processing*, 70 F.R.D. 126 (1976).

[8] Address by Prof. David Trubeck, Professor of Law of the University of Wisconsin, before the Harvard Law School Masteral Class in Interdisciplinary Approaches to Dispute Settlement, Harvard Law School, February 25, 1980.

[9] *Ibid.*

[10] AGONCILLO & GREGORIO, HISTORY OF THE FILIPINO PEOPLE 47 (1970).

[11] "Let Us Today Build Bridges of Tomorrow," Address by Chief Justice Fred Ruiz Castro before the Integrated Bar of the Philippines, on the occasion of its anniversary, Manila Hotel, March 17, 1978.

[12] PE & TADIAR, KATARUNGANG PAMBARANGAY: DYNAMICS OF COMPULSORY CONCILIATION 148 (1979).

[13] Address by Chief Justice Fred Ruiz Castro to a Seminar for Action Officers under the auspices of the Malacañang Executive Office, Philippine Village Hotel, November 10, 1976, *cited* in PE & TADIAR, *supra*, at 151.

sprung from family feuds and neighborhood intramurals — "brought to court not for justice, but 'in the name of justice' for a so-called 'principle' which in reality is unmitigated self-conceit."[14] These kind of cases "do not write jurisprudence — they merely waste talent and squander finances; they are an overuse, nay a misuse of the courts."[15] Thus, their resolution must be fashioned within the same precinct, "far removed from the impersonal sphere of the courts."[16]

The barangay, which has since become our basic political unit again,[17] is thought to be the best implement of the new system of grassroots justice, as conceived by Chief Justice Castro. Explaining the rationale for his choice of forum, he said:[18]

> ... This intended throwback to Pre-Hispanic times is not impelled by blind patriotism. Rather, it is inspired by the realization that inspite of the intrusions into the Filipino psyche of the isms of alien civilization, the Filipino has retained an admirable degree of honor and respect for his elders. ... And indeed, what can satiate the vanity in a supposed cause better than the words of one whom the vain himself has placed in a position of esteem and reverence.

On January 27, 1978, Presidential Decree No. 1293 was promulgated, creating the Presidential Katarungang Pambarangay Commission[19] which was charged with the task of studying the feasibility of instituting a system of resolving disputes among family and barangay members without resort to the courts. It was thus a victory for the late Chief Justice and proponent of this system, who was made Chairman of the Commission. A few months later, the draft submitted by this Commission was signed into law.

True to the form envisioned by its main exponent, the Katarungang Pambarangay seeks to achieve a two-fold goal: (1) to promote the speedy administration and enhance the quality of justice by relieving the courts of docket congestion caused by indiscriminate filing of cases; and (2) to perpetuate and officially recognize the time-honored tradition of amicably settling disputes among family and barangay members at the barangay level, without judicial recourse, thus, implementing the constitutional mandate to preserve and develop Filipino culture, and to strengthen the family as a basic social institution.[20] By and large, the Katarungang Pambarangay law

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14 Address of Chief Justice Castro, *supra,* Note 11.
15 *Ibid.*
16 *Ibid.*
17 Pres. Decree No. 557 (1974).
18 Address of Chief Justice Castro, *supra,* Note 11, *et seq.*
19 The members of the Commission were:
Chairman: Chief Justice Fred Ruiz Castro
Members: Minister Vicente Abad Santos
Minister Juan Ponce Enrile
Minister Jose Roño
IBP President Marcelo Fernan
U.P. College of Law Dean Froilan Bacuñgan
20 Pres. Decree No. 1508, Whereas clauses.

is a legal measure that lends concrete expression to basic social policies of the State.

*Salient Features of PD 1508*

The basic philosophy of PD 1508 is found in Section 6 thereof, to wit:

> No complaint, petition, action or proceeding involving any matter within the authority of the Lupon... shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached by the parties as certified by the Lupon or Pangkat Secretary, attested by the Lupon or Pangkat Chairman...

In other words, the submission of disputes regarding any matter within the cognizance of the Katarungang Pambarangay Law[21] for conciliation is a condition precedent to the filing of any suit in the proper court. This feature of barangay justice may be likened to the concept of "exhaustion of administrative remedies,"[22] and may be referred to as "compulsory conciliation."[23]

There are three (3) modes of amicable settlement provided: (1) mediation by the Barangay Captain,[24] (2) conciliation by conciliation panels called Pangkat ng Tagapagkasundo;[25] and (3) arbitration by the Barangay Captain or the conciliation panels by written agreement of the parties.[26] The parties-disputants may go through only one or all three of these stages, depending on how soon an amicable settlement is reached, if at all.

