

LOCAL ADMINISTRATIVE ADJUDICATION OF FISHERY CASES (CAN THIS BE AN INNOVATIVE ALTERNATIVE TO CRIMINAL PROSECUTION OF FISHERY CASES?)

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An **administrative adjudication** process that cannot continually be more efficient, less expensive, and less formal than the court system is not an improvement.

[District of Columbia: Establishment of Appeals Tribunal by Tax Executive](#)

I. Introduction

Local government units (LGU) have been granted an array of management powers within their territorial jurisdictions under existing laws, particularly the Local Government Code² and the Philippine Fisheries Code³. In the coastal zone, the powers and responsibilities of LGUs include protection, regulation, revenue generation, local legislation, enforcement, provision of services, extension and technical assistance, and performing inter-government relations and engaging with NGOs and people’s organizations. In a sense, LGUs are in the best position to ensure equitable use and sustainable management of our coastal resources.

In the area of enforcement, several LGUs have initiated the formation of coastal law enforcement teams, filing of criminal cases and the passage of ordinances that would impose fines and other penalties against fishery law violators. It is in this area that LGUs have started to work out innovative actions that would address the perennial problems in the prosecution of fishery crimes, such as case dismissals, prolonged litigation, lack of judges and prosecutors especially in far-flung island municipalities and the tendency of witnesses and law enforcers to lose interest in the prosecution of fishery cases.

Some LGUs have enacted municipal fishery ordinances providing for administrative sanctions which are imposed by municipal adjudication boards. Others have organized trainings/seminars for their key officials and staff on administrative adjudication.

Can administrative adjudication serve as a viable alternative in strengthening fishery law enforcement efforts? Is there sufficient legal basis to establish and develop protocols and processes for local administrative adjudication? What must be in place to ensure that the pursuit of local or municipal administrative adjudication becomes workable or feasible?

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² Republic Act (RA) No. 7160

³ RA 8550

II. The Nature of Administrative Adjudication

2.1. Plain, Speedy and Less Technical Proceedings

Administrative law characterizes administrative adjudication as the process by which an administrative agency issues an order, which can be affirmative, negative, injunctive, or declaratory in form. It also refers to the process adopted by an administrative agency for the formulation of a final order or decision.⁴ Adjudication applies the administrative agency's policy to the actions of a particular party, and it results in an order for or against that party. The methods are regulated by the law on administrative procedure.

Our present legal framework identifies the agencies and institutions which exercise authority to adjudicate administrative cases, thus:

- (i) Any individual, bureau, office commission, authority or officer of the National Government authorized by law or executive order to issue licenses, grant rights or privileges and adjudicate cases;
- (ii) Research institutions with respect to licensing functions;
- (iii) Government corporations with respect to functions regulating private rights, privileges, occupation or business;
- (iv) Public officials in the exercise of disciplinary powers;
- (v) Local Government Units.

Similar to judicial proceedings, administrative adjudication procedures need to comply with the constitutional requirement of “due process”. Due process has procedural and substantive aspects⁵. The procedural aspect requires that the positions of both parties must be heard first before a decision is arrived. The substantial aspect prohibits the enactment of unreasonable, arbitrary and oppressive laws. The cardinal rights which are articulated in the famous case of “Ang Tibay v. C.I.R.”⁶ must be respected in administrative proceedings.

Unlike court proceedings, administrative adjudication processes are plain, speedy and are not bound by technical requirements observed in judicial proceedings. The presence of lawyers are not necessary in administrative proceedings. Existing administrative laws and regulations embody the perspective of speedy disposition of cases. The Philippine Administrative Code of 1987 or Executive Order No. 292 provides that in order to expedite administrative proceedings involving conflicting rights or claims and obviate expensive litigations, every agency shall, in the public interest, encourage amicable settlement, compromise and arbitration.⁷

⁴ Philippine Administrative Law

⁵ Joaquin Bernas, *The Philippine Constitution*, 1996

⁶ *Ang Tibay versus C.I.R.* (69 Phil. 635, February 27, 1940)

