



BANTAY KATARUNGAN (Sentinel of Justice)

Case Study on Civil Society Oversight
The Experience of Bantay Katarungan (Sentinel of Justice) in the Philippines

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Bantay Katarungan or the Sentinel of Justice is an independent, non-partisan, ethics-oriented organization formed for the purpose of reforming and modernizing the system of justice in the Philippines. Its declared purposes are to:

1. Help our people seek and attain justice by a systematic monitoring and evaluation of the day-to-day performance of various courts, tribunals and agencies, particularly in cases involving the public interest, such as plunder, graft and corruption, betrayal of public trust, gross injustice, violation of human rights and the like;
2. Assist in improving the administration of justice by seeing to it that persons who are qualified to dispense justice, in terms of competence, integrity and dedication, are recruited, nominated, and appointed to key positions in judicial and administrative agencies; and
3. Encourage deserving officials and personnel in said agencies to perform their duties without fear or favor, and enlist public support so that they are properly compensated and shielded from unwarranted attack, abuse or smear; and, on the other hand, those who fail to perform their duties, in accordance with law, are exposed, weeded out, and if necessary, punished.

ORGANIZATIONAL SET-UP OF BANTAY KATARUNGAN

Bantay Katarungan is headed by Amb. Sedfrey A. Ordonez (chair) and Sen. Jovito R. Salonga (adviser and coordinator). Sedfrey Ordonez was a former Secretary of the Department of Justice and Solicitor General of the Philippines. Jovito Salonga, on the other hand was former Senate President of the bicameral Philippine legislature. Apart from the important public offices they have previously handled and their recognized competence as lawyers, it is their reputation as independent and credible persons that constitute their most important contribution to the organization. *Bantay Katarungan* is a foundation governed by a Board of Trustees composed of persons of known integrity and commitment to the cause of improving justice in the Philippines.

The leaders and officers of *Bantay Katarungan* are assisted by Executive Director Emilio C. Capulong, Jr., a practicing lawyer, and two supervising lawyers: Bong Montesa, a lecturer at the Ateneo Law School, and Florin T. Hilbay, an assistant professor at the University of the Philippines College of Law.

The essential ground support for the activities of *Bantay Katarungan* come from student monitors or volunteers from different law schools in Metro Manila who are selected on the basis of their academic standing and dedication to the work of *Bantay Katarungan*.

THE ACTIVITIES OF BANTAY KATARUNGAN

The work of *Bantay Katarungan* focuses on the following:

1. The monitoring of appointments to the judiciary, especially those appointments to the Supreme Court, Court of Appeals, and the Anti-Graft Court known as the

Sandiganbayan. To do this, *Bantay Katarungan* monitors proceedings before the Judicial & Bar Council.¹ It also monitors those appointments to other sensitive positions in the government, such as the Office of the Ombudsman.²

2. The making of evaluation reports on the basis of its monitoring activities. Such evaluation reports are sent to the Office of the President, through the Executive Secretary's Office, and the Judicial & Bar Council, in order to assist them in the exercise of their discretion.

3. The monitoring of significant pending cases. For example, *Bantay Katarungan* has a team of volunteers who attends the hearings in the Plunder Cases against a former president, Joseph Estrada. Another team of volunteers also attends the hearings in the House of Representatives Committee on Justice with respect to the impeachment complaint against eight justices of the Supreme Court. *Bantay Katarungan* also monitors other cases such as the Coco Levy Cases³ and the *Kuratong Baleleng* Cases.⁴

3. The publication of matters of national concern through the *Kilosbayan*⁵ Magazine, a monthly publication. For such purpose, Sen. Salonga and the *Kilosbayan* Staff have written on diverse subjects as (1) the present efforts of the government, through the Presidential Commission on Good Government,⁶ to recover the ill-gotten wealth of former president Marcos and his family, (2) the modernization project of the Commission and Elections (and the *Bantay Katarungan*'s concern about its feasibility), and (3) the efforts of the counsel for former president Joseph Estrada to delay the Plunder Cases.

Bantay Katarungan also performs other functions that promote public welfare in general. In one instance, it filed a criminal complaint against a sitting justice of the *Sandiganbayan* for violation of the Anti-graft and Corrupt Practices Act. In another, it filed a petition before the Supreme Court to stop the holding of a re-examination in one of the subjects in the Philippine Bar Examinations as a result of the leakage in the examination in Mercantile Law. That petition was granted on the same day by the Supreme Court, thus preventing the unjust solution of requiring 5,500 bar examinees to re-take the examination in Mercantile Law when they had no participation whatsoever in the leakage.