Disputes for conciliation are brought before a body called the Lupong Tagapayapa, constituted in every barangay[27] every two (2) years, with the Barangay Captain as Chairman.[28] Ten to twenty other members thereof, actually residing or working in the Barangay, not otherwise disqualified by law, are appointed by the Barangay Captain,[29] taking into account considerations of integrity, impartiality, independence of mind, sense of fairness, reputation for probity, and educational attainment.[30] The main functions of the Lupon are to exercise administrative supervision over the conciliation panels, and to act as a forum for the exchange of ideas and observations

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21 See Pres. Decree No. 1508, Secs. 2 and 6 for disputes which are subject matter of amicable settlement.

22 PE & TADIAR, *op. cit., supra,* Note 12 at 154.

23 *Ibid.,* at 18.

24 Pres. Decree No. 1508, Sec. 4(b).

25 *Ibid.,* Secs. 1(f) and 4(c).

26 *Ibid.,* Sec. 7.

27 The term "barangay" refers not only to barrios covered by Pres. Decree No. 557 but also those known as "citizens' assemblies" under Pres. Decree No. 86. *See* Pres. Decree No. 1508, Sec. 1(a), para. 6.

28 Pres. Decree No. 1508, Sec. 1(a).

29 For the details of the appointment procedure, *see* Pres. Decree No. 1508, Sec. 1(a), para. 3 to 5.

30 Pres. Decree No. 1508, Sec. 1(a), para. 1.

among its members and the public on matters relevant to the amicable settlement of disputes.[31]

Proceedings for amicable settlement are commenced by an oral or written complaint to the Barangay Captain[32] by any individual who has a cause of action against another[33] involving any matter within the authority of the Lupon to conciliate. Upon receipt of such complaint, the Barangay Captain shall summon the parties[34] and their witnesses to appear before him for mediation.[35] If mediation fails within fifteen (15) days, a conciliation panel of three (3) members, chosen by agreement of the parties from the members of the Lupon, shall be constituted.[36] The Pangkat shall convene within three days after its constitution and thereafter hear the parties and their witnesses, simplify issues, and explore all possibilities for amicable settlement.[37] It shall arrive at a settlement or resolution within fifteen (15) days from the day it convenes, extendible at the discretion of the Pangkat for another 15 days, or more, in clearly meritorious cases.[38] At any stage in the proceedings, the parties may agree in writing to submit the dispute to arbitration, and accordingly abide by the award of the Barangay Captain or the Lupon, as the case may be.[39] All amicable settlements or arbitration awards may be enforced within one year from the date of settlement by court action.[40]

All proceedings for settlement are public and informal, except at the instance of the Barangay Captain or the Pangkat or any of the parties to exclude the public in the interest of privacy, decency, or public morals.[41] The results of the mediation proceedings, and the whole of the conciliation proceedings shall be duly recorded,[42] such records being transmitted to the proper city or municipal court[43] for safekeeping.[44]

Parties to a dispute must appear before the Lupon or the Pangkat personally, without the assistance or representation of counsel, except where the parties are minors or incompetents, in which case they may be assisted by their next of kin who are not lawyers.[45] Yet, admissions made in the course of any of the proceedings may be admissible for any purpose in any

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31 *Ibid.*, Sec. 1(d).
32 *Ibid.*, Sec. 4(a).
33 Only individuals, meaning natural persons, may be parties to an amicable settlement. *See* Katarungang Pambarangay Rules and Regulations, Rule VI, Sec. 1.
34 *See* Pres. Decree No. 1508, Sec. 3. Parties must be from the same barangay, or from different barangays, so long as they adjoin each other.
35 Pres. Decree No. 1508, Sec. 4(c).
36 *Ibid.*, Sec. 1(f).
37 *Ibid.*, Sec. 4(c).
38 *Ibid.*, Sec. 4(e).
39 *Ibid.*, Sec. 7.
40 *Ibid.*, Sec. 12.
41 *Ibid.*, Sec. 8.
42 *Ibid.*, Sec. 1(e) and 1(f), para. 6.
43 *Ibid.*, Sec. 14.
44 Min. of Justice Op. No. 147, s. (1979).
45 Pres. Decree No. 1508, Sec. 9.

other proceedings.[46] These two provisions, taken together, present a significant problem area, specifically in the realm of constitutional law. They pose a threat to the constitutional guarantee against self-incrimination, if not jeopardize it all together. It is this aspect which the remainder of this paper will attempt to explore more deeply, in the hope of arriving at a workable resolution of the problem.