⁷ Section 10, Chapter 3, Book 7, Administrative Code, Executive Order 292

2.2. Existing Administrative Proceedings on Natural Resource Use

In the realm of environmental management and natural resource use, agencies like the Department of Environment and Natural Resources (DENR) and the Bureau of Fisheries and Aquatic Resources (BFAR) under the Department of Agriculture (DA) have adjudication proceedings relating to conflicts and claims arising from their issuance of permits and licenses, including suspension and cancellation of such privileges. Protocols of these proceedings are embodied in specific administrative issuances. For instance, in the case of forestry cases, including the use of chainsaws, the DENR has issued Department Administrative Order (DAO) No. 97-32 that provide guidelines in the administrative hearings of forestry cases.

On fishery cases, Regional Directors and other officials of the DA-BFAR may be authorized by the Secretary of Agriculture to conduct hearings and impose administrative fines for the violation of and non-compliance with fisheries rules and regulations.⁸

The Palawan Council for Sustainable Development created by the Strategic Environmental Plan for Palawan⁹ (SEP) has a legal committee which serves as the PCSD Adjudication Board (PAB). The primary function of the PCSD is to exercise "governance, implementation and policy direction of the SEP."¹⁰ Specific laws, such as the Philippine Wildlife Resources Conservation Act¹¹, the Philippine Chainsaw Act¹² and the National Caves Law, gives authority to the PCSD to enforce these laws within the province of Palawan. The PCSD acquires, "the jurisdiction over all declared aquatic critical habitats, all aquatic resources including but not limited to all fishes, aquatic plants, invertebrates and all marine mammals, except dugong".¹³

In implementing its mandate, the PCSD has passed Administrative Order No. 2000-05, which provides the guidelines for the accreditation, regulation and monitoring of live fish catching, culture, transport and trading in the province. Its powers include the regulation of certain fishing practices through the imposition of more stringent requirements, such as in the case of regulating live fish trading. AO 2000-05 imposes heavy administrative fines to collectors, traders and carriers of live fish that are not accredited by the PCSD. It also allows the summary forfeiture of vessels involved in the offense.

Ideally, administrative remedies can be cost effective, efficient and swift than judicial remedies. In practice, the administrative system is also fraught with problems such as accessibility of these administrative bodies and the lack of personnel (such as hearing officers and lawyers) to conduct these proceedings (*Dante Dalabajan, Cyanide and dynamite fishing in the Calamianes region;*

⁸ Section 42, Chapter 5, Title IV, Administrative Code of 1987

⁹ Republic Act No. 7611. SEP follows a "... graded system of protection and development control over the whole of Palawan, including its tribal lands, forest mines, agriculture areas, sea grass beds and surrounding sea" called Environmentally Critical Area Network (ECAN).

¹⁰ Section 16, Republic Act 7611

¹¹ Republic Act No. 9147

¹² Republic Act No. 9175

¹³ Section 4, Republic Act 9147

2003). PCSD has only three personnel while DA-BFAR has one for the whole of Calamianes. Administrative hearings are either conducted in Puerto Princesa City or Manila, thus making these agencies no more visible and accessible than the court. (ibid.)

DA-BFAR's proceedings on cancellation of commercial fishing vessel licenses and fishpond leases can also take years. Complaints filed by Palawan environmental groups seeking the cancellation of commercial fishing licenses issued to corporations engaged in "pa-aling" fishing have been pending with DA-BFAR for more than four (4) years before these were resolved¹⁴. Cases involving fishpond leases also took more than six (6) years.¹⁵

These practical limitations can and must be addressed if administrative adjudication were to make a significant impact on enforcement and coastal resource management.

The PCSD has attempted to do this by conducting monthly hearings on its administrative cases, and allocating personnel and resources to support the conduct of these proceedings. The PCSD adjudication board (PAB) meets once a month to hear cases involving violations of the Chainsaw Act, SEP clearance requirements and other guidelines. Despite these initiatives, the situation is still far from perfect. There is an evident need for further refinement of the procedural guidelines, more technical support and commitment of PAB members, and address delays caused by the service of summons, notices and other processes and inconsistencies in the application of PCSD administrative orders. Other issues include the absence of an explicit provision in the SEP law on the nature of the PCSD as a quasi-judicial body and the power to appropriate fines which are part of the penalties imposed.¹⁶

By its nature, administrative adjudication cannot replace the judicial courses of action. It is an alternative for adjudicating violations of environmental laws. Under the Philippine judicial system, administrative remedies are subject to review by judicial bodies in the event there are questions raised concerning the validity of the proceedings, errors in judgment and application of laws. It may also be necessary, in certain instances, for these administrative agencies or adjudication bodies to resort to courts when the offenders refuse to comply with the administrative penalties.