¹The Judicial & Bar Council is an independent constitutional body created in the Philippine Constitution composed of the following: the Chief Justice of the Philippine Supreme Court as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. As provided for in the Philippine Constitution, the Council has the principal function of recommending appointees to the Judiciary. The members of the Supreme Court and judges of lower courts are appointed by the President from a list of at least three nominees prepared by the Judicial & Bar Council for every vacancy.

²The Office of the Ombudsman is similar to an Independent Counsel, but with expanded jurisdiction. It has prosecutory and investigatory powers that covers practically all public offices. Under the Constitution, it is the Judicial & Bar Council that recommends to the President a list of persons who may be appointed as Ombudsman.

³The Coco Levy Cases refer to cases for recovery of billions of pesos taken in the form of taxes on coconut farmers and eventually siphoned off to private banks of close associates of former President Ferdinand Marcos.

⁴These cases concern the salvaging/rubout of certain individuals engaged in bank robbery. One of the principal suspects in this case is a senator of the republic who has publicly declared his intention to run for President.

⁵*Kilosbayan* is the sister organization of the *Bantay Katarungan*.

⁶Incidentally, Sen. Salonga was the first Chair of the Presidential Commission on Good Government.

THE PROCESS FOR SELECTION OF VOLUNTEERS

Considering the impact of the activities of the *Bantay Katarungan*, it is very important for *Bantay Katarungan* to be very selective in its selection process for volunteers. Thus, prospective volunteers undergo a screening process meant to ensure the admission of responsible volunteers.

The initial step in the selection process is the publication of the start of the selection process. This is done by sending notices to the respective deans of the leading law schools in Manila. The deans then select from among their interested students those who are in good academic standing and who they think have the requisite qualifications for volunteer work. The list of recommendees is sent to *Bantay Katarungan* for evaluation. This is then given to the Executive Director and the Supervising Lawyers who may conduct interviews before the final list is submitted to Sen. Salonga and Amb. Ordóñez.

JUDICIAL WATCH

Subjective Qualifications and the Role of Bantay Katarungan

As mentioned earlier, the most important part of the work of *Bantay Katarungan* is that of monitoring the appointment to sensitive positions in the Judiciary and agencies performing functions related to the dispensation of justice in the Philippines. Since judges and justices, once appointed, enjoy security of tenure and serve until they reach the age of seventy, it is an imperative that those who get appointed are able to comply with the subjective and objective qualifications for judges. While objective qualifications are easy enough to verify as they can be done by looking at the curriculum vitae of a particular applicant, the subjective qualifications, the ones that appear in the Philippine Constitution—competence, integrity, probity, and independence—are quite difficult to establish and require more than just a casual perusal of the qualifications of the applicant as they appear on paper.

This is where the role of *Bantay Katarungan* assumes considerable significance. The monitoring work performed by the volunteers of *Bantay Katarungan* is extensive and geared towards developing a picture or an approximation of the character of the applicant based on those subjective requirements that appear in the Constitution. In addition, this function of *Bantay Katarungan* should be taken in the context of the absence of any similar body performing such functions. In particular, it should be noted that even though the Judicial & Bar Council (an independent body with fiscal autonomy) is mandated by the Constitution to recommend to the President appointees to the judiciary, it has not yet gone to the extent of creating a pool of investigators that could mirror the work of *Bantay Katarungan*.

The Selection Process

The selection process for vacant positions in the judiciary starts with the publication by the Judicial & Bar Council of the notice of vacancies in specific positions in the judiciary, and providing a period for the application by interested parties. This notice is published in newspapers of general circulation to ensure the widest possible dissemination of the notice.

Before the deadline for the filing of the application forms, *Bantay Katarungan* sends one of the members of its administrative staff to the office of the Judicial & Bar Council to obtain photocopies of the application forms including the curriculum vitae of the respective

candidates. These forms are then given to the Executive Director and the Supervising Lawyers for determination of who among the applicants are applying for the first time or not. If an applicant had previously applied for a position in the judiciary, the existing database of the *Bantay Katarungan* is then checked to ascertain whether a monitoring and evaluation report has already been made. If one has already been made, the monitoring is limited to updating the previous report. On the other hand, if the applicant is a first timer, the supervising lawyers start the distribution of the assignments to the student monitors.