### *The Right Against Self-Incrimination in Philippine Jurisprudence*

The right against self-incrimination consists essentially of the right not to be compelled to be a witness against one's self. It is the true sense of the privilege that no one may be forced to furnish testimony which may be used against himself;[47] incriminating statements that may furnish the missing evidence necessary for his conviction, as for instance in a criminal case.[48]

The privilege against self-incrimination is an American institution which was formally introduced into our system of laws and government by President McKinley's Instruction to the Second Commission, the Taft Commission.[49] The pertinent portion of the Instruction reads:

> ... the Commission should bear in mind, and the people of the Islands should be made to understand, that there are certain great principles of government ... which we deem essential to the rule of law and the maintenance of individual freedom; ... that there are also certain practical rules of government which we have found essential to the preservation of these great principles of liberty and law ... for the sake of liberty and happiness. ... Upon every division and branch of the Government of the Philippines therefore, must be imposed these inviolable rules: ... *that no person shall be compelled in any criminal case to be a witness against himself.*[50]

True to the spirit and letter of the above-instruction, the Philippine courts, then part of the United States' judicial system, upheld the right against self-incrimination in several cases,[51] and which decisions were all affirmed by the United States Supreme Court. The prohibition covered any and all forms of compulsory testimonial self-incrimination.[52] It was, and remains to be, a safeguard against the compulsory disclosure of incriminating facts.[53]

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[46] *Ibid.*, Sec. 10.

[47] U.S. v. Navarro, 3 Phil. 143 (1904).

[48] Chavez v. Court of Appeals, G.R. No. 29169, Aug. 19, 1968 24 SCRA 663 (1968).

[49] I Public Laws ixiii (1900), *cited* in Chavez v. CA, *supra*, at 698.

[50] *Ibid.* The rule was subsequently embodied in the Philippine Bill of 1902, Sec. 5, para. 3. (Emphasis added).

[51] U.S. v. Ong Sin Hong, 36 Phil. 735 (1917); U.S. v. Salas, 25 Phil. 337 (1913); U.S. v. Tan Teng, 23 Phil. 145 (1912); U.S. v. Navarro, *supra.*

[52] Villaflor v. Summers, 41 Phil. 62 (1920); U.S. v. Navarro, *supra.*

[53] People v. Bagasala, G.R. No. 26182, May 31, 1971, 39 SCRA 236 (1971); Chavez v. CA, *supra.*

The privilege did not remain confined to criminal cases alone. Nor did it remain a mere provision of law. On Nov. 15, 1935, the right against self-incrimination was elevated into a constitutional guarantee, consecrated in Article III, Section 1 (8) of the 1935 Constitution in these words: "No person shall be compelled to be a witness against himself." Thus, the privilege extended coverage to non-criminal cases as well.

The landmark case of *Bermudez v. Castillo,*[54] an administrative case decided by the Philippine Supreme Court in 1937, interpreted the constitutional guarantee as extending to a criminal case as well as to any other case. Justice Laurel, in his concurring opinion therein, said:[55]

> ... The protection, under all clauses, *extends to all manners of proceeding, in which testimony is to be taken,* whether litigious or not, and whether *ex parte* or otherwise. It therefore applies in all kinds of courts, ... in all methods before a court... and in investigations by a legislative or a body having legislative functions. (Emphasis added).

To the same effect is the ruling in the case of *McCarthy v. Arndstein,*[56] decided by the highest court of the United States which inculcated the value of the privilege to us, that the right may be invoked in court, before legislative committee, grand juries, and other tribunals.