¹⁴ Palawan NGOs vs. ASB Fishing Corporation and Prime A Fishing Corporation

¹⁵ Re: Cancellation of Fishpond Lease Agreement of 6thMD Veterans Development Corporation in Barangay Pulot, Municipality of Espanola, Palawan; also, Application for Renewal of FLA filed by 4th Watch Multipurpose Cooperative, Barangay Tagabinet, Puerto Princesa City

¹⁶ Presentation by Atty. Adelina Benavente-Villena, chief legal officer of PCSD staff and PAB secretary on the PCSD's PAB experience during the Orientation on Administrative Adjudication for local officials of Cagayancillo, Palawan, on June 13, 2009, Legend Hotel, Puerto Princesa City.

III. The Rationale and Legal Basis for Administrative Adjudication

3.1. Weakness of Judicial Proceedings

Law enforcement seeks primarily to impose the most severe sanction on offenders. Logically, judicial courses of action would be the best route to exact deterrence considering the variety and range of penalties the judicial system can impose, such as, among others, fine, cancellation of licenses and permits, reparation, damages, and imprisonment. The loss of income, privileges, opportunities and liberty are heavy and theoretically, would deter would-be violators from pursuing their unlawful acts.

In reality, the present system makes it difficult to achieve deterrence and secure the appropriate fine or other penalty. Studies made by environmental law groups involved in the filing and prosecution of environmental cases show the following:

- Courts are not considered a venue for seeking redress for environmental crimes (Mindanao);
- In the case of the Calamianes region, Northern Palawan, the study on cyanide and dynamite fishing shows that only 0.3 percent of violations detected result in court cases; the figure would be much lower if undetected violations are factored in;
- In the province of Quezon, the study showed high conviction rate for fisheries crimes, but a closer look reveals that easy plea bargaining and low fines provide incentives to “settle” the case, then commit the crime again.¹⁷

Studies have shown that such problems as lack of judges and prosecutors especially in far-flung island municipalities, insufficient resources for law enforcement (subsidy for witnesses, patrol boats), inadequate knowledge on the nuances of environmental law enforcement by law enforcers, among others, hamper effective law enforcement of fishery and other environmental laws.¹⁸ Socio-cultural and political problems such as political patronage and corruption aggravate these problems. The pervasive corruption, patronage and personalism, coupled with the limited resources are significant factors that impinge upon government’s accountability and effectiveness (Golub, 1998).

The aforementioned realities compel enforcement agencies and local government units to look into other options in order to exact penalties on offenders of environmental laws. In the area of fishery law enforcement, opportunities for other avenues are being seriously considered. In

¹⁷ Research Initiatives on Environmental Adjudication by Paglilingkod Batas Pangkapatiran Foundation (PBPF), Tanggol Kalikasan (TK) and Environmental Legal Assistance Center, Inc. (ELAC), presented during Roundtable Discussion in the Supreme Court, 2006

¹⁸ Dalabajan, D., E. Lorenzo and G. Mayo-Anda. (2002). “The Weakest Link: The Status of Fisheries Law Enforcement in Calamianes Group of Islands”. Unpublished monograph prepared for the Conservation International

Calamianes, Northern Palawan, enforcement agencies are forced to make choices given that they are seriously hampered by inadequate resources and other practical difficulties (Dalabajan, 2003). Practical limitations and not theoretical considerations (such as the facts and circumstances of the case) are the more important determinants in making a choice on what legal actions to take (Dalabajan, 2003, quoting Van Zeben and Mulkey, 1995).