The assignments are distributed to the student monitors (grouped on the basis of their school affiliation), ensuring that they are assigned to applicants who do not belong to the school in which the particular group of student monitors are enrolled.⁷ This system of assignment avoids the possibility of any institutional bias that might arise from the fact that the monitor and the applicant may have come from the same law school. At times, geographical location is also considered. Some applicants come from very far places; thus, monitors who are familiar with the area where a particular applicant holds office are given the assignment. Once the assignments are distributed, the student volunteers may start their monitoring activities.

The Monitoring Proper

Bantay Katarungan's student monitors have already developed different methods of conducting their monitoring activities depending, for the most part, on the qualifications of a particular applicant. Based on the experience of the student monitors, the most important factor that determines the direction of the monitoring report is the nature of the employment of the applicant—whether he or she is employed in the government or is engaged in private practice.

If an applicant is from the government, a lot of information is readily available. Government employees are required by law to accomplish on a yearly basis a Statement of Assets and Liabilities where they are required to state, under pain of administrative and criminal sanction, their net worth, the nature of their properties, their business interests, and pending civil/administrative/criminal cases against them. Thus, the Statement of Assets and Liabilities already show a significant amount of information about the particular applicant. Moreover, if the applicant is already employed in the judiciary (which means that he or she is seeking a promotion from one court to another, a regular route taken by applicants), then the student monitors have a host of sources of information that may be used to assess the fitness of that particular applicant.

First, the Supreme Court has an attached office called the Office of the Court Administrator (OCA). The OCA is similar to an Ombudsman for the entire judiciary, with the exception that it is under the control of the Supreme Court itself. Its records concerning cases involving judges are generally open to the public. Thus, one may find in the OCA the following information: (1) whether a judge has already been the subject of a disciplinary proceeding; and (2) a judge's report regarding his current docket (thus helping the student monitors determine his current output).

Second, monitors can also go to the courthouse where the judge serves and interview (without necessarily disclosing the purpose of such interview) the judge's law clerks, stenographers, and other members of the administrative staff. In most cases, the student

⁷*Bantay Katarungan* has instituted an informal system of accountability whereby leaders are selected among the students. These leaders are in charge of monitoring the progress of the assignments given to the students.

monitors also question the lawyers who appear before the judge to obtain information about his competence and integrity. The student monitors have also developed the practice of asking for copies of the decisions of the judge concerned. In some cases, reports of the student monitors have also been based on interviews with other judges who hold office in the same building. Student monitors have even gone to the extent of interviewing the applicants' neighbors.

For those applicants who come from the private sector, information is generally obtained on a more limited basis because of the lack of government-type requirement such as the Statement of Assets and Liabilities. For those who are engaged in private practice, the procedure for the student monitors is to ask employees in the law firms where the applicants work as well as judges in which they have pending cases. Sometimes, the monitors also go to the Integrated Bar of the Philippines, the national organization of lawyers, to ascertain whether there are pending disbarment cases against the applicant or whether the applicant had previously been sanctioned.

In all cases, regardless of whether the applicant is from the public or private sector, the monitors make it a point to interview the applicants themselves in order that the monitors may verify some of the information that they are able to gather during the monitoring and to allow the applicant to clarify certain statements made about them.

The Evaluation Report

Once the monitoring is completed by the student monitors involved, their report is given to the Executive Director who forwards it to the Supervising Lawyers who then distributes the monitoring reports between themselves for further evaluation. This process of evaluation involves the checking of the report for accuracy. To improve the quality of the reports, the Supervising Lawyers evaluate the reports using as the basis the qualifications of the applicants that are required by the Constitution—competence, integrity, probity, and independence. Note that from time to time, the officers of *Bantay Katarungan* conduct lectures on how to write monitoring and evaluation reports to standardize the reports in order that the applicants may be evaluated on the basis of more or less the same set of criteria.

After the reports are evaluated by the Supervising Lawyers, the consolidated reports are then sent to Senator Salonga and Ambassador Ordonez for clearance. The reports are then finalized and the decision whether or not to endorse an applicant is made on the basis of such reports. In some cases, a meeting is had among the officers of *Bantay Katarungan* to ensure that all relevant factors are considered before the evaluation report is released.