The liberal approach taken by the Supreme Court in construing the constitutional guarantee is aimed at providing real protection to the individual invoking it, thereby preventing it to be illusory and a mere dead letter. A broad interpretation certainly renders the privilege truly a guarantee to those whose rights are intended to be secured.[57]

The inviolability and vigor in which the privilege is regarded in our constitutional consciousness grew even deeper in the light of the amendment of our Constitution in 1973. The Bill of Rights of the 1973 Constitution more firmly secures the right of every person not to be compelled to be a witness against himself by providing further that any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such rights, and that any confession obtained in violation of this rule shall be inadmissible in evidence.[58] This addendum to the Bill of Rights, which in effect is a constitutional rule of evidence, does not, by any means, reduce the mantle of protection of the privilege to criminal cases alone, as in the case of the rule prevailing before the 1935 Constitution. It adopts the core of the ruling in the case of *Miranda v. Arizona,*[59] and guarantees, *in addition,* the right to silence,[60]

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[54] 64 Phil. 483 (1937).
[55] *Ibid.,* at 489, *citing* 4 WIGMORE, EVIDENCE 835. (Emphasis ours).
[56] 266 U.S. 34 (1924).
[57] Bermudez v. Castillo, *supra.*
[58] CONST., Art. IV, Sec. 20.
[59] 384 U.S. 436 (1966).
[60] *See* Cabal v. Kapunan, G.R. No. 19052, Dec. 29, 1962, 6 SCRA 1059 (1967).

the right to counsel,[61] and the right to be informed of these rights. Thus, for such statements made in a criminal investigation to be admissible, the accused must, in the absence of a clear and intelligent waiver of his constitutional rights, be warned prior to questioning, that he has a right to remain silent, that any statement he makes may be used as evidence against him, and that he has a right to the presence of an attorney.[62] In this context, the constitutional right against self-incrimination has become a truly "valuable and substantive right . . . fundamental in our scheme of justice."[63]

. . . Such is the present status and nature of the privilege against self-incrimination. It is inviolable; it is all-encompassing. In the light of prevailing jurisprudence, will PD 1508 stand the challenge of constitutional validity? Will it secure to the disputants their right not to be compelled to be a witness against themselves, their right to counsel, their right to remain silent, their right to be informed of these rights? As envisioned by its chief maker, will the Katarungang Pambarangay Law "serve the purpose of obtaining admissions of uncontroverted facts and undisputed comments, of simplifying issues and restricting the number of witnesses, *always with due regard to the constitutional rights of the accused.*?"[64]

*Admissibility of Admissions Made Under PD 1508*

Express from Section 10 of PD 1508 is the rule that admissions made in the course of any of the proceedings for settlement may be admissible for any purpose in any other proceedings. Considering that parties thereto appear by themselves, without assistance or representation by counsel,[65] the above-mentioned rule creates a real danger that the privilege against self-incrimination may be subversed.

Mediation and conciliation necessarily involve a "laying of cards" by the parties. In order to arrive at an amicable settlement, the parties must feel free to talk about their problems, mundane as they are, even those which do not have a direct bearing on the dispute sought to be resolved. This is a natural phenomenon in conciliation, more so in Philippine setting, because it is person-oriented.[66] It is deeply concerned in knowing the personalities of the disputants, on knowing what values are held by the parties, so that a trade-off of values may be effected to restore disrupted harmonious relationship or to create such harmony where there is none.[67] This nature of the conciliation process, therefore, extracts all statements from the parties as may be necessary and sufficient to arrive at a settlement.

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[61] People v. Beralde, G.R. No. 32832, June 29, 1979 91 SCRA 125 (1979); Magtoto v. Manguerra, G.R. No. 37201, March 3, 1975, 63 SCRA 4 (1975).
[62] Miranda v. Arizona, *supra.*
[63] Chavez v. CA, *supra,* at 678.
[64] Address of Chief Justice Castro, *supra,* Note 11 (emphasis ours).
[65] Pres. Decree No. 1508, Sec. 9.
[66] PE & TADIAR, *op. cit., supra,* Note 12 at 159.
[67] *Ibid.,* at 164.

These statements may be square on the point of dispute, or extraneous thereto. At any rate, once these have been made, there is no turning back, as all the proceedings, and necessarily, the utterances, are recorded and transmitted to the proper court, ever ready to be used at any time at any other proceeding, even to the detriment of the interests of the declarants themselves. What is very ironic in this state of affair is that while these statements were intended to make peace, they will forever hang like the sword of Damocles, ever threatening to break peace. With these provisions, PD 1508 has created a new version of Scylla and Charybdis; if one does not submit his complaint for conciliation before the Lupon, he cannot vindicate his right in court; yet, if he agrees to a conciliation, the statements he may make therein may be used against him. If these rules do not amount to a derogation, nay, a denial of the privilege, what then?