3.2. General Welfare Clause under LGC: Delegation of Police Power

A promising opportunity is provided by the Local Government Code which allows local government units to pass "...ordinances for the protection of coastal and marine resources and imposition of appropriate penalties for dynamite fishing and other activities which result to ...ecological imbalance."¹⁹ The same law also provides that every local government shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare.²⁰ General welfare includes, among others, enhancing the right of the people to a balanced ecology.

The general welfare clause under the RA 7160 embodies the delegation of police power. Through this law, the State has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation. Police power as an inherent attribute of sovereignty, is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. Thus, while there is no direct provision that gives the LGU the power of administrative adjudication, this can be implied from RA 7160 which gives LGUs the power to enact administrative rules as its incidental and implied power. When an ordinance is passed, the LGU may provide administrative details for its effective implementation.

RA 7160 clearly provides for the management by LGUs of municipal waters and other water resources within its territory. The emphasis given by RA 7160 on the extent of powers exercised by the LGUs is highlighted in several cases, most notable of which is that of Tano vs. Socrates²¹, thus:

“Section 5(c) of the LGC explicitly mandates that the general welfare provisions of the LGC "shall be liberally interpreted to give more powers to the local government units in accelerating economic development and upgrading the quality of life for the people of the community”.

¹⁹ Sec. 447 (a) (1) (vi)], Republic Act 7160

²⁰ Section 16, RA 7160.

²¹ Alfredo Tano, et al. versus Hon. Gov. Salvador Socrates, et al. (G.R. No. 110249, August 21, 1997).

The LGC vests municipalities with the power to grant privileges in municipal waters and impose rentals, fees or charges therefor; to penalize, by appropriate ordinances, the use of explosives, noxious or poisonous substances, electricity, *muro-ami*, and other deleterious methods of fishing; and to prosecute any violation of the provisions of applicable fishery laws. Further, the sangguniang bayan, the sangguniang panlungsod and the sangguniang panlalawigan are directed to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, *inter alia*, ordinances that "[p]rotect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing . . . and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance."

Finally, the centerpiece of LGC is the system of decentralization as expressly mandated by the Constitution. Indispensable to decentralization is *devolution* and the LGC expressly provides that "[a]ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned." Devolution refers to the act by which the National Government confers power and authority upon the various local government units to perform specific functions and responsibilities.²²

3.3. Philippine Fisheries Code: Further Empowerment of the LGUs

The Philippine Fisheries Code supplements the mandates of local governments under the Local Government Code by empowering local governments to enact appropriate local ordinances and enforce all fishery laws and regulations within the municipal waters.²² RA 8550 provides for the exclusive jurisdiction of city and municipal governments over the inland and municipal waters as regards the management, conservation, utilization, protection, development, and disposition over fishery and aquatic resources. It therefore strengthens and expands the fisheries management powers of local governments under the Local Government Code²³.

Under RA 8550 and RA 7160, the range of control mechanisms on the management of fisheries and other coastal resources by local government units include the following:

- (a) area use allocation or zoning – Local governments are required by RA 8550 to designate at least fifteen percent (15%) of the total coastal area of the municipality as fish sanctuaries.²⁴ Specific zones also need to be segregated for the operation of fish pens, cages, traps, and other structures for the culture of fish, but not over ten percent (10%) of

²² Section 16, RA 8550

²³ Section 149 of the Local Government Code granted fishery management powers to local government units.