Once the monitoring and evaluation report is finalized, it is then sent to the Judicial and Bar Council so that the report can be considered by the Council before it makes its determination of who among the qualified applicants should be included in the shortlist that will be sent to the President. In some instances, upon request by the Office of the Executive Secretary, the *Bantay Katarungan* also furnishes the Office of the President copies of its evaluation report so that they can be considered before the final decision to appoint is made. It should be noted that what is given by the Judicial & Bar Council to the Office of the President is simply the shortlist of names it is recommending for appointment; thus, it is not obligated to justify its decision to include any particular applicant in the shortlist.

The reports issued by the *Bantay Katarungan* are, of course, simply recommendatory and a part of the entire political process of appointing members of the judiciary. In the end, it is

still the politically accountable officer, the President, who has to make the choice. Nonetheless, the function assumed by *Bantay Katarungan* is important considering that it is the only organization that performs quasi-investigatory functions that ensure that the appointing authority will have all the relevant information at hand before she makes the final decision to appoint.

THE LECTURE SERIES

Once or twice a month, *Bantay Katarungan* organizes lectures for its student monitors. For these lectures, *Bantay Katarungan* has invited sitting and retired Justices of the Supreme Court, the (past and present) Ombudsman, the Solicitor General, Justices of the Court of Appeals, the Public Information Officer of the Supreme Court, and many others who play an important role in the judicial process.

The guest speakers are given wide latitude in selecting the topics they wish to discuss, although in all cases they are requested to include some pointers on how to improve the monitoring activities of the student monitors. The benefit obtained by the student monitors in this exercise is the information that they get from insiders about what actually happens in the institutions that comprise an integral part of the judiciary. For example, just recently, the Solicitor General, who was formerly the head of the Court Administrator's Office and the Commission on Elections, spoke about many practical matters that could help the student monitors obtain information from the Court Administrator's Office. He also spoke at length about the present goings-on at the Commission on Elections, including matters of policy that could help it function effectively and allow it to perform its constitutional task of ensuring free, orderly, and honest elections.

In another lecture, the new Ombudsman spoke about the difficulties involved in pursuing his function as the protector of the people against abuses by public officers, noting that his office has a conviction rate of 6% primarily because his prosecutors are severely overworked and in some cases untrained and unable to match the lawyers of accused public officers who are able to hire the best lawyers their ill-gotten money could buy. He even broached the possibility of institutionalizing a "prosecutor watch," a group of volunteers who, like the *Bantay Katarungan*, can monitor cases handled by Ombudsman lawyers and whose function is to report to the Ombudsman the performance of his lawyers in the courtroom.

In all these instances, the student monitors were able to ask questions about the judicial process and so were able to immerse themselves in the entire system not on a theoretical level but on a practical level with aid from the perspective of insiders.

FACTORS THAT HAVE CONTRIBUTED TO SUCCESS OF BANTAY KATARUNGAN

1. Credibility of its leaders – Perhaps the most important ingredient to the success that has so far been enjoyed by *Bantay Katarungan* is the credibility of its leaders. Sen. Salonga and Amb. Ordonez are well known not only for their competence but, more importantly, also for their credibility. This is why people, both from the public and private sectors, listen to and rely on their statements.

2. Ability to publish its concerns – *Bantay Katarungan* has a wide network of people who have the ability to disseminate information about its activities. First of all, it has the Kilosbayan Magazine which can be used as an outlet for informing the general public. Secondly, newspapers of general circulation are accessible to *Bantay Katarungan* whenever it intends to generate public support for some of its efforts or to simply publish matters that it thinks are important for the public to know.

3. A pool of competent student volunteers that ensures that the monitoring activities of the *Bantay Katarungan* will remain free from political influences. – It is natural to anticipate that the appointment process, especially to high government offices including those in the judiciary, will be highly politicized. Thus, credible information about applicants to the judiciary is hard to come by. With the aid of student volunteers who are able to gather extensive information about the applicants, the Judicial & Bar Council and the Office of the President are given reliable information.

The added benefit in all of this is that, in the long run, the system of securing the assistance of student monitors will create a pool of idealistic lawyers who, by the time they graduate, will have already made significant contributions to society and in particular, the system where they will employ their skills, the legal system. The strategy also allows law students to become quasi-insiders in the legal system; thus, giving them specialized and practical knowledge of how the system operates within a specific legal culture.

4. The absence of a similar body performing monitoring activities. This situation has made *Bantay Katarungan* almost indispensable to the appointment process, so much so that in many instances, the Judicial & Bar Council had requested *Bantay Katarungan* to submit copies of its reports.

Considerations:

- Difficult to seek information on applicants who are from the provinces.