The defense may be invoked that non-assistance or representation by counsel does not necessarily render the privilege illusory, since neither party is compelled to make any statement. Hence, there is no need for a lawyer to advise him of the legal implications of what he might say, because he may not say anything. This is a hypocritical argument, to say the least. If the disputants refuse to talk, presumably because they are aware of the consequences thereof, would settlement be achieved? Would it not defeat the very purpose of the law? Neither would it be tenable to argue that both parties are similarly situated, i.e., neither of them is assisted by counsel; hence, they are on equal footing. Setting aside for a moment the implication of admissibility on the privilege, what would happen when one of the disputants is a lawyer? Can he leave his legal training at the door before he submits to settlement? In the eyes of the law, there would certainly be a disturbing imbalance.

It may be argued further that admissibility can not be defeated by lack of counsel because neither party, not even the respondent thereto in a criminal case, is "under investigation for the commission of an offense," to quote the language of Article IV, Section 20 of the 1973 Constitution. Therefore, the right to be silent, the right to counsel, and the right to be informed of the same, do not arise. This is an argument that reveals ignorance of the law. It is to be remembered that the constitutional guarantee against self-incrimination is sufficiently contained in the rule that no person shall be compelled to be a witness against himself. The right to counsel, and the right to silence only affirm and secure the privilege more concretely, specifically in criminal case. The afore-quoted provision of the new Constitution is but an *additional means* to secure the privilege. It does not in any manner override or limit the scope of the guarantee. In the case of *Magtoto v. Manguerra*,[68] the Supreme Court, by way of a footnote, expressly recognized the fact that under the 1935 Constitution, there was already the

[68] *Supra.* Note 61.

guarantee against self-incrimination, which was carried into the 1973 Constitution, and that it was accordingly limiting its decision to the issue of right to counsel since it is a new right given to the accused by the 1973 Constitution.[69] Thus, for the purpose of invoking the privilege, it matters not whether the dispute before the Lupon partakes of a criminal nature, nor that the proceedings before the same partake of the nature of a criminal investigation.

Admissibility of evidence under PD 1508 may be likened to the admissibility of testimony at a former trial in a regular court proceeding. The similarity ends there. Under the Rules of Court, the testimony of a witness given in a former case, in order to be admissible in a subsequent one, must relate to the same subject matter, between the same parties, the adverse party having had an opportunity to cross-examine him, and the witness is dead, out of the Philippines, or unable to testify.[70] A former case is meant to be one of a judicial or quasi-judicial nature and excludes one before a legislative or administrative committee, the reason being that these bodies do not strictly adhere to the rules of evidence.[71] Even then, such prior testimony must still be formally offered in evidence before the Court. This is a recognition of the fact that in the proceedings of such bodies, there is little, if at all, intervention of lawyers who may be able to apprise the parties thereto of the legal significance of their statements. The same nature of proceedings characterize those before the Lupon. Hence, there is equal reason, if not more, to exclude admissions made in the proceedings before the Lupon or the Pangkat from being given in evidence in any other proceeding.

Further, the use of prior testimony in regular courts is limited to a subsequent case where there is an identity of parties and subject matter. Again, implicit here is the regard for constitutional protection, in the sense that it fences the area of inquiry. It avoids a fishing expedition of incriminating statements that may have been previously made, but which do not bear any material relation to the case at bar. It places in high regard the aim of the privilege as one which protects the disclosure of the guilt of the accused, *whether sought directly as the object of the inquiry, or indirectly and incidentally* for the purpose of establishing facts involved in an issue between the parties.[72] If such safeguards are duly taken in formal court procedures, where a party is ably represented by counsels, trained in the intricacies of legal jargon, why not more in proceedings before the Lupon or Pangkat, which are not in the least judicial or quasi-judicial, nor in the most, administrative?

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[69] *Ibid.*, at 11.
[70] RULES OF COURT, Rule 130, Sec. 41.
[71] 5 MORAN, COMMENTS ON THE RULES OF COURT 429-430 (1970).
[72] U.S. v. Navarro, *supra*, Note 47 (emphasis ours).