²⁴ Sec. 81, RA 8550

- the surface water area of lakes and rivers can be designated as aquaculture zones²⁵, and these structures should also not impede navigation or migration.²⁶
- (b) revenue and licensing – The broad licensing powers of the local governments include the imposition of rentals, fees, or charges for the grant of fishery privileges within municipal waters to erect fish corrals, aquatic beds for oysters, mussels, and similar species, and bangus fry areas;²⁷ and to issue licenses for operation of fishing vessels of three (3) gross tons or less.²⁸ Under the Fisheries Code, cities and municipalities shall determine license fees for all fishery activities within municipal waters,²⁹ and shall have authority to enter into pearl farm leases within their jurisdiction.³⁰
 - (c) enforcement - Local governments have absolute authority to enforce all fishery laws, rules, and regulations in addition to valid fishery ordinances,³¹ which includes all prohibited acts under the RA 8550. Such power is shared with other national agencies such as the Bureau of Fisheries and Aquatic Resources (BFAR), Philippine Navy, Philippine Coast Guard, Philippine National Police (PNP).³²
 - (d) general management powers – Local governments can set catch ceiling limitations within municipal waters;³³ declare closed seasons for fishing;³⁴ and entirely prohibit, or at least limit, fishery activities within municipal water areas that are overfished.³⁵ Other management powers, including those not specified by RA 8550, may be derived from the general jurisdiction of the city or municipality to manage, conserve, develop, protect, utilize, and dispose of all fish and fishery or aquatic resources within municipal waters.

It must be pointed out that local government units do not have exclusive and primary jurisdiction over protected areas covered by the National Integrated Protected Areas System³⁶ (NIPAS) because such areas are excluded in the coverage of municipal waters. Pursuant to RA 7586, the jurisdiction over protected areas rests with the Protected Area Management Board (PAMB). The NIPAS Law vests upon the site-specific Protected Area Management Board to, among others, “*decide matters relating to planning, resource protection and general administration... of the protected area*”.

Clearly therefore, administrative powers bestowed upon local government units are embodied in statutes. Local legislation and rules and regulations are needed to carry these out and operationalize the implementation of such administrative powers.

²⁵ Sec. 51, RA 8550

²⁶ Sec. 55 and 56, RA 8550

²⁷ Sec. 149, LGC

²⁸ *Ibid.*

²⁹ Sec. 6, RA 8550

³⁰ Sec. 52, RA 8550

³¹ Sec. 16, RA 8550

³² Sec. 124, RA 8550

³³ Sec. 8, RA 8550

³⁴ Sec. 9, RA 8550

³⁵ Sec. 23, RA 8550

³⁶ RA 7586

IV. Review of Some Municipal Ordinances on Administrative Adjudication

4.1. The Experience of Bohol and Palawan³⁷

Two focus group discussion (FGD) sessions were conducted among municipal officials and key personnel in the provinces of Palawan and Bohol primarily to determine the status, extent and impact of municipal administrative adjudication on fishery cases. The following concerns were gleaned from the FGDs.

(i) Existence of Ordinance on Municipal Administrative Adjudication

In Bohol, the municipalities of Ubay, Bien Unido and Talibon have CRM/fishery ordinances that make a general reference to administrative adjudication, but they have no specific ordinances on municipal administrative adjudication. The general provision is inadequate and could not provide the needed guidance in the implementation of administrative adjudication.

The municipality of Carlos P. Garcia (CPG) in Bohol, and the municipality of Linapacan in Palawan have ordinances providing specifically for municipal administrative adjudication.

The municipality of Busuanga in Palawan had an ordinance but this was vetoed by the mayor as he was not in favor of the person leading the administrative adjudication group/unit provided under the ordinance.

The municipalities of Coron and Culion have proposed ordinances, but as of 2009, the municipal councils have not deliberated on these proposed municipal legislation.

The municipalities of El Nido and Dumaran also provide for administrative adjudication but it is not clear whether there are existing systems in place to make this work. El Nido has a municipal resolution and an executive order providing for an administrative investigation unit, but the group's task is limited to the determination of an existence of a environmental law violation and the appropriateness of filing a criminal case.

(ii) Provisions of the Ordinance on Administrative Adjudication

The ordinances of Linapacan, Palawan and CPG, Bohol have common features, as follows:

- Establishment of administrative adjudication body (AAB)
- Powers and functions of the AAB
- Composition and Qualification of AAB
- Rules and Procedures
- Appropriation

³⁷ Taytay, Northern Palawan is treated separately and is not included in this specific segment.

Carlos P. Garcia's Ordinance lays down a very detailed procedure, with provisions on the presentation of evidence similar to judicial proceedings. It also provides for injunction as part of the penalty.

Linapacan's ordinance is not as detailed as that of CPG, provides for a summary procedure and prohibits the presence of lawyers.

