

Strategic Litigation as Part of the Alternative Lawyering Strategies in the Philippines: a SALIGAN Mindanaw Perspective

Sentro ng Alternatibong Lingap Panligal (SALIGAN Mindanaw)

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SALIGAN is an acronym, which translated, in English means Alternative Legal Assistance Center. We are a legal organization working in partnership with workers, farmers, fisherfolks, Moro and indigenous peoples, urban poor and rural communities. Our work with the basic sectors enables us to engage in legal literacy and paralegal formation, litigation support, policy advocacy, research and publication, and internship. We are founded in 1987, one of the organizations that arose from the democratic institutions built after the Philippine martial law.

We are a member of the Alternative Law Groups, Inc. (ALG), a network of legal resources organizations in the Philippines working towards alternative or developmental lawyering. In a paper entitled *Mainstreaming the Alternative*¹ by the Alternative Law Groups, Inc., the ALG described this Philippine-style of public interest lawyering as:

“The ALG experience of public interest lawyering manifests that alternative lawyering means more than just precipitating social change through court ordered decrees, enforce existing laws and articulate public norms. To be an alternative, developmental or feminist lawyer means to view law as an indispensable weave in our social fabric. It is to practice law fundamentally for individuals, communities and sectors that have been historically, culturally and economically marginalized and disenfranchised. The mark of such practice is that it seeks not only to create ripples of public impact from individual cases but also that it empowers in the process. To be an alternative lawyer means a clear professional commitment that the use of law is not the sole domain of those who have passed the bar and taken the oath, but could and should be shared with the individuals, communities and sectors which it affects.

Alternative lawyers therefore do not practice alone. At the very least, their clients, beneficiaries or partners participate in the process. They do so not only as paralegals but also as peoples who work to better their conditions. They do so as principal actors in making decisions on options which have been laid out by the alternative law group. Ideally they know every twist and turn of every metalegal action that they engage in.”

As lawyers, litigation is a major tool in SALIGAN's work, but not necessarily the primary strategy. We only use litigation if such strategy to defend the

¹ <http://alternativelawgroups.org/resources.asp?sec=det&id=171> accessed on November 2011.

marginalized sectors' rights and interests will provide an opportunity for major policy pronouncements to the sectors' benefit. We prioritize test cases that will bring precedence favorable to them or those suits that we sense would strengthen the empowerment process of a particular community or the complement the organizing strategy of the organization.

Our experience in litigation in the Philippines varied from the precedent-setting cases to community empowerment cases. Particularly for our Mindanao branch, we got to handle a case involving the intervention of community members affected with aerial spraying practices of banana companies. Cavendish bananas are sprayed with fungicides using airplanes, which upon spraying drifts even beyond the plantations, towards neighboring residents' house, farms and sources of water. The residents lobbied with the local legislative council to ban such practice as it affected their health, livelihoods and sources of water. The City of Davao responded through an ordinance banning aerial spraying. The banana plantations, along with their organization, the Pilipino Banana Growers and Exporters Association (PBGEA)², which counts among its members Del Monte Fresh Produce Philippines and DOLE Stanfilco, filed a case questioning the constitutionality of the local government ordinance banning aerial spraying practice.

The case is between PBGEA, *et. al.* versus the City of Davao, but community residents affected by the harmful practice filed its Intervention, claiming a party in interest, to which standing of the community residents were opposed by PBGEA claiming that the issue is the validity of an ordinance, and citizens are already represented by the City of Davao. Eventually the trial court allowed the intervention and presented evidence of their experiences whenever aerial spraying occurs, such as itchiness in their skin, irritations in the eyes, difficulty in breathing, plants wilting and even their sources of water were contaminated. PBGEA, on cross-examination, questioned why the residents failed to see a doctor for their health complaints and other experts for their contamination that might be caused by other factors. The residents testified that they do not have the resources to conduct the tests, and can only complain with the local council for an ordinance to put a stop to the practice.

PBGEA presented its case before the trial court, supported by a leading Manila-based law office, with expert witnesses claiming there is no scientific basis to support an aerial spray ban, and even one coming from Dow Agrosciences in the UK, defending the safety of their fungicides. The trial court ruled in favor of the validity of the ordinance, recognizing the power of a local government to protect the right of the people to their health and the environment, and the judge relied on the testimony of the residents and a leading toxicologist in the country on the danger of even a drop of chemical affecting peoples' health.

² Information from their website, www.pbgea.org. The PBGEA website includes their responses to the statement of another toxicologist in the Philippines, who conducted a health study of a community located beside a plantation. A banana plantation filed a libel case against the doctor, which eventually were dismissed by the judge, but the decision was appealed by the company.

On appeal, the Court of Appeals reversed the trial court's decision, but not without having most of the justices inhibiting from being involved in the case. A lone well-written dissent saved the day for the residents who even camped outside the appellate court to give them justice.

The case is now pending in the Supreme Court, which final resolution of the case involving the constitutionality of the aerial spray ordinance, still languishes in delay. The court did not issue any injunction to temporarily stop aerial spraying while the case is pending, hence the toxic chemical continue to be sprayed on innocent target. This case illustrates the asymmetry of power and resources that the communities have against powerful corporations. While the corporations can secure legal representation and can provide resources for any delay in a lengthy court proceedings, even on appeal, community members have to rely on their own commitment to continue with the case, keeping the fire among other members of the community burning to continue with their advocacy. Community members attending the hearings would have to be briefed before and after every hearings about what is happening as their lawyers and the corporations' lawyers argue about a point, object on what was testified and in a language not fully understandable to them. Aside from it is in English, it is also legalese. When a community member testifies, an interpreter have to translate everything, when all of them, the judge, lawyers, and everyone present in court, understands Filipino. Unfortunately, Philippine laws and court procedures are all in English, and one in translation are the members of the community, who are the party most affected with the results of the matter in litigation.

As an organization, SALIGAN believes that litigation is just one strategy towards our goal towards the legal empowerment of the poor and marginalized. It is not the only strategy towards legal empowerment of communities. In fact, it should only be used on exceptional circumstances. What litigation can achieve is to strengthen the community organizing processes. In this case, the lead organization of the residents, the *Mamamayan Ayaw sa Aerial Spraying (MAAS)*, from their lobbying efforts with the local government, galvanized their actions towards supporting the case in court. Media are always interested in a lawsuit, and the coverage over a case against a corporation might be making headlines, and this becomes a tool to highlight the issues and educate the general public on what is happening in rural communities. Another advantage of litigation is this can facilitate legal education of communities who have no opportunity to be informed of their rights as a people, to clean air and water, and of a healthful and balanced ecology. Litigation can become a tool for legal empowerment.

The pitfall of any litigation might be the too much dependence on the leading actors in any lawsuit, the judge and the lawyers, while the empowerment processes of communities might take a backside. Without proper guidance, the focus is on how lawyers eloquently delivered their objections and how a judge controls his courtroom from the drama of the lawyers. The issues of human rights abuse suffered by communities are also sidelined with the bigger story of banana companies pulling out their investments in the city. Amidst the technical ramifications and ruminations of case lies a story of communities having their



rights violated by a corporation. What litigation cannot achieve is fully exhaust what truth and justice are, as the legal procedures tend to be more technical, than substantial. In the end, only those who have sufficient resources and influence can fully get justice in the formal legal structure.

SALIGAN is a member of the Philippine Misereor Partnership (PMP), a network of more than 300 non-governmental and civil society organizations in the Philippines. Together these organizations strive to fight poverty, promote development of the poor people of the Philippines and to defend human rights. Saligan thanks Misereor for their invitation and support to attend and contribute to this conference.