The same can be said regarding offer of compromise. Compromise is in the nature of reciprocal concessions between parties to avoid a litigation or put an end to one already commenced.[73] Thus, it is in itself a form of amicable settlement, and which is therefore tantamount to the end sought by PD 1508. Its basis is the desire "to buy one's peace."[74] Hence, a mere offer of compromise must not be taken against the offeror, or such fact be taken in the other party's favor, unless such offer is clearly not "to buy peace" but amounts to an admission of liability.[75] An offer of compromise is not a confession of debt[76] and is not admissible in evidence for either party,[77] the same being privileged.[78]

For as long as no settlement is reached under PD 1508, the proceedings before the Lupon or Pangkat merely consists of offers and counter-offers of compromise. Hence, they must be inadmissible in evidence, for the same reasons and in the same manner that offers of compromise under the Rules of Court are not admissible.

In a very early case,[79] statements concerning an issue before the court, made out of court, and reduced to writing before a municipal president and certified by him were held to be hearsay and inadmissible. The only material difference between that case and the system established by PD 1508 is that in the latter, there is an express provision of law allowing the admission of such evidence. Indeed, our rules of evidence are exclusionary in nature;[80] i.e., all forms of evidence, not otherwise excluded by incompetence or irrelevance, is admissible. Incompetence of an evidence is essentially a matter of an express legal provision. Hence, since admissions are expressly allowed in any other proceeding, the same must be construed as competent evidence. However, we should not be so myopic and bigoted as to be blind to the dictates of the Constitution. Any rule of law must yield to constitutional limitations. If the allowance of such evidence by virtue of an express provision of law, would run counter to well-established and highly honored constitutional precepts, such provision of law can not stand. It must be culled from the rest of the provisions of an otherwise good law.

*Recommendations and Conclusion*

Pres. Decree No. 1508, insofar as its objectives are concerned, is concededly good law. Its mechanics, however, render the common *tao* a sure loser in his quest for justice. The law should not be too harsh as to deprive the parties-disputant the assistance of counsel during the proceedings, and yet allow their admissions made therein to be given in evidence

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[73] CIVIL CODE, Art. 2028.
[74] Dailey v. King, 44 NW 959 (1890).
[75] Varadero v. Insular Lumber, 46 Phil. 176 (1924).
[76] RULES OF COURT, Rule 130, Sec. 24; U.S. v. Torres, 34 Phil. 994 (1916).
[77] Varadero v. Insular Lumber, *supra.*
[78] Buiser v. Cabrera, 81 Phil. 669 (1948).
[79] Ismael v. Guanzon, 2 Phil. 347 (1903).
[80] MORAN, *op. cit.*, at 5; *See* RULES OF COURT, Rule 128, Sec. 3.

in any proceeding for any other purpose. Admissions thereunder, made without the assistance of counsel are, in effect, given the character and probative value of admissions in open court. This is certainly anomalous and unjust. We know too well that our legal system is fraught with intricacies that only men well-trained in law can fully grasp. Even the educated and intelligent layman has small and oftentimes no skill in the science of law, and is particularly unfamiliar with the rules of evidence.[81] How much more with the average barangay resident, who is schooled within the narrow confines of the "pilapil", and whose innate sense of justice is his only cause of vindicating a legitimate grievance? Should he be compelled to submit to conciliation, only to be haunted by the possibility that his utterances therein may be used against him later, when opportunity tempts? Without proper legal advice on the implications and impact of what he might say before the Lupon or the Pangkat, without proper safeguards on his constitutional and basic legal rights, he may be subsequently put on trial without prior charge.

If the rule on admissibility were to stand, the parties must be allowed the assistance of counsel, at the least, during the proceedings. It is argued that lawyers will only prevent amicable settlement by bringing into the proceedings their training and orientation of adversary procedures better called for in formal courtroom battles. Emphasis on the litigious attitude of lawyers, however, should not be taken to prejudice the greater interests of justice. A petty offense does not necessarily mean that no genuine issue of fact and/or law is involved, as to be denied constitutional protection; neither is there a rational connection between amount in controversy and the appropriate process for its resolution.[82] What is needed, therefore is a process that will not only resolve a dispute, but one which will also secure to the parties thereto a *fair and just* resolution, a peace pact without conditions or far-reaching negative consequences. This entails at least a working knowledge of the law which a lawyer worth his salt possesses. A lawyer is essentially a handmaiden of justice and peace. His predisposition to adversary proceedings and verbiage is not inbred; it results, rather from the confusion of his real role in society, a misconception sired and perpetuated by the conceited. His intended role in the administration of justice, however, remains first and foremost, a *counsellor-at-law*[83] not an attorney-at-law. The Katarungang Pambarangay Law should not be saddled with such confusion and misimpression of the lawyer's oath of duty to the interests of justice. What we need perhaps is to re-orient our lawyers and the public in general with the true nature and character of the legal profession, but never should we deny legal protection solely on the above-ground. In this way, we might even be able to put confidence back into our legal