(ii) Implementation of the Ordinance

It was noteworthy that despite the existence of the aforesaid ordinances, there was no functional administrative adjudication board. However, in the case of Linapacan, Palawan and CPG, Bohol where specific ordinances provided for administrative adjudication, there were efforts undertaken relating to administrative adjudication.

Linapacan officials shared that they imposed fines on violators of their municipal fishery ordinance and their 2008 collection reached P500,000. However, they noted that the AAB was not organized and no training was undertaken. Thus, the officials did not fully appreciate the administrative adjudication process and ultimately, the ordinance was not implemented. They also cited political intervention in some fishery cases.

In the case of CPG, seminars and training on administrative adjudication was undertaken, but the AAB was not functional. The municipal officials and personnel were not well versed on fishery laws and policies, and this deficiency made it difficult for them to perform the tasks expected of an AAB.

In Talibon, Bohol, the AAB met once only, and did not function. The municipal officials and personnel opined that this was their oversight and suggested an immediate review of their ordinance and for the conduct of trainings.

Officials and municipal personnel from Bien Unido and Ubay, Bohol expressed the need to strengthen the processes, refine the procedures and clarify the powers, functions and limitations of the AAB.

(iv) Obstacles/Barriers and Challenges

Municipal officials and personnel of Bohol and Palawan identified the following as obstacles and challenges in the pursuit of municipal administrative adjudication, thus:

- general lack of awareness on the nuances of administrative adjudication;
- typical bureaucratic problems and "politics" which have hampered implementation;
- lack of capacity building activities (orientation seminars, mentoring sessions and exchange visits).

Municipal officials expressed the need for assistance in reviewing their current ordinances and in developing an administrative adjudication manual.

(v) Proposed Actions and Ways Forward

In addition to the assistance sought for reviewing their current ordinances, proposed ordinances and in the development of a manual on administrative adjudication, there are other concerns that need to be addressed by every local government unit.

In reviewing their current and proposed ordinances on administrative adjudication, it would be worthwhile to conduct information drive or awareness activities among key officials, municipal personnel and community stakeholders on administrative adjudication. Engaging stakeholders can contribute to the effective implementation of administrative adjudication.

Particular to CPG, the review of the ordinance must consider the practicability and effectiveness of implementing the detailed procedure established by the ordinance. The composition and structure of the AAB, the protocols and procedural guidelines need to be deliberated upon. This effort will help determine the needed technical and logistical support to be provided by the municipal government.

4.2. Taytay, Palawan's Attempt on Municipal Administrative Adjudication³⁸

A municipality found on the northernmost tip of Palawan, Taytay prides itself in having one of the most numerous productive fishing grounds in the province. The bays of Sibaltan, Imorigue, Sharkfin, Base and the Inner and Outer Sounds of Malampaya produce enormous fish catch (13,005 metric tons in 1995), 85 percent of which are perches, brems snappers, eels, jacks, scad, mullets and garfishes.³⁹

The municipality of Taytay has Municipal Ordinance No. No 05, series of 2004, also known as the Fishery Code of Taytay and Municipal Ordinance No. 37, series of 2007, or the Taytay Live Reef Fish Ordinance. It has a municipal administrative adjudication body called the Fishery Management Unit (FMU) which conducts administrative adjudication hearings on violations of the fishery ordinances.

The creation of the Fishery Management Unit is provided under the Taytay Fishery Code or Ordinance No. 05. The ordinance mandates the FMU “to conduct hearings for the purpose of

³⁸ Information is also based on interviews with members of the Taytay Fisheries Management Unit, specifically, Ms. Marivic Matilliano of World Wildlife Fund and Atty. Olegario Cayetano, FMU legal officer

³⁹ Jacinto, Eusebio Jr. Community Legal and Institutional Studies. Tambuyog Development Center (1997). Pp. 112.

investigating and imposing administrative sanctions and indemnify against any person apprehended within the municipal waters and accused of violating any provision (of the Fishery Code)”. The FMU is under the Office of the Municipal Agriculturist and is composed of the: i) Municipal Agriculturist, ii) Municipal Administrator; iii) Municipal Chief of Police; iv) Legal Officer; and v) FARMC representative, Barangay representative or NGO representative. It is supposed to resolve cases within fifteen (15) days from the time a case was lodged. Summary judgment is rendered by the FMU for offenders who fail to appear in the proceedings.