[81] Powell v. Alabama, 287 U.S. 45, 68 (1932), *cited* in Gideon v. Wainwright, 372 U.S. 335 (1963).

[82] Sander, *op. cit., supra,* Note 7 at 124-125.

[83] PE & TADIAR, *op. cit., supra,* Note 12 at 153 (emphasis ours).

and judicial systems, and consequently discourage indiscriminate filing of cases.

The need for counsel acquires even greater importance where disputes partake of a criminal nature. The offender, in almost all cases, lacks both the skill and knowledge to adequately prepare for his defense, even though he may have a perfect one. And where settlement is not reached at the barangay level, it is almost sure that in the adjudicative phase, the offender himself, by way of the admissions he may have made before the Lupon or Pangkat, will furnish the missing evidentiary link necessary for his conviction, beyond reasonable doubt. Indeed, various offenses could go the way of minor offenses and simply exit from the courts, and could instead be heard by public officials other than judges in surroundings other than courtrooms, *but always with due regard and appropriate procedural safeguards for his rights.*[84] He must therefore be provided with the "guiding hand of counsel" at *every step* in the proceedings against him.[85]

If it is deeply believed that the presence of lawyers in the proceedings under the Katarungang Pambarangay Law is nugatory of the very purpose the law seeks to attain, it should at least be provided that a resident lawyer be appointed to act as legal adviser to the Lupon or the Pangkat, and who shall be present in all proceedings therein in order to lend some protection and faith to the parties-disputants. This will not be hard to undertake; as part of their social responsibility, the Integrated Bar of the Philippines could induce them to render such service for free. After all, it will not partake of a full-time job, considering the nature of the proceedings themselves.

If on the other hand, Pres. Decree No. 1508 is an implicit admission of the decadence the legal profession has plummetted itself, as to distrust lawyers in effectively and efficiently aiding amicable settlement, admissions made before the Lupon or Pangkat should be excluded from being given in evidence in any other proceeding. It should be borne in mind that effective mediation and conciliation may require the giving of confidential information by the parties which they may be reluctant to give if it may be used against them in the adjudicating phase.[86] The problem even becomes more complex when a minor or an incompetent is a party thereto. Pres. Decree 1508 provides that in this case, they may be assisted by their next of kin who are not lawyers.[87] Thus, if both parents are lawyers, they will not be allowed to assist their minor or incompetent children, the task being delegated to one who may not have the best interests of such party at heart. If during the settlement, confidential information is asked, would such next of kin be in a position to give the same, much more be held responsible

[84] Rosenberg, *Designing Procedures That Is Civil To Promote Justice is Civilized,* 69 MICH. L. REV. 797, 809 (1971). (Emphasis added)
[85] *See* Note 81.
[86] *See* Note 7, at 122.
[87] Pres. Decree 1508, Sec. 9.

if the same were to be used against the child or incompetent later on? Much danger is present when these provisions under scrutiny are allowed to stand. The fact remains that in any given case, the denial of the right to counsel and admissibility of admissions made without assistance of counsel can not be provided together, without crowding out the constitutional guarantee against self-incrimination. Thus, these two provisions, obnoxious as they are to our sense of justice and constitutional bearings, will only obviate the laudable objectives for which the law was promulgated.

In the light of all these considerations, the choice becomes clear. We must save the law, if only for the hope that it may truly promote the speedy administration of justice and thus, be acquitted of the most common charge today — that justice delayed is justice denied. To do so, we must accordingly amend it in order to give a true expression of our sentiments and concern for the protection of our constitutional right against self-incrimination. Let us allow the participation of lawyers in the proceedings, either as counsels or resident advisers, or in the alternative, let us treat admissions made thereunder as if they were not made at all. In doing so, we will be giving justice to our constitutional precepts, and at the same time promote the speedy administration of justice by restoring the public's faith to the rule of law.