According to Section 8.4. of Ordinance No. 05, the imposition of fines and penalties “...is without prejudice to administrative sanctions which may be imposed upon the offender for the purpose of fully or partially recovering the loss in revenue and/or costs incurred by the Municipal Government on account of the violation, and indemnity to compensate for the loss of, damage to, and/or costs of rehabilitation of the fishery and aquatic resources”.

The FMU is empowered to impound fishing vessels and/or gears involved in the violation of the Fisheries Code until the adjudication of the offense is terminated. Such items will not be released unless the cost of impoundment and storage has been settled. It shall not release inherently illegal items such as noxious substances to the offender unless instructed by the Court for which a case is pending. A valid fishing license issued to an individual will be revoked after the latter has been found to be guilty of an offense.

A Fisheries Arbitral Committee (FAB) is created if an offender opts to appeal an adverse judgment. The offender is given seven (7) days to appeal the judgment to the FAB who will then render final judgment within 15 days upon the receipt of the appeal. The FAB is a group of five (5) chosen by the FMU and the offender, respectively, from the rank of respected citizens of the municipality and the third member chosen jointly from the Committee on Fisheries of the Sangguniang Bayan. The decision of the FAB is final and unappealable.

The operations of the Taytay FMU has been supported annually as part of Fisheries Section of the Municipal Agricultural Office (MAO). Its operations are supported by the fisheries trust fund and partly by the annual municipal fisheries budget. Since 2008, a minimum budget of P250,000 has been earmarked.

Since late 2007, the FMU has conducted hearings and disposed of more than ten municipal fishery cases covered by the fishery ordinance. Most of these cases involved compressor fishing and the use of “baby *hulbot*” (active fishing gear) which are prohibited by the fishery ordinance. While some of these cases involved the seizure of the fishing vessel used in the commission of the fishery crime, the FMU has not ordered the forfeiture of any fishing vessel seized by law enforcers. The release of the fishing vessel has been the subject of plea bargaining or preliminary conferences; and generally, the FMU has allowed the release of these vessels provided the violator pays the fine/s provided under the fishery ordinance.

The conduct of administrative adjudication proceedings has not precluded the filing of criminal cases in court. Cases involving dynamite and cyanide fishing were generally filed in court.

FMU members interviewed admitted the deterrent value of the administrative adjudication process. They said that the expeditious adjudication process relatively contributed to such deterrence. The fines are deposited to the fisheries trust fund handled by the municipal treasury.

However, they maintain that such process needs to be more effective and be free from political interference. In several instances, the persons sued would seek the help of local officials. This situation has somehow resulted in the release of fishing vessels, in limiting penalties to the imposition of fines and in the reduction of fines.

The composition of the FMU needs to be reviewed. Currently, the MAO has inhibited himself from participating in the administrative adjudication proceedings since his personnel are involved in the enforcement activities, including the documentation and filing of cases. The municipal chief of police has similarly raised the same concern. Thus, certain FMU members are contemplating on revising the ordinance in order to make changes in the composition of the FMU.

FMU members interviewed suggested a review of the administrative adjudication rules of procedure, the FMU's mandate, including the composition of the FMU. A performance evaluation of the FMU and assessment of its impact on enforcement must also be undertaken. The NGO representative to the FMU said that their group is planning to conduct a management effectiveness assessment (MEA) in relation to their Taytay projects and they will include an evaluation of the FMU and other enforcement mechanisms.

V. Pre-requisites for Local Administrative Adjudication

The establishment of an administrative adjudication machinery is difficult and can be tough. Given the challenges faced by other administrative agencies such as the DENR, DA-BFAR and PCSO, it is important that the LGU is ready and convinced that the system can and will work to the advantage of their coastal resources, their constituents, enforcement agencies and their own institution. Once the system is set up, the LGU must ensure the integrity and credibility of the system in order to engender the support of civil society groups and the public at large.

Ideally, the following must be in place in order to ensure that municipal administrative adjudication can be operational and effective, thus:

1. Policy and Institutional Framework

An ordinance must be passed providing for the establishment of an administrative adjudication system, identifying the nature, powers and composition of the adjudication body, its procedures and other protocols.

In crafting the fisheries ordinance, the LGU can specify where administrative fines levied against offenders would go (e.g. to fund patrolling initiatives or to apprehending officers as incentives). Under the judicial system, civil damages go directly to the national coffers. Allocating fines to enforcement agencies may likely increase the incentive of police personnel to conduct more patrol operations and arrests.

Prior to this ordinance, there must be a municipal fisheries ordinance or coastal resources management code that lays down, among others, the registration and licensing requirements and procedures, and the prohibitions and penalties. The administrative adjudication process will take cognizance of the prohibitions and penalties provided by the fisheries ordinance.

The fisheries ordinance can be reviewed in order to strengthen sections on prohibitions and penalties, including the provisions on the use of administrative fines. The LGU can specify where administrative fines levied against offenders would go (e.g. to fund patrolling initiatives or to apprehending officers as incentives).

A fisheries registration and licensing system must also be in place. The database resulting from this mechanism would be useful reference to the adjudication board when they evaluate cases and determine penalties.

2. Functioning Coastal Law Enforcement Program

Most municipalities have their “*bantay dagat*” program which is included in their development plan and annual appropriation. Sustaining this initiative is a critical factor in the continuity of the municipal administrative adjudication. Unless law enforcement efforts are vigorously pursued, there would be no complaints filed and the administrative adjudication board will have nothing to adjudicate.

Law enforcement trainings must differentiate administrative from judicial processes which most law enforcers are familiar with. Such trainings must enable law enforcers to identify legal options and remedies available when they conduct enforcement activities.

3. Capability Building/Training on Administrative Adjudication

Municipal officials and personnel are not experienced adjudicators and most of them would probably have no idea on how to adjudicate fishery cases. The multi-sectoral/stakeholder composition of the body would be an added challenge. It is therefore imperative that capability building activities be planned, including cliniquing or mentoring activities.

4. Resources (Technical and Financial)

The adjudication board members need personnel to record the cases, organize the case files and document the adjudication proceedings. It would also be handy to have a pool of readily available experts (both science and legal) that they could consult whenever issues arise. Thus, a secretariat and a pool of technical experts (even on a retainer basis) need to be organized and engaged. The municipal adjudication board may also be given incentives or reasonable honorarium for the public service work they do.

Regular funding support to administrative adjudication is critical. The Taytay experience demonstrated that the establishment of the municipal fisheries trust fund (which include administrative fines imposed) and annual budget for fisheries adjudication is a key factor in sustaining the operations of the administrative adjudication body.

5. Information Dissemination to Stakeholders

The fisherfolks and other residents of a municipality must be aware of the administrative adjudication ordinance, including its accompanying protocols so they can help support its implementation. Knowledge of such processes would be empowering for a community. In turn, an empowered community can contribute to the attainment of a dynamic and credible administrative adjudication system.

6. Mechanism for Monitoring and Evaluation

The experience of LGUs showed that administrative adjudication mechanisms need to be monitored and evaluated. The Taytay, Palawan experience illustrated the value of documenting the administrative cases filed and administration adjudication proceedings, evaluating the performance of the administrative adjudication and using the results of the evaluation in reviewing the administrative adjudication mechanism. One challenge they faced is in the handling of the political intervention in some of the fishery cases. FMU members concerned have no clear solution to this concern. A mechanism for transparency can be one way to obviate political interference.

While local administrative adjudication by municipal governments is largely an untested area, it is encouraging to note that an increasing number of local government units have passed ordinances to provide the framework and operationalize adjudication processes. The challenge for these municipalities is the implementation of their ordinances, specifically, in making their administrative adjudication boards functional.

Local administrative adjudication, notwithstanding its limitations, can respond to the concerns of accessibility and visibility which typify the judicial processes. The immediate challenge is how to develop the proper perspective in the municipal level, especially among local officials, and encourage them to build on their existing legislative and enforcement initiatives